BILL/FINANCE BILL, 2002

Annotated Text of Finance Bill, 2002[`1]

[6 OF 2002]

A Bill to give effect to the financial proposals of the Central Government for the financial year 2002-2003.

BE it enacted by Parliament in the Fifty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (*1*) This Act may be called the Finance Act, 2002.

(*2*) Save as otherwise provided in this Act, sections 2 to 112 shall be deemed to have come into force on the 1st day of April, 2002.

CHAPTER II

RATES OF INCOME-TAX

Income-tax

2. (*1*) Subject to the provisions of sub-sections (*2*) and (*3*), for the assessment year commencing on the 1st day of April, 2002, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided therein.

(*2*) In the cases to which Paragraph A of Part I of the First Schedule applies, where the assessee has, in the previous year, any net agricultural income exceeding five thousand rupees, in addition to total income, and the total income exceeds fifty thousand rupees, then,—

(*a*) the net agricultural income shall be taken into account, in the manner provided in clause (*b*) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and

(*b*) the income-tax chargeable shall be calculated as follows :—

(*i*) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(*ii*) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income;

(*iii*) the amount of income-tax determined in accordance with sub-clause (*i*) shall be reduced by the amount of income-tax determined in accordance with sub-clause (*ii*) and the sum so arrived at shall be the income-tax in respect of the total income:

Provided that the amount of income-tax so arrived at, as reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided in that Paragraph and the sum so arrived at shall be the income-tax in respect of the total income.

(*3*) In cases to which the provisions of Chapter XII or Chapter XII-A or sub-section (*1A*) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (*1*) or the rates as specified in that Chapter or section, as the case may be:

Provided that the amount of income-tax computed in accordance with the provisions of sections 112 and 113 shall be increased by a surcharge for purposes of the Union or surcharge as provided in Paragraph A, B, C, D or E, as the case may be, of Part I of the First Schedule:

Provided further that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115E and 115JB of the Income-tax Act, the amount of income-tax computed under this sub-section shall be increased by a surcharge for purposes of the Union, calculated at the rate of two per cent of such income-tax:

Provided also that no surcharge shall be payable by a foreign company.

(*4*) In cases in which tax has to be charged and paid under section 115U of the Income-tax Act, the tax shall be charged and paid at the rate as specified in the said section and shall be increased by a surcharge for purposes of the Union, calculated at the rate of five per cent of such tax.

(*5*) In cases in which tax has to be deducted under sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, at the rates in force, the deductions shall be made at the rates specified in Part II of the First Schedule and shall be increased, by a surcharge for purposes of the Union, calculated in each case, in the manner provided therein.

(*6*) In cases in which tax has to be deducted under sections 194C, 194E, 194EE, 194F, 194G, 194H, 194-I, 194J, 194K, 194L, 196A, 196B, 196C and 196D of the Income-tax Act, the deductions shall be made at the rates specified in those sections and shall be increased by a surcharge for purposes of the Union, calculated at the rate of five per cent of such tax.

(*7*) In cases in which tax has to be collected under the proviso to section 194B or under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section or at the rates specified in Part II of the First Schedule, as the case may be, and shall be increased, by a surcharge for purposes of the Union, calculated in each case, in the manner provided therein.

(*8*) Subject to the provisions of sub-section (*9*), in cases in which income-tax has to be charged under sub-section (*4*) of section 172 or sub-section (*2*) of section 174 or section 174A or section 175 or sub-section (*2*) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed, at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act shall be increased for purposes of the Union, calculated in each case in the manner provided therein:

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (*1A*) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:

Provided further that the amount of income-tax computed in accordance with the provisions of section 112 of the Income-tax Act shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule:

Provided also that in respect of any income chargeable to tax under sections 115A, 115AB, 115AC, 115ACA, 115AD, 115B, 115BB, 115BBA, 115BBB, 115E and 115JB of the Income-tax Act, "advance tax" computed under the first proviso shall be increased by a surcharge, for purposes of the Union, calculated at the rate of five per cent of such tax.

(*9*) In cases to which Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds fifty thousand rupees, then, in charging income-tax under sub-section (*2*) of section 174 or section 174A or section 175 or sub-section (*2*) of section 176

of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

(*a*) the net agricultural income shall be taken into account, in the manner provided in clause (*b*) [that is to say, as if the net agricultural income were comprised in the total income after the first fifty thousand rupees of the total income but without being liable to tax], only for the purpose of charging or computing such income-tax or, as the case may be, "advance tax" in respect of the total income; and

(*b*) such income-tax or, as the case may be, "advance tax" shall be so charged or computed as follows:—

(*i*) the total income and the net agricultural income shall be aggregated and the amount of income-tax or "advance tax" shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income;

(*ii*) the net agricultural income shall be increased by a sum of fifty thousand rupees, and the amount of income-tax or "advance tax" shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income were the total income;

(*iii*) the amount of income-tax or "advance tax" determined in accordance with sub-clause (*i*) shall be reduced by the amount of income-tax or, as the case may be, "advance tax" determined in accordance with sub-clause (*ii*) and the sum so arrived at shall be the income-tax or, as the case may be, "advance tax" in respect of the total income:

Provided that the amount of income-tax or "advance tax" so arrived at, as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act, shall be increased by a surcharge for purposes of the Union calculated in each case, in the manner provided therein.

(*10*) For the purposes of this section and the First Schedule,—

(*a*) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 2002, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

(*b*) "insurance commission" means any remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including business relating to the continuance, renewal or revival of policies of insurance);

(*c*) "net agricultural income", in relation to a person, means the total amount of agricultural income, from whatever source derived, of that person computed in accordance with the rules contained in Part IV of the First Schedule;

(*d*) all other words and expressions used in this section and the First Schedule but not defined in this sub-section and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

Note

Income-tax

Clause 2, read with the First Schedule to the Bill, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2002-2003. Further, it lays down the rates at which tax is to be deducted at source during the financial year 2002-2003 from income subject to such deduction under the Income-tax Act; and the rates at which "advance tax" is to be paid, tax is to be deducted at source from or paid on income chargeable under the head "Salaries" and tax is to be calculated and charged in special cases for the financial year 2002-2003.

Rates of income-tax for the assessment year 2002-2003

Part I of the First Schedule to the Bill specifies the rates at which income is liable to tax for the assessment year 2002-2003. These rates are the same as those specified in Part III of the First Schedule to the Finance Act, 2001, for the purposes of deduction of tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2001-2002.

Rates for deduction of tax at source during the financial year 2002-2003 *from income other than "Salaries"*

Part II of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source during

the financial year 2002-2003 from incomes other than "Salaries". These rates are broadly the same as those specified in Part II of the First Schedule to the Finance Act, 2001, for the purposes of deduction of income-tax at source during the financial year 2001-2002. However, for foreign companies, the rate of deduction of income-tax shall be forty per cent. as against the existing rate of forty-eight per cent. Further, the rate of deduction of tax at source from dividends in the case of domestic companies and other resident persons shall be ten per cent. The amount of tax so deducted shall be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such income-tax.

Rates for deduction of tax at source from "Salaries" computation of "advance tax" and charging of income-tax in special cases during the financial year 2002-2003

Part III of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source from, or paid on, income under the head "Salaries" and also the rates at which "advance tax" is to be paid and income-tax is to be calculated or charged in special cases for the financial year 2002-2003.

Paragraph A of this Part specifies the rates of income-tax in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of Part III applies. No change is proposed in the rate structure.

Paragraph B of this Part specifies the rate of income-tax in the case of every co-operative society. In such cases, the rates of tax will continue to be the same as those specified for assessment year 2002-2003.

Paragraph C of this Part specifies the rate of income-tax in the case of every firm. In such cases, the rate of tax will continue to be the same as that specified for assessment year 2002-2003.

Paragraph D of this Part specifies the rate of income-tax in the case of every local authority. In such cases, the rate of tax will continue to be the same as that specified for assessment year 2002-2003.

Paragraph E of this Part specifies the rates of income-tax in the case of companies. The rate of tax in the case of domestic companies will continue to be thirty-five per cent. as specified for the assessment year 2002-2003. However, in the case of foreign companies, it will be forty per cent. instead of forty-eight per cent.

In the case of every person being an individual, Hindu undivided family, association of persons or body of individuals whose income exceeds sixty thousand rupees and where income-tax is to be deducted at source or "advance tax" is payable in accordance with the provisions of this Part such amount of income-tax after allowing rebate under Chapter VIII-A, is proposed to be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such tax.

In the case of every artificial juridical person, co-operative society, firm, local authority or company where income-tax is to be computed in accordance with the provisions of this Part, such amount of income-tax is proposed to be increased by a surcharge for purposes of the Union calculated at the rate of five per cent. of such tax.

CHAPTER III

DIRECT TAXES

Income-tax

Amendment of section 2.

3. In section 2 of the Income-tax Act,—

(*a*) in clause (*24*), after sub-clause (*xi*), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely:—

"(*xii*) any sum referred to in clause (*vii*) of section 28;";

(*b*) in clause (*31*), after sub-clause (*vii*), the following *Explanation* shall be inserted, namely:—

"*Explanation*.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;";

(*c*) in clause (*37A*), in sub-clause (*i*), for the words, figures and letters "or section 115BB or section 115E", wherever they occur, the words, figures and letters "or section 115BB or section 115BBB or section 115E" shall be substituted with effect from the 1st day of April, 2003.

Note

Clause 3 seeks to amend section 2 of the Income-tax Act relating to definitions.

It is proposed to insert a new clause (*vii*) in section 28 of the Income-tax Act *vide* clause 13 of the Bill so as to provide that any sum whether received or receivable in cash or kind, under an agreement for not carrying out any activity in relation to any business; or not to share any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature, or information or technique likely to assist in the manufacture or processing of goods or provision for services, shall be chargeable to income-tax under the head "Profits and gains of business or profession".

It is proposed to insert a new sub-clause (*xii*) in clause (*24*) of section 2 so as to provide that the said sum received or receivable shall be included within the definition of income as defined in that clause.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Under the existing provisions contained in clause (*31*) of the said section, the expression "person" includes an individual, a Hindu undivided family, a company, a firm, an association of persons or a body of individuals, whether incorporated or not, a local authority and every artificial juridical person not falling within anything aforesaid.

It is proposed to insert an *Explanation* in the said clause (*31*) of the said section so as to provide that an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not, such person or body or authority or juridical person, was formed or established or incorporated with the object of deriving income, profits or gains.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

It is also proposed to amend clause (37A) of the said section to include therein the reference of the new section 115BBB proposed to be inserted *vide* clause 46 of the Bill. This amendment is consequential in nature.

This amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 10.

4. In section 10 of the Income-tax Act,—

(*a*) clause (*3*) shall be omitted with effect from the 1st day of April, 2003;

(*b*) in clause (*4*), in sub-clause (*i*), the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided** that the Central Government shall not specify, for the purposes of this sub-clause, such securities or bonds on or after the 1st day of June, 2002;";

(*c*) in clause (*4B*), for the words "savings certificates issued", the words, figures and letters "savings certificates issued before the 1st day of June, 2002" shall be substituted with effect from the 1st day of April, 2003;

(*d*) clause (*5B*) shall be omitted with effect from the 1st day of April, 2003;

(*e*) in clause (*6*), sub-clause (*i*) shall be omitted with effect from the 1st day of April, 2003;

(*f*) in clause (*6A*), after the words, figures and letters "Government or the Indian concern after the 31st day of March, 1976", the words, figures and letters "but before the 1st day of June, 2002" shall be inserted with effect from the 1st day of April, 2003;

(*g*) in clause (*6B*), with effect from the 1st day of April, 2003,—

(*i*) for the words "agreement entered into by the Central Government", the words, figures and letters "agreement entered into before the 1st day of June, 2002 by the Central Government" shall be

substituted;

(*ii*) for the words "related agreement approved", the words "related agreement approved before that date" shall be substituted;

(*h*) in clause (*10C*), after sub-clause (*viib*), the following sub-clause shall be inserted, namely:—

"(*viic*) an institution, having importance throughout India or in any State or States, as the Central Government may, by notification in the Official Gazette, specify in this behalf;";

(*i*) after clause (*10C*), the following clause shall be inserted with effect from the 1st day of April, 2003, namely: —

"(*10CC*) in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment within the meaning of clause (*2*) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in section 200 of the Companies Act, 1956 (1 of 1956);";

(*j*) clause (*14A*) shall be omitted with effect from the 1st day of April, 2003;

(*k*) in clause (*15*), with effect from the 1st day of April, 2003,–

(*i*) in sub-clause (*iib*), the following proviso shall be inserted, namely:–

"Provided that the Central Government shall not specify, for the purposes of this sub-clause, such Capital Investment Bonds on or after the 1st day of June, 2002;";

(*ii*) in sub-clause (*iid*), after the third proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

"Provided also that the Central Government shall not specify, for the purposes of this sub-clause, such bonds on or after the 1st day of June, 2002.";

(*l*) in clause (*20*), the following Explanation shall be inserted with effect from the 1st day of April, 2003, namely: —

'*Explanation*.—For the purposes of this clause, the expression "local authority" means—

(*i*) Panchayat as referred to in clause (*d*) of article 243 of the Constitution; or

(*ii*) Municipality as referred to in clause (*e*) of article 243P of the Constitution; or

(*iii*) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or

(*iv*) Cantonment Board as defined in section 3 of the Cantonments Act, 1924 (2 of 1924).';

(*m*) clause (*20A*) shall be omitted with effect from the 1st day of April, 2003;

(*n*) in clause (*21*), after the third proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided also** that where the scientific research association is approved by the Central Government and subsequently that Government is satisfied that—

(*i*) the scientific research association has not applied its income in accordance with the provisions contained in clause (*a*) of the first proviso; or

(*ii*) the scientific research association has not invested or deposited its funds in accordance with the provisions contained in clause (*b*) of the first proviso; or

(*iii*) the activities of the scientific research association are not genuine; or

(*iv*) the activities of the scientific research association are not being carried out in accordance with all or any of the conditions subject to which such association was approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association and to the Assessing Officer;";

(*o*) in clause (*22B*), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided also** that where the news agency has been specified, by notifica-tion, by the Central Government and subsequently that Government is satisfied that such news agency has not applied or accumulated or distributed its income in accordance with the provisions contained in the first proviso, it may, at any time

after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer;";

(*p*) clause (*23*) shall be omitted with effect from the 1st day of April, 2003;

(*q*) in clause (*23A*), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided further** that where the association or institution has been approved by the Central Government and subsequently that Government is satisfied that—

(*i*) such association or institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(*ii*) the activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer;";

(*r*) in clause (*23B*), after the second proviso and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided also** that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that—

(*i*) the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso; or

(*ii*) the activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.";

(*s*) in clause (*23C*),—

(*i*) in the third proviso, for clause (*a*), the following clause shall be substituted with effect from the 1st day of April, 2003, namely:–

"(*a*) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where any income is accumulated on or after the 1st day of April, 2002, the period of such accumulation shall in no case exceed five years; and";

(*ii*) in the ninth proviso, with effect from the 3rd day of February, 2001,–

(*a*) after the words, brackets, letters and figures "in terms of clause (*d*) of sub-section (*2*) of section 80G", the words, brackets, figures and letter "in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (*v*) of sub-section (*5C*) of that section, in the manner specified in that clause, or" shall be inserted and shall be deemed to have been inserted;

(*b*) for the words, figures and letters "or before the 31st day of March, 2002", the words, figures and letters "or before the 31st day of March, 2003" shall be substituted and shall be deemed to have been substituted;

(*iii*) the tenth proviso shall be omitted;

(*iv*) after the tenth proviso, the following provisos shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided also** that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or other medical institution, as the case may be, is established;

Provided also that where the fund or institution referred to in sub-clause (*iv*) or trust or institution referred to in sub-clause (*v*) is notified by the Central Government or any university or other educational institution referred to in sub-clause (*vi*) or any hospital or other medical institution referred to in sub-clause (*via*), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—

(*i*) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not,—

(*A*) applied its income in accordance with the provisions contained in clause (*a*) of the third proviso; or

(*B*) invested or deposited its funds in accordance with the provisions contained in clause (*b*) of the third proviso; or

(*ii*) the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution,—

(*A*) are not genuine; or

(*B*) are not being carried out in accordance with all or any of the conditions subject to which such association was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer;";

(*t*) in clause (*23D*), in the opening portion, the words, figures and letter "subject to the provisions of Chapter XII-E," shall be omitted with effect from the 1st day of April, 2003;

(*u*) clause (*23E*) shall be omitted with effect from the 1st day of April, 2003;

(*v*) after clause (*23EA*), the following clause shall be inserted, namely:—

"(*23EB*) any income of the Credit Guarantee Fund Trust for Small Scale Industries, being a trust created by the Government of India and the Small Industries Development Bank of India established under sub-section (*1*) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989), for five previous years relevant to the assessment years beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2007;";

(*w*) in clause (*23FA*), the words, figures and letter "other than dividends referred to in section 115-O," shall be omitted with effect from the 1st day of April, 2003;

(*x*) in clause (*23G*), the words, figures and letter "other than dividends referred to in section 115-O," shall be omitted with effect from the 1st day of April, 2003;

(*y*) clauses (*29*) and (*33*) shall be omitted with effect from the 1st day of April, 2003.

Note

Clause 4 seeks to amend section 10 of the Income-tax Act relating to incomes not included in total income.

Sub-clause (*a*) seeks to omit clause (*3*) of the said section which provides for exemption with respect to receipts, which are of casual and non-recurring nature.

Sub-clause (*b*) seeks to amend sub-clause (*i*) of clause (*4*) so as to provide that the Central Government shall not specify securities or bonds referred to in that sub-clause on or after 1st June, 2002.

Sub-clause (*c*) seeks to amend clause (*4B*) so as to provide that exemption on interest income on savings certificates notified by the Central Government under that clause on or after 1st June, 2002 shall not be available.

Sub-clause (*d*) seeks to omit clause (*5B*) which provides for exemption in respect of tax paid by the employer on behalf of an individual referred to in that clause.

Sub-clause (*e*) seeks to omit sub-clause (*i*) of clause (*6*) which provides for exemption in respect of passage moneys, etc., received by an individual who is not a citizen of India.

Sub-clause (*f*) seeks to amend clause (*6A*) so as to provide that tax paid by the Government or an Indian concern on behalf of a foreign company deriving income by way of royalty or fees for technical services in pursuance of an agreement with the Government or Indian concern shall be included in the total income of the foreign company in respect of agreements entered into on or after 1st June, 2002.

Sub-clause (*g*) seeks to amend clause (*6B*) so as to provide that tax paid by the Government or an Indian concern on behalf of a non-resident or a foreign company in pursuance of an agreement shall be included in the total income of the non-resident or the foreign company in respect of agreements entered into on or after 1st June, 2002.

Sub-clauses (*a*) to (*g*) will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Under the existing provisions contained in clause (*10C*), any amount received by an employee of a public sector company or any other company or an authority established under a Central, State or Provincial Act or a local authority or a co-operative society or a University or an Indian Institute of Technology or any State Government or the Central Government or a notified institute of management, at the time of voluntary retirement, or termination of his service in accordance with any scheme or schemes of voluntary retirement, or in the case of a public sector company, a scheme of voluntary separation, to the extent such amount does not exceed five lakh rupees, is not included in computing the total income of such employee.

Sub-clause (*h*) seeks to enlarge the scope of the exemption by extending it to an employee of an institution, having its importance throughout India or any State or States, as may be specified by the Central Government, by notification in the Official Gazette, for the purposes of clause (*10C*).

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Under the existing provisions contained in sub-clause (*iv*) of clause (*2*) of section 17 of the Income-tax Act, any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee is included in perquisite.

Sub-clause (*i*) seeks to insert a new clause (*10CC*) to provide that in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment within the meaning of clause (*2*) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in section 200 of the Companies Act, 1956, shall be exempt from tax.

Sub-clause (*j*) seeks to omit clause (*14A*) which provides for exemption with respect to exchange risk premium received by a public financial institution.

Sub-clause (*k*) seeks to amend sub-clauses (*iib*) and (*iid*) of clause (*15*) so as to provide that the Central Government shall not specify Capital Investment Bonds and bonds referred to in those sub-clauses on or after 1st June, 2002.

Under the existing provisions contained in clause (*20*), any income of a local authority chargeable under the head “Income from house property”, “Capital gains” or “Income from other sources” or from a trade or business carried on by it which accrues or arises from the supply of a commodity or service (not being water or electricity) within its own jurisdictional area or from the supply of water or electricity within or outside its own jurisdictional area, is not included in computing its total income.

Sub-clause (*l*) seeks to amend the said clause so as to restrict the exemption to the Panchayat and Municipality referred to in clause (*d*) of article 243 and clause (*e*) of article 243P of the Constitution, Municipal Committee and District Boards legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund and to the Cantonment Boards as defined under section 3 of the Cantonments Act, 1924.

Sub-clause (*m*) seeks to omit clause (*20A*) which provides for exemption in respect of any income of an authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both.

Sub-clause (*n*) seeks to amend clause (*21*) so as to provide that where the scientific research association is approved by the Central Government and subsequently that Government is satisfied that the scientific research

association has not applied its income in accordance with the provisions contained in clause (*a*) of the first proviso to the said clause or the scientific research association has not invested or deposited its funds in accordance with the provisions contained in clause (*b*) of the said proviso or the activities of the scientific research association are not genuine or the activities of the scientific research association are not being carried out in accordance with all or any of the conditions subject to which such association was approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association and to the Assessing Officer.

Sub-clause (*o*) seeks to amend clause (*22B*) so as to provide that where the news agency has been specified, by notification, by the Central Government and subsequently that Government is satisfied that such news agency has not applied or accumulated or distributed its income in accordance with the provisions contained in the first proviso to that clause, it may, at any time after giving a reasonable opportunity of showing cause, rescind the notification and forward a copy of the order rescinding the notification to such agency and to the Assessing Officer.

Sub-clause (*p*) seeks to omit clause (*23*) which provides for exemption in respect of any income of an association or institution established in India which may be notified under that clause, having as its object the control, supervision, regulation or encouragement in India of the games of cricket, hockey, football, tennis or such other games or sports notified in the Official Gazette.

Sub-clause (*q*) seeks to amend clause (*23A*) so as to provide that where the association or institution established in India having its objects the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture which has been approved by the Central Government and subsequently that Government is satisfied that such association or institution has not applied or accumulated its income in accordance with the provisions contained in clause (i) of the proviso to the said clause or the activities of the association or institution are not being carried out in accordance with all or any of the conditions subject to which such association or institution was approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such association or institution and to the Assessing Officer.

Sub-clause (*r*) seeks to amend clause (*23B*) so as to provide that where the institution has been approved by the Khadi and Village Industries Commission and subsequently that Commission is satisfied that the institution has not applied or accumulated its income in accordance with the provisions contained in the first proviso to the said clause or the activities of the institution are not being carried out in accordance with all or any of the conditions subject to which such institution was approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned institution, by order, withdraw the approval and forward a copy of the order withdrawing the approval to such institution and to the Assessing Officer.

Sub-clauses (*i*) to (*r*) will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Under the existing provisions contained in clause (*23C*) of the said section, the income of any fund or institution referred to in sub-clause (*iv*) or any trust or institution referred to in sub-clause (*v*) or any university or other educational institution referred to in sub-clause (*vi*) or any hospital or other medical institution referred to in sub-clause (*via*), is not exempt under the said sub-clauses unless the income is applied or accumulated for application, wholly and exclusively to the objects for which the fund or trust or institution or university or educational institution or hospital or medical institution is established and in a case where more than twenty-five per cent. of the income is accumulated on or after 1st April, 2001, the period of the accumulation of the amount exceeding twenty-five per cent. of its income shall not exceed five years.

Sub-clause (*s*)(*i*) seeks to omit the provision permitting accumulation up to twenty-five per cent. of the income for an unlimited period and to provide that where any income is accumulated on or after the 1st April, 2002, the period of such accumulation shall in no case exceed five years.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Under the existing provisions contained in clause (23C) of section 10, any amount of donation received by the fund or institution in terms of clause (d) of sub-section (2) of section 80G which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-

section (5C) of that section and not transferred to the Prime Ministers' National Relief Fund on or before the 31st day of March, 2002 shall be deemed to be the income of the previous year and shall accordingly be charged to tax.

Sub-clause (s)(ii) seeks to amend clause (23C) so as to provide that the exemptions under this clause shall not be available if such a fund or institution does not render accounts of income and expenditure to the authority prescribed under clause (v) of sub-section (5C) of section 80G in the manner and within the time prescribed in that clause.

It is also proposed to extend the time limit for utilising the funds in terms of sub-section (5C) of section 80G and transferring the unutilised funds to the Prime Ministers' National Relief Fund from 31st March, 2002 to 31st March, 2003.

This amendment will take effect retrospectively from 3rd February, 2001.

Sub-clause (s)(iii) seeks to omit the tenth proviso to clause (23C) of the said section which provides that an institution or trust having total receipts of more than one crore rupees, or a university or other educational institution or hospital or other medical institution having total receipts exceeding one crore rupees, shall publish its accounts in a local newspaper and furnish a copy of such newspaper along with the application prescribed under the first proviso to clause (23C).

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Sub-clause (s)(iv) seeks to insert a proviso to clause (23C) of the said section so as to provide that where the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) does not apply its income during the year of receipt and accumulates it, any credit or payment out of such accumulation to any trust or institution registered under section 12AA or to any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall not be treated as application of income to the objects for which such fund or trust or institution or university or educational institution or hospital or medical institution, as the case may be, is established.

Sub-clause (s)(v) seeks to amend clause (23C) so as to provide that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) of that clause is notified by the Central Government or any university or other educational institution referred to in sub-clause (vi) or any hospital or other institution referred to in sub-clause (via) is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that such fund or institution or trust or university or other educational institution or hospital or other medical institution has not, applied its income in accordance with the provisions contained in clause (a) of the third proviso to that clause; or invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or the activities of such fund or trust or institution or university or other educational institution or hospital or other medical institution are not genuine or are not being carried out in accordance with all or any of the conditions subject to which such association was notified or approved, it may, at any time after giving a reasonable opportunity of showing cause against the proposed rescinding or withdrawal to the concerned fund or institution or trust or university or other educational institution or hospital or other medical institution, rescind the notification or withdraw the approval and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or university or other educational institution or hospital or other medical institution and to the Assessing Officer.

Sub-clause (s) (iv) will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Sub-clause (t) seeks to omit reference to "Chapter XII-E" in clause (23D) of the said section. The proposed amendment is of consequential nature.

Sub-clause (u) seeks to omit clause (23E) which provides for exemption with respect to income of the Exchange Risk Administration Fund set up by a public financial institution.

Sub-clauses (t) and (u) will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Sub-clause (v) seeks to insert a new clause (23EB) so as to exempt any income of the Credit Guarantee Fund

Trust for Small Scale Industries being a trust created by the Government of India and the Small Industries Development Bank of India for a period of five previous years relevant to the assessment years beginning on 1st April, 2002 and ending on 31st March, 2007.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and four subsequent years.

Sub-clause (w) seeks to omit the words "other than dividends referred to in section 115-O" in clause (23FA). The proposed amendment is of consequential nature.

Sub-clause (x) seeks to omit the words "other than dividends referred to in section 115-O" in clause (23G). The proposed amendment is of consequential nature.

Sub-clause (y) seeks to omit clause (29) which provides for exemption in respect of any income of an authority constituted under any law for the time being in force for the marketing of commodities, derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities. It also seeks to omit clause (33) which provides for exemption in respect of income by way of dividends and income received in respect of units from the Unit Trust of India and income received in respect of units of a mutual fund.

Sub-clauses (w), (x) and (y) will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 10A.

5. In section 10A of the Income-tax Act, in sub-section (*1*), after the third proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided also** that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived by an undertaking from the export of such articles or things or computer software:".

Note

Clause 5 seeks to amend section 10A of the Income-tax Act relating to special provision in respect of newly established undertakings in free trade zone, etc.

Under the existing provisions contained in sub-section (1) of the said section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, is allowed from the total income of the assessee. The profits derived from the export of articles or things or computer software is the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee.

The proposed amendment seeks to insert a new proviso after the third proviso to sub-section (1) of the said section so as to provide that for the assessment year 2003-2004, the deduction shall be restricted to ninety per cent. of such profits and gains.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 only.

Amendment of section 10B.

6. In section 10B of the Income-tax Act, in sub-section (*1*), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:—

"**Provided also** that for the assessment year beginning on the 1st day of April, 2003, the deduction under this sub-section shall be ninety per cent of the profits and gains derived from the export of such articles or things or computer software:".

Note

Clause 6 seeks to amend section 10B of the Income-tax Act relating to special provisions in respect of newly

established hundred per cent. export-oriented undertakings.

Under the existing provisions contained in sub-section (1) of the said section, a deduction of such profits and gains as are derived by an undertaking from the export of articles or things or computer software for a period of ten consecutive assessment years beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce such articles or things or computer software, as the case may be, is allowed from the total income of the assessee. The profits derived from the export of articles or things or computer software is the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the assessee.

The proposed amendment seeks to insert a new proviso after the second proviso to sub-section (1) of the said section so as to provide that for the assessment year 2003-2004, the deduction shall be restricted to ninety per cent. of such profits and gains.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 only.

Amendment of section 11.

7. In section 11 of the Income-tax Act, with effect from the 1st day of April, 2003,—

(*a*) in sub-section (*1*),—

(*i*) in clause (*a*), the words "and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;" shall be omitted;

(*ii*) in clause (*b*), the words "and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent of the income from such property;" shall be omitted;

(*iii*) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

"*Explanation*.–For the purposes of clauses (*a*) and (*b*), if, in the previous year, the income applied to charitable or religious purposes in India falls short of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount for the reason that the whole or any part of the income has not been received during that year, then, so much of the income applied to such purposes in India during the previous year in which the income is received or during the previous year immediately following as does not exceed the said amount, may, at the option of the person in receipt of the income (such option to be exercised in writing before the expiry of the time allowed under sub-section (*1*) of section 139 for furnishing the return of income) be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, during the previous year in which the income is received or during the previous year immediately following, as the case may be.";

(*b*) for sub-section (*1B*), the following sub-section shall be substituted, namely:—

"(*1B*) Where any income in respect of which an option is exercised under the *Explanation* to sub-section (*1*) is not applied to charitable or religious purposes in India during the period referred to in the said *Explanation*, then, such income shall be deemed to be the income of the person in receipt thereof, of the previous year immediately following the previous year in which the income was received.";

(*c*) in sub-section (*2*),—

(*i*) the words "seventy-five per cent of" shall be omitted;

(*ii*) after the second proviso, the following *Explanation* shall be inserted, namely:—

"*Explanation*.—Any amount credited or paid, out of income referred to in clause (*a*) or clause (*b*) of sub-section (*1*), read with the *Explanation* to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.";

(*d*) in sub-section (*3*),—

(*i*) after clause (*c*), the following clause shall be inserted, namely:—

"(*d*) is credited or paid to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10,";

(*ii*) for the words "set apart or ceases to remain so invested or deposited or", the words "set apart or ceases to remain so invested or deposited or credited or paid or" shall be substituted;

(*e*) in sub-section (*3A*), the following proviso shall be inserted, namely:—

"**Provided** that the Assessing Officer shall not allow application of such income by way of payment or credit made for the purposes referred to in clause (*d*) of sub-section (*3*) of section 11.".

Note

Clause 7 seeks to amend section 11 of the Income-tax Act relating to income from property held for charitable or religious purposes.

The existing provisions contained in clauses (a) and (b) of sub-section (1) of the said section, *inter alia*, provide that an amount up to twenty-five per cent. of the income of a trust can be accumulated for an indefinite period, and without any condition.

Sub-clause (a) (i) seeks to provide that twenty-five per cent. of the income from property held under trust which is not applied to charitable or religious purposes, but is accumulated or set apart for application for such purposes, can be accumulated, subject to the conditions laid down in sub-section (2) of section 11.

Sub-clause (a) (ii) seeks to provide that twenty-five per cent. of the income from property held under trust which is not applied to charitable or religious purposes, but is finally set apart for application for such purposes, can be accumulated, subject to the conditions laid down in sub-section (2) of section 11.

Sub-clause (a) (iii) seeks to substitute the existing *Explanation* of sub-section (1) of the said section. The proposed amendment is of consequential nature.

Sub-clause (b) seeks to substitute a new sub-section for sub-section (1B) of the said section so as to provide that where any income in respect of which an option is exercised under the *Explanation* to sub-section (1), is not applied to charitable or religious purposes in India during the previous year in which the income was received, or during the previous year immediately following, then, such income shall be deemed to be the income of the person in receipt thereof of the previous year immediately following the previous year in which the income was received.

Under the existing provisions contained in sub-section (2) of the said section, where seventy-five per cent. of the income referred to in clause (a) or clause (b) of sub-section (1), read with the *Explanation* to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, subject to certain conditions specified therein.

Sub-clause (c) (i) seeks to omit the words "seventy-five per cent. of" in sub-section (2) so as to provide that if the whole of the income derived from property held under trust is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income provided the conditions specified in this sub-section are complied with.

Sub-clause (c) (ii) seeks to insert an *Explanation* below sub-section (2) of the said section so as to provide that any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the *Explanation* to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

Thus, payment to other trusts or institutions out of income from property held under trust in the year of receipt will continue to be treated as application of income. However, any such payment out of the accumulated income shall not be treated as application of income and will be taxed accordingly.

Sub-clause (d) (i) seeks to insert a new clause in sub-section (3) of section 11 so as to provide that if any income referred to in sub-section (2) of the said section is paid or credited to any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, such payment or credit shall be deemed to be the income of the person in receipt of the income from property held under trust of the previous year in which such payment or credit is made.

Sub-clause (d) (ii) seeks to insert the words "paid or credited or," in sub-section (3) of section 11 after the words "set apart or ceases to remain so invested or deposited or". The proposed amendment is of consequential nature.

Sub-clause (e) seeks to insert a proviso in sub-section (3A) so as to provide that the Assessing Officer shall not allow application of income by way of payment or credit made for the purposes referred to in clause (d) of sub-section (3) of the said section. The proposed amendment takes away the discretion of the Assessing Officer in sub-section (3A) to allow the trust to apply the accumulated income for payment or credit to other charitable or religious trusts and institutions.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 12.

8. In section 12 of the Income-tax Act, in sub-section (*3*), with effect from the 3rd day of February, 2001,—

(*a*) after the words, brackets, letters and figures "in terms of clause (*d*) of sub-section (*2*) of section 80G", the words, brackets, figures and letter "in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (*v*) of sub-section (*5C*) of that section, in the manner specified in that clause, or" shall be inserted and shall be deemed to have been inserted;

(*b*) for the words, figures and letters "or before the 31st day of March, 2002", the words, figures and letters "or before the 31st day of March, 2003" shall be substituted and shall be deemed to have been substituted.

Note

Clause 8 seeks to amend section 12 of the Income-tax Act relating to income of trusts or institutions from contributions.

Under the existing provisions contained in sub-section (3) of the said section, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G which has been utilised for purposes other than providing relief to victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of that section and is not transferred to the Prime Minister's National Relief Fund on or before the 31st March, 2002, shall be deemed to be the income of the previous year and shall, accordingly, be charged to tax.

Sub-clause (a) seeks to amend sub-section (3) to provide that the exemption under this sub-section shall not be available if such a trust or institution does not render accounts of income and expenditure to the prescribed authority under clause (v) of sub-section (5C) of section 80G in the manner and within the time prescribed in that clause.

Sub-clause (b) also seeks to amend sub-section (3) to extend the time-limit for utilising the funds in terms of sub-section (5C) of section 80G and transferring the unutilised funds to the Prime Minister's National Relief Fund up to 31st March, 2003 instead of 31st March, 2002.

These amendments will take effect retrospectively from 3rd February, 2001.

Amendment of section 12A.

9. In section 12A of the Income-tax Act, clause (*c*) shall be omitted.

Note

Clause 9 seeks to amend section 12A of the Income-tax Act relating to conditions as to registration of trusts, etc.

Under the existing provisions contained in clause (c) of the said section, the exemption under sections 11 and 12 in relation to income of any trust or institution does not apply to a trust or institution, having total income exceeding one crore rupees (without giving effect to the provisions of sections 11 and 12), unless such trust or institution publishes its accounts in a local newspaper before the due date for furnishing the return of income and also furnishes a copy of such newspaper along with the return of income.

The proposed amendment seeks to omit the said clause (c) of section 12A dispensing with the requirement of publishing accounts in a local newspaper and furnishing a copy of such newspaper along with the return of income.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Amendment of section 14A.

10. In section 14A of the Income-tax Act, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 11th day of May, 2001, namely :—

"**Provided** that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.".

Note

Clause 10 seeks to amend section 14A of the Income-tax Act relating to expenditure incurred in relation to income not includible in total income.

It is proposed to insert a proviso in the said section so as to clarify that the provisions contained in that section shall not empower the Assessing Officer to reassess the cases under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before 1st April, 2001.

This amendment will take effect retrospectively from 11th May, 2001.

Amendment of section 17.

11. In section 17 of the Income-tax Act, in clause (*2*), after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

'**Provided further** that for the assessment year beginning on the 1st day of April, 2002, nothing contained in this clause shall apply to any employee whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers) exclusive of the value of all perquisites not provided for by way of monetary payment, does not exceed one lakh rupees.'.

Note

Clause 11 seeks to amend section 17 of the Income-tax Act relating to the definitions of "salary", "perquisite" and "profits in lieu of salary".

The existing provisions contained in clause (2) of the said section define "perquisite" to include the value of rent-free accommodation provided to the employee by his employer, value of concession in the matter of rent of such accommodation, the value of any benefit or amenity granted or provided free of cost by the employer in certain circumstances, any sum paid by the employer in respect of any obligation payable by the employee, any sum payable by the employer to effect an assurance on life of the employee or to effect a contract for an annuity and the value of any other fringe benefit or amenity, as may be prescribed.

It is proposed to insert a proviso in the said clause to provide that for the assessment year beginning on 1st April, 2002, no perquisite shall be computed under the said clause in the case of an employee whose income under the head "Salaries" for that year, exclusive of the value of all perquisite not provided for by way of monetary payments does not exceed one lakh rupees.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 only.

Amendment of section 24.

12. In section 24 of the Income-tax Act, in clause (*b*), with effect from the 1st day of April, 2003,—

(*a*) in the second proviso, for the words, figures and letters "before the 1st day of April, 2003", the words "within three years from the end of the financial year in which capital was borrowed" shall be substituted;

(*b*) after the second proviso and the *Explanation*, the following shall be inserted, namely:—

'**Provided also** that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.–For the purposes of this proviso, the expression "new loan" means the whole or any part of a loan taken by the assessee subsequent to capital borrowed, for the purpose of repayment of such capital.'.

Note

Clause 12 seeks to amend section 24 of the Income-tax Act relating to deductions from income from house property.

The existing provisions contained in section 24 provide, *inter alia,* for a deduction up to an amount of one lakh fifty thousand rupees payable as interest on capital borrowed on or after 1st April, 1999 for the acquisition or construction of the property, where such acquisition or construction is completed before 1st April, 2003, while computing the income chargeable under the head "Income from house property".

Sub-clause (a) proposes to amend the second proviso to the said section so as to provide that where such property is acquired or constructed with capital borrowed on or after 1st April, 1999, the deduction for interest up to one lakh fifty thousand rupees will be allowed if the acquisition or construction is completed within three years from the end of the financial year in which capital was borrowed.

Sub-clause (b) proposes to insert a third proviso so as to provide that no deduction shall be made under the second proviso unless the assessee furnishes a certificate from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable on such capital borrowed by the assessee for the purpose of acquisition or construction of the property, or conversion of the whole or any part of such capital borrowed for such purpose which remains to be repaid, as a new loan.

It is further proposed to insert an *Explanation* to the third proviso which defines "new loan".

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 28.

13. In section 28 of the Income-tax Act, after clause (*vi*), the following shall be inserted with effect from the 1st day of April, 2003, namely:—

'(*vii*) any sum, whether received or receivable in cash or kind, under an agreement for—

(*a*) not carrying out any activity in relation to any business; or

(*b*) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

Explanation.—For the purposes of this clause,—

(*i*) "agreement" includes any arrangement or understanding or action in concert,—

(*A*) whether or not such arrangement, understanding or action is formal or in writing; or

(*B*) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;

(*ii*) "service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging.'.

Note

Clause 13 seeks to amend section 28 of the Income-tax Act relating to profits and gains of business or profession.

The existing provisions contained in the said section specify the categories of income which are chargeable to income-tax under the head "Profits and gains of business or profession".

It is proposed to insert a new clause (vii) in the aforesaid section so as to provide that any sum whether received or receivable, in cash or kind, under an agreement for not carrying out any activity in relation to any business or not to share any know-how, patent, copyright, trade-mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for service, shall be chargeable to income-tax under the head "Profits and gains of business or profession".

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 32.

14. In section 32 of the Income-tax Act, in sub-section (*1*), with effect from the 1st day of April, 2003,—

(*a*) in clause (*ii*),—

(*i*) in the second proviso, for the words, brackets and figures "or clause (*ii*)", at both the places where they occur, the words, brackets, figures and letter "or clause (*ii*) or clause (*iia*)" shall be substituted;

(*ii*) in *Explanation 2* below the fifth proviso, for the words "For the pur-poses of this clause", the words "For the purposes of this sub-section" shall be substituted;

(*b*) after clause (*ii*), the following shall be inserted, namely:—

'(*iia*) in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2002, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to fifteen per cent. of the actual cost of such machinery or plant shall be allowed as deduction under clause (*ii*) :

Provided that such further deduction of fifteen per cent shall be allowed to—

(*A*) a new industrial undertaking during any previous year in which such undertaking begins to manufacture or produce any article or thing on or after the 1st day of April, 2002; or

(*B*) any industrial undertaking existing before the 1st day of April, 2002, during any previous year in which it achieves the substantial expansion by way of increase in installed capacity by not less than twenty-five per cent:

Provided further that no deduction shall be allowed in respect of—

(*a*) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or

(*b*) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or

(*c*) any office appliances or road transport vehicles; or

(*d*) any machinery or plant, the whole or part of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year:

Provided also that no deduction shall be allowed under clause (*A*) or, as the case may be, clause (*B*), of the first proviso unless the assessee furnishes the details of machinery or plant and increase in the installed capacity of production in such form, as may be prescribed, along with the return of income, and the report of an accountant, as defined in the *Explanation* below sub-section (*2*) of section 288 certifying that the deduction has been correctly claimed in accordance with the provisions of this clause.

Explanation.—For the purposes of this clause,—

(*1*) "new industrial undertaking" means an undertaking which is not formed,–

(*a*) by the splitting up, or the reconstruction, of a business already in existence; or

(*b*) by the transfer to a new business of machinery or plant previously used for any purpose;

(*2*) "installed capacity" means the capacity of production as existing on the last day of any previous year commencing on or after the 31st day of March, 2002.'.

Note

Clause 14 seeks to amend section 32 of the Income-tax Act relating to depreciation.

Under the existing provisions contained in the said section, deduction is allowed in respect of depreciation on assets owned wholly or partly by the assessee and used for the purposes of the business or profession. In the case of any block of assets, the deduction is allowed at such percentage on the written down value thereof as is prescribed.

Item (A) of sub-clause (a) seeks to make a reference to new clause (iia) in the second proviso to sub-section (1) and item (B) of sub-clause (a) seeks to amend *Explanation 2* below the fifth proviso, to substitute the words "For the purposes of this sub-section" for the words "For the purposes of this clause". These amendments are of consequential nature.

Sub-clause (b) seeks to insert a new sub-clause (iia) in sub-section (1) of the said section to provide that in the case of any new machinery or plant (other than ships and aircraft), which has been acquired and installed after the 31st day of March, 2002, by an assessee engaged in the business of manufacture or production of any article or thing, a further sum equal to fifteen per cent. of the actual cost of such machinery or plant shall be allowed as deduction under clause (ii). Such further deduction of fifteen per cent. shall be allowed to a new industrial undertaking during any previous year in which such undertaking begins to manufacture or to produce any article or thing on or after the 1st day of April, 2002 or to any industrial undertaking existing before the 1st day of April, 2002, during any previous year in which it achieves the substantial expansion by way of increase in installed capacity by not less than twenty-five per cent.

However, no deduction shall be allowed in respect of any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or any office appliances or road transport vehicles; or any machinery or plant, the whole or part of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year. It is further proposed to provide that no deduction shall be allowed under clause (A) or, as the case may be, clause (B), of the first proviso unless the assessee furnishes the details of machinery or plant and increase in the installed capacity of production in such form, as may be prescribed, along with the return of income, and the report of an accountant, as defined in the *Explanation* below sub-section (2) of section 288 certifying that the deduction has been correctly claimed in accordance with the provisions of this clause.

It is also proposed to define the expressions "new industrial undertaking" and "installed capacity" for the purposes of the proposed clause (iia).

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 33AC.

15. In section 33AC of the Income-tax Act, in sub-section (*1*), for the first proviso, the following proviso shall be substituted with effect from the 1st day of April, 2003, namely:—

> "**Provided** that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the aggregate of the amounts of the paid-up share capital, the general reserves and amount credited to the share premium account of the assessee, no allowance under this sub-section shall be made in respect of such excess.".

Note

Clause 15 seeks to amend section 33AC of the Income-tax Act relating to reserves for shipping business.

Under the existing provisions contained in sub-section (1) of the said section, a Government company or a public company formed and registered in India with the main object of carrying on the business of operation of ships is allowed a deduction of an amount not exceeding hundred per cent. of the profits derived from the business of operation of ships, subject to certain conditions including crediting of the amount to a reserve account. The first proviso to the said sub-section provides that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid-up share capital (excluding the amounts capitalised from the reserves) of the assessee, no allowance shall be made in respect of such excess.

It is proposed to substitute the aforesaid proviso to the said sub-section so as to provide that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the aggregate of the amounts of the paid-up share capital, the general reserves and amount credited to the share premium account of the assessee, no allowance under that sub-section shall be made in respect of such excess.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 35AC.

16. In section 35AC of the Income-tax Act, after sub-section (*5*) and before the *Explanation*, the following sub-section shall be inserted with effect from the 1st day of April, 2003, namely :—

"(*6*) Notwithstanding anything contained in any other provision of this Act, where—

(*i*) the approval of the National Committee, granted to an association or institution, is withdrawn under sub-section (*4*) or the notification in respect of eligible project or scheme is withdrawn in the case of a public sector company or local authority or an association or institution under sub-section (*5*); or

(*ii*) a company has claimed deduction under the proviso to sub-section (*1*) in respect of any expenditure incurred directly on the eligible project or scheme and the approval for such project or scheme is withdrawn by the National Committee under sub-section (*5*),

the total amount of the payment received by the public sector company or the local authority or the association or the institution, as the case may be, in respect of which such company or authority or association or institution has furnished a certificate referred to in clause (*a*) of sub-section (*2*) or the deduction claimed by a company under the proviso to sub-section (*1*) shall be deemed to be the income of such company or authority or association or institution, as the case may be, for the previous year in which such approval or notification is withdrawn and tax shall be charged on such income at the maximum marginal rate in force for that year.".

Note

Clause 16 seeks to amend section 35AC of the Income-tax Act relating to expenditure on eligible projects or schemes.

Under the existing provisions contained in the said section, any sum paid, to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme, is allowed as a deduction during the previous year.

It is proposed to insert a new sub-section (6) in the said section so as to provide that where the approval granted to an association or institution referred to in sub-section (1) of the aforesaid section is withdrawn under the provisions of sub-section (4) or the notification in respect of eligible project or scheme is withdrawn in the case of a public sector company or local authority or an association or institution under sub-section (5) or where a company has claimed deduction under the proviso to sub-section (1) in respect of any expenditure incurred directly on the eligible project or scheme and the approval for such project or scheme is withdrawn by the National Committee under sub-section (5), the total amount of the payment received by the public sector company or the local authority or the association or the institution, as the case may be, in respect of which such company or authority or association or institution has furnished a certificate referred to in clause (a) of sub-section (2) or the deduction claimed by a company under the proviso to sub-section (1) shall be deemed to be the income of such company or authority or association or institution, as the case may be, for the previous year in which such approval or notification is withdrawn and tax shall be charged on such income at the maximum marginal rate in force for that year.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 35CCB.

17. In section 35CCB of the Income-tax Act, in sub-section (*1*), in the opening portion, for the words "Where an assessee incurs any expenditure", the words, figures and letters "Where an assessee incurs any expenditure on or before the 31st day of March, 2002" shall be substituted with effect from the 1st day of April, 2003.

Note

Clause 17 seeks to amend section 35CCB of the Income-tax Act relating to expenditure by way of payment to associations and institutions for carrying out programmes of conservation of natural resources.

Under the existing provisions contained in sub-section (1) of the said section, any sum paid by an assessee to an association or institution, which is approved by the prescribed authority and has as its object the undertaking of any programme of conservation of natural resources or of afforestation, to be used for carrying out any programme of conservation of natural resources or afforestation approved by the prescribed authority or to such fund for afforestation as may be notified by the Central Government, is allowed as a deduction.

It is proposed to amend the said sub-section so as to provide that a deduction under that sub-section shall be allowed if such sum is paid on or before the 31st March, 2002.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 35DDA.

18. In section 35DDA of the Income-tax Act, for sub-section (*2*), the following sub-sections shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001, namely:—

"(2) Where the assessee, being an Indian company, is entitled to the deduction under sub-section (*1*) and the undertaking of such Indian company entitled to the deduction under sub-section (*1*) is transferred, before the expiry of the period specified in that sub-section, to another Indian company in a scheme of amalgamation, the provisions of this section shall, as far as may be, apply to the amalgamated company as they would have applied to the amalgamating company if the amalgamation had not taken place.

(3) Where the undertaking of an Indian company entitled to the deduction under sub-section (*1*) is transferred, before the expiry of the period specified in that sub-section, to another company in a scheme of demerger, the provisions of this section shall, as far as may be, apply to the resulting company, as they would have applied to the demerged company, if the demerger had not taken place.

(4) Where there has been reorganisation of business, whereby a firm is succeeded by a company fulfilling the conditions laid down in clause (*xiii*) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (*xiv*) of section 47, the provisions of this section shall, as far as may be, apply to the successor company, as they would have applied to the firm or the proprietary concern, if reorganisation of business had not taken place.

(*5*) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (*1*) in the case of the amalgamating company referred to in sub-section (*2*), in the case of demerged company referred to in sub-section (*3*) and in the case of a firm or proprietary concern referred to in sub-section (*4*) of this section, for the previous year in which amalgamation, demerger or succession, as the case may be, takes place.

(*6*) No deduction shall be allowed in respect of the expenditure mentioned in sub-section (*1*) under any other provision of this Act.".

Note

Clause 18 seeks to amend section 35DDA of the Income-tax Act relating to amortisation of expenditure incurred under voluntary retirement scheme.

Under the existing provisions contained in sub-section (1) of the said section, where an assessee incurs any expenditure in any previous year by way of payment of any sum to an employee at the time of his voluntary retirement under any scheme of voluntary retirement, one-fifth of the amount so paid shall be deducted in computing the profits and gains of the business for that previous year and the balance shall be deducted in equal instalments for each of the four immediately succeeding previous years.

It is proposed to substitute new sub-sections (2) to (6) for the existing sub-section (2) so as to provide that where the undertaking of an Indian company entitled to deduction for amortisation of voluntary retirement expenses is transferred before the expiry of the period specified in sub-section (1) of the said section to another Indian company in a scheme of amalgamation or demerger, the deduction shall continue to be available to the amalgamated company or the resulting company as if the amalgamation or demerger had not taken place. Similarly, in case of reorganisation of certain forms of business whereby a firm or a proprietary concern is succeeded by a company, the deduction shall continue to be available to the successor company. No deduction shall be allowed to the amalgamating or demerged company, or to the firm or proprietary concern, in the year in which the undertaking is transferred.

These amendments will take effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

Amendment of section 36.

19. In section 36 of the Income-tax Act, in sub-section (*1*), in clause (*viia*), with effect from the 1st day of April, 2003,—

(*i*) in sub-clause (*a*),—

(*A*) for the words "not exceeding five per cent", the words "not exceeding seven and one-half per cent" shall be substituted;

(*B*) after the proviso and before the *Explanation*, the following proviso shall be inerted, namely :—

'**Provided further** that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent." had been substituted.';

(*ii*) in sub-clause (*c*), the following proviso shall be inserted, namely:—

"**Provided** that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount not exceeding ten per cent of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year.".

Note

Clause 19 seeks to amend section 36 of the Income-tax Act relating to other deductions.

Under the existing provisions contained in sub-clause (a) of clause (viia) of sub-section (1) of section 36, a scheduled bank (not being a bank incorporated outside India) or a non-scheduled bank is entitled to a deduction of up to five per cent. of its gross total income before allowing deduction under the said clause, in respect of provision for bad and doubtful debts. Under the proviso to the said sub-clause such banks have an option to claim deduction in respect of any provision for assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it. The amount of deduction is limited to five per cent. of the amount of the doubtful assets or loss assets shown in the books of account of such bank on the last day of the previous year. The deduction is available for five consecutive assessment years commencing on or after 1st April, 2000 and ending before 1st April, 2005.

It is proposed to enhance the limit of deduction from five per cent. to seven and one-half per cent. of the gross total income (before making deduction under the said clause). It is further proposed to enhance the limit on the optional deduction from five per cent. to ten per cent. of the doubtful or loss assets for the remaining two assessment years i.e. 2003-2004 and 2004-2005.

Under the existing provisions contained in sub-clause (c) of clause (viia) of sub-section (1) of the said section, a public financial institution, a State financial corporation and a State industrial investment corporation is entitled to a deduction, in computing the total income, in respect of the provision for bad and doubtful debt made out of the profits. The maximum amount to be allowed as a deduction is limited to five per cent. of its total income computed before making any deduction in respect of the provision for bad and doubtful debt under the provisions of this clause and Chapter VI-A.

It is proposed to insert a proviso to sub-clause (c) of clause (viia) so as to provide an option to a public financial institution, a State financial corporation or a State industrial investment corporation to claim a deduction in respect of any provision for assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it. The amount of deduction shall not exceed ten per cent. of the amount of doubtful assets or the loss assets shown in the books of account of such institution or corporation on the last day of the previous year and such deduction shall be available for two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment years 2003-2004 and subsequent years.

Amendment of section 40.

20. In section 40 of the Income-tax Act,—

(*i*) in clause (*a*), after sub-clause (*iv*), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely:–

"(*v*) any tax actually paid by an employer referred to in clause (*10CC*) of section 10;";

(*ii*) in clause (*b*), in sub-clause (*iv*), for the words "eighteen per cent", the words "twelve per cent" shall be substituted with effect from the 1st day of June, 2002.

Note

Clause 20 seeks to amend section 40 of the Income-tax Act relating to amounts not deductible.

Section 40 of the Income-tax Act specifies the amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession".

Sub-clause (i) of clause 4 of the Bill proposes to insert a new clause (10CC) in section 10 of the Income-tax Act to provide that in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment within the meaning of clause (2) of section 17, the tax on such income actually paid by his employer, at the option of the employer, on behalf of such employee, notwithstanding anything contained in section 200 of the Companies Act, 1956, shall be exempt from income-tax.

It is proposed to insert a new sub-clause (v) in clause (a) of the said section, so as to provide that the tax actually paid by an employer referred to in clause (10CC) of section 10 shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession".

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

The existing provisions contained in clause (b) of section 40 relate to certain expenses which are not allowable deductions or which are allowed only subject to certain monetary ceiling. Sub-clause (iv) of clause (b) of section 40 provides that in case of any firm, interest paid by the firm to any of its partners will be allowable as a deduction to the extent the rate of interest does not exceed eighteen per cent. per annum.

The proposed amendment seeks to reduce the maximum rate of the interest payable by the firm to any of its partners from eighteen per cent. per annum to twelve per cent. per annnum for the purposes of the said clause.

These amendments will take effect from 1st June, 2002.

Substitution of new section for section 43A.

21. For section 43A of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2003, namely:—

'43A. *Special provisions consequential to changes in rate of exchange of currency.*— Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment—

(*a*) towards the whole or a part of the cost of the asset; or

(*b*) towards repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest, if any,

the amount by which the liability as aforesaid is so increased or reduced during such previous year and which is taken into account at the time of making the payment, irrespective of the method of accounting adopted by the assessee, shall be added to, or, as the case may be, deducted from–

(*i*) the actual cost of the asset as defined in clause (*1*) of section 43; or

(*ii*) the amount of expenditure of a capital nature referred to in clause (*iv*) of sub-section (*1*) of section 35; or

(*iii*) the amount of expenditure of a capital nature referred to in section 35A; or

(*iv*) the amount of expenditure of a capital nature referred to in clause (*ix*) of sub-section (*1*) of section 36; or

(*v*) the cost of acquisition of a capital asset (not being a capital asset referred to in section 50) for the purposes of section 48,

and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid.

Explanation 1.—In this sub-section, unless the context otherwise requires,–

(*a*) "rate of exchange" means the rate of exchange determined or recognised by the Central Government for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;

(*b*) "foreign currency" and "Indian currency" have the meanings respectively assigned to them in section 2 of the Foreign Exchange Management Act, 1999.

Explanation 2.—Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this sub-section.

Explanation 3.—Where the assessee has entered into a contract with an authorised dealer as defined in section 2 of the Foreign Exchange Management Act, 1999, for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, to be added to, or deducted from, the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset under this sub-section shall, in respect of so much of the sum specified in the contract as is available for discharging the *liability* aforesaid, be computed with reference to the rate of exchange specified therein.'.

Note

Clause 21 seeks to substitute a new section for section 43A of the Income-tax Act relating to special provisions consequential to changes in rate of exchange of currency.

Under the existing provisions contained in section 43A, where an assessee has acquired any capital asset from a country outside India for the purposes of his business or profession on deferred payment terms or against a foreign loan, before the date of devaluation of the rupee, the additional rupee liability incurred by him in meeting the instalments of the cost of the asset or of the foreign loan, as the case may be, falling due for payment after the date of devaluation, will be allowed to be added to the original actual cost of the asset for the purpose of calculating the allowance of depreciation in computing the profits.

Similar increase in the original actual cost is allowed to be made in respect of capital assets acquired by the assessee used in scientific research related to the business carried on by him or patent rights or copyrights acquired from abroad or any capital asset acquired by a company for the purpose of promoting family planning amongst its employees. Further, in computing the capital gains arising to the assessee on the sale or transfer of a capital asset acquired by him from abroad on deferred payment terms or against a foreign loan, the additional rupee liability incurred by him in repaying the instalments of the cost or the foreign loan, as the case may be, after the date of devaluation of the rupee, is added to the original actual cost of the asset. The section also provides that where there is a decrease in the rupee liability of the assessee in respect of assets acquired by him from abroad, due to a change in the exchange value of the rupee, the original actual cost of the asset will be correspondingly reduced.

It is proposed to substitute the said section so as to provide that where a capital asset has been acquired from a country outside India, the addition or deduction from the actual cost of the asset on account of change in the rate of exchange in any previous year shall be allowed to be made only on actual payment by the assessee towards the cost of the asset or repayment of the loan or interest, irrespective of the method of accounting adopted by the assessee.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 44AE.

22. In section 44AE of the Income-tax Act, in sub-section (*2*), with effect from the 1st day of April, 2003,—

(*a*) in clause (*i*), for the words “two thousand rupees”, the words “three thousand five hundred rupees” shall be substituted;

(*b*) in clause (*ii*), for the words “one thousand eight hundred rupees”, the words “three thousand one hundred and fifty rupees” shall be substituted.

Note

Clause 22 seeks to amend section 44AE of the Income-tax Act relating to special provision for computing profits and gains of business of plying, hiring or leasing goods carriages.

Under the existing provisions contained in sub-section (1) of the said section, in the case of an assessee, who owns not more than ten goods carriages and who is engaged in the business of plying, hiring or leasing such goods carriages, the income of such business chargeable to tax under the head “Profits and gains of business or profession” is deemed to be the aggregate of the profits and gains from all the goods carriages owned by him in the previous year. Sub-section (2) of the aforesaid section provides that in the case of heavy goods vehicles, the profits and gains from each such goods carriage shall be deemed to be an amount equal to two thousand rupees, and one thousand eight hundred rupees in the case of vehicles other than heavy goods vehicles, for every month or part of a month during which the vehicles are owned by the assessee.

Sub-clause (a) seeks to enhance the rate for computing the profits and gains in respect of business of plying, hiring or leasing goods carriages being heavy goods vehicles from two thousand rupees to three thousand five hundred rupees per vehicle for every month or part of a month during which the vehicles are owned by the assessee.

Sub-clause (b) seeks to enhance the rate for computing the profits and gains in respect of business of plying, hiring or leasing goods carriages other than heavy goods vehicles from one thousand eight hundred rupees to three thousand one hundred and fifty rupees per vehicle for every month or part of a month during which the vehicle is owned by the assessee.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 47.

23. In section 47 of the Income-tax Act, in clause (*xv*), after the words and figures “the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992)”, the words and figures “or the Reserve Bank of India constituted under sub-section (*1*) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934)” shall be inserted with effect from the 1st day of April, 2003.

Note

Clause 23 seeks to amend section 47 of the Income-tax Act relating to transactions not regarded as transfer.

Under the existing provisions contained in clause (xv) of the said section, any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the Securities and Exchange Board of India shall not be regarded as transfer for the purpose of charging capital gains tax.

It is proposed to amend the said clause so as to extend the benefit of exemption from capital gains tax to any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the Reserve Bank of India.

This amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Insertion of new section 50C.

24. After section 50B of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2003, namely:—

‘50C. *Special provision for full value of consideration in certain cases.*— (*1*) Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is

less than the value adopted or assessed by any authority of a State Government (hereafter in this section referred to as the "stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

(*2*) Without prejudice to the provisions of sub-section (*1*), where—

(*a*) the assessee claims before any Assessing Officer that the value adopted or assessed by the stamp valuation authority under sub-section (*1*) exceeds the fair market value of the property as on the date of transfer;

(*b*) the value so adopted or assessed by the stamp valuation authority under sub-section (*1*) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer and where any such reference is made, the provisions of sub-sections (*2*), (*3*), (*4*), (*5*) and (*6*) of section 16A, clause (*i*) of sub-section (*1*) and sub-sections (*6*) and (*7*) of section 23A, sub-section (*5*) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957 (27 of 1957), shall, with necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (*1*) of section 16A of that Act.

Explanation.—For the purposes of this section, "Valuation Officer" shall have the same meaning as in clause (*r*) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

(*3*) Subject to the provisions contained in sub-section (*2*), where the value ascertained under sub-section (*2*) exceeds the value adopted or assessed by the stamp valuation authority referred to in sub-section (*1*), the value so adopted or assessed by such authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.'.

Note

Clause 24 seeks to insert a new section 50C in the Income-tax Act to provide for a special provision for full value of consideration in certain cases.

The proposed sub-section (1) of the said section seeks to provide that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

The proposed sub-section (2) of the said section seeks to provide that where the assessee claims before any Assessing Officer that the value adopted or assessed by the authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer and the value so adopted or assessed by the authority under sub-section (1) has not been disputed in any appeal or revision or no reference has been made before any other authority, court or a High Court, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer, and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (i) of sub-section (1) and sub-sections (6) and (7) of section 23A, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, 1957, shall, with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act. The Valuation Officer shall be the Valuation Officer as defined in clause (r) of section 2 of the Wealth-tax Act, 1957.

The proposed sub-section (3) provides that where the value ascertained under sub-section (2) exceeds the value adopted or assessed by the authority referred to in sub-section (1), the value so adopted or assessed by the authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

This amendment will take effect from 1st April, 2003, and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 54EC.

25. In section 54EC of the Income-tax Act, in the *Explanation* occurring at the end, in clause (*b*), after sub-clause (*ii*), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely :—

"(*iii*) on or after the 1st day of April, 2002, by the National Housing Bank established under sub-section

(*1*) of section 3 of the National Housing Bank Act, 1987 (53 of 1987) or by the Small Industries Development Bank of India established under sub-section (*1*) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989).".

Note

Clause 25 seeks to amend section 54EC of the Income-tax Act which provides that capital gain is not to be charged on investment in certain bonds.

Under the existing provisions contained in section 54EC, any capital gain arising from the transfer of a long-term capital asset is exempt from tax if such capital gain is invested in the long-term specified asset, being any bond redeemable after three years, issued by the National Bank for Agriculture and Rural Development or the National Highways Authority of India or by the Rural Electrification Corporation Limited.

It is proposed to amend the *Explanation* below sub-section (3) of the said section so as to extend the benefit of exemption under the said section to the bonds, redeemable after three years, issued on or after 1st April, 2002, by the National Housing Bank or by the Small Industries Development Bank of India.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Substitution of new section for section 70.

26. For section 70 of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2003, namely:—

'70. *Set off of loss from one source against income from another source under the same head of income.*—(*1*) Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income, other than "Capital gains", is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

(*2*) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset.

(*3*) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any capital asset (other than a short-term capital asset) is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset not being a short-term capital asset.'.

Note

Clause 26 seeks to substitute a new section for section 70 of the Income-tax Act relating to set off of loss from one source against income from another source under the same head of income.

The existing provisions contained in the said section provide that where the net result for any assessment year in respect of any source falling under any head of income is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

It is proposed to substitute the said section by a new section so as to provide that where the net result for any assessment year in respect of any source falling under any head of income other than "Capital gains" is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head, and where the net result in respect of any short-term capital asset is a loss, such loss shall be allowed to be set off against income, if any, for that assessment year under the head "Capital gains" in respect of any other capital asset, and where the net result in respect of any capital asset other than a short-term capital asset is a loss, such loss shall be allowed to be set off against the income, if any, for that assessment year in respect of any other capital asset not being a short-term capital asset.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 72A.

27. In section 72A of the Income-tax Act, in sub-section (*7*), in clause (*aa*), after sub-clause (*iii*), the following sub-clause shall be inserted with effect from the 1st day of April, 2003, namely:—

"(*iiia*) the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or".

Note

Clause 27 seeks to amend section 72A of the Income-tax Act relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

Under the existing provisions of the said section the carry forward of accumulated losses and unabsorbed depreciation is allowed in cases of amalgamation of a company owning an industrial undertaking or a ship, with another company. Clause (aa) of sub-section (7) of the said section defines "industrial undertaking" to mean any undertaking which is engaged in the manufacture or processing of goods or computer software or the business of generation or distribution of electricity or any other form of power or mining or the construction of ships, aircrafts and rail systems.

It is proposed to amend the said clause so as to include in the definition of "industrial undertaking", any undertaking engaged in the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 74.

28. In section 74 of the Income-tax Act, with effect from the 1st day of April, 2003,–

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:–

'(*1*) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and–

(*a*) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset;

(*b*) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;

(*c*) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.';

(*b*) sub-section (*3*) shall be omitted.

Note

Clause 28 seeks to amend section 74 of the Income-tax Act relating to losses under the head "Capital gains".

The existing provisions contained in sub-section (1) of the said section provide for carry forward and set off of a loss under the head "Capital gains" for any assessment year against income, if any, under the head "Capital gains" assessable for the following assessment year. The loss remaining to be so set off can be carried forward to the following assessment year, and so on.

It is proposed to amend sub-section (1) of section 74 so as to provide that where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee, in so far as such loss relates to a short-term asset, it shall be carried forward and set off against the income, if any, under the head "Capital gains" assessable for the following assessment year in respect of any other capital asset and in so far as such loss relates to a long-term capital asset, it shall be carried forward and set off against the income, if any, under the head "Capital gains" assessable for the following assessment year in respect of any other capital asset not being a short-term capital asset. The loss remaining to be so set off shall be carried forward to the following assessment year, and so on.

It is further proposed to omit sub-section (3) of the said section, which is applicable in respect of assessment year commencing on 1st April, 1987 or earlier assessment years.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 80G.

29. In section 80G of the Income-tax Act, in sub-section (*5C*), with effect from the 3rd day of February, 2001,—

(*a*) in the opening portion, for the words "This sub-section", the words "This section" shall be substituted and shall be deemed to have been substituted;

(*b*) in clause (*iii*), for the words, figures and letters "on or before the 31st day of March, 2002", the words, figures and letters "on or before the 31st day of March, 2003" shall be substituted and shall be deemed to have been substituted;

(*c*) for clause (*iv*), the following clause shall be substituted and shall be deemed to have been substituted, namely:—

"(*iv*) the amount of donation remaining unutilised on the 31st day of March, 2003 is transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2003;";

(*d*) in clause (*v*), for the words, figures and letters "on or before the 30th day of June, 2002", the words, figures and letters "on or before the 30th day of June, 2003" shall be substituted and shall be deemed to have been substituted.

Note

Clause 29 seeks to amend section 80G of the Income-tax Act relating to deduction in respect of donations to certain funds, charitable institutions, etc.

Under the existing provisions contained in section 80G, an assessee is allowed a deduction from his total income in respect of donations made by him. The amount of deduction is hundred per cent. in respect of donations to certain funds.

Sub-clause (a) seeks to make the relevant provisions of section 80G applicable to any fund, trust or institution referred to in clause (d) of sub-section (2) in relation to amounts received for providing relief to the victims of earthquake in Gujarat.

Sub-clause (b) seeks to extend the time-limit for utilisation of donations received by the trust or institution or fund for the victims of earthquake in Gujarat, from 31st March, 2002 to 31st March, 2003.

Sub-clause (c) seeks to extend the time-limit for transfer of the amount received by the trust or institution or fund which is not utilised, to the Prime Minister's National Relief Fund, to 31st March, 2003 instead of 31st March, 2002.

Sub-clause (d) seeks to extend the date of submission of accounts of such trust or institution or fund to the prescribed authority, from 30th June, 2002 to 30th June, 2003.

These amendments will take effect retrospectively from 3rd February, 2001.

Amendment of section 80GGA.

30. In section 80GGA of the Income-tax Act, in sub-section (*2*), with effect from the 1st day of April, 2003,—

(*i*) in clause (*c*), in the opening portion, for the words "any sum paid by the assessee in the previous year", the words, figures and letters "any sum paid by the assessee in any previous year ending on or before the 31st day of March, 2002" shall be substituted;

(*ii*) in clause (*cc*), in the opening portion, for the words "any sum paid by the assessee in the previous year", the words, figures and letters "any sum paid by the assessee in any previous year ending on or before the 31st day of March, 2002" shall be substituted.

Note

Clause 30 seeks to amend section 80GGA of the Income-tax Act relating to deduction in respect of certain donations for scientific research or rural development.

Under the existing provisions contained in clauses (c) and (cc) of sub-section (2) of the said section, any sum

paid by the assessee in the previous year to an association or institution, which has as its object the undertaking of any programme of conservation of natural resources or of afforestation, to be used for carrying out any programme of conservation of natural resources or of afforestation approved by the prescribed authority or to such fund for afforestation as may be notified by the Central Government, as the case may be, is allowed as a deduction.

Sub-clause (i) seeks to amend the said clause (c) so as to make the provisions of section 35CCB applicable in respect of any payments made on or before 31st March, 2002.

Sub-clause (ii) seeks to amend the said clause (cc) so as to make the provisions of section 35CCB applicable in respect of payments made on or before 31st March, 2002.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 80HHD.

31. In section 80HHD of the Income-tax Act, in sub-section (*1*), with effect from the 1st day of April, 2003,—

(*i*) in clause (*c*), for the words “twenty per cent”, at both the places where they occur, the words “twenty-five per cent” shall be substituted;

(*ii*) in clause (*d*), for the words “ten per cent”, at both the places where they occur, the words “fifteen per cent” shall be substituted.

Note

Clause 31 seeks to amend section 80HHD of the Income-tax Act relating to deduction in respect of earnings in convertible foreign exchange.

Under the existing provisions contained in clauses (c) and (d) of sub-section (1) of the said section, an assessee, being an Indian company or a person (other than a company) resident in India, engaged in the business of a hotel or of a tour operator, approved by the prescribed authority, or of a travel agent, is allowed a deduction, in computing the total income of the assessee for the assessment year 2003-2004, of a sum equal to the aggregate of twenty per cent. of the profits derived by him from services provided to foreign tourists and so much of the amount not exceeding twenty per cent. of the profits as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in sub-section (4) of the aforesaid section. Similar deduction is allowed in computing the total income of the assessee for the assessment year 2004-2005, at the rate of ten per cent. of the profits and so much of the amount not exceeding ten per cent of the profits as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be utilised for the purposes of the business of the assessee in the manner laid down in that sub-section.

It is proposed to amend clauses (c) and (d) of sub-section (1) so as to increase the said deductions from twenty per cent. to twenty-five per cent. and from ten per cent. to fifteen per cent, respectively.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment years 2003-2004 and 2004-2005.

Amendment of section 80-IA.

32. In section 80-IA of the Income-tax Act, with effect from the 1st day of April, 2003,—

(*a*) in sub-section (*2*), after the words “industrial park”, the words, brackets and figures “or develops or develops and operates or maintains and operates a special economic zone referred to in clause (*iii*) of sub-section (*4*)” shall be inserted;

(*b*) in sub-section (*7*), for the words “Where the assessee is a person other than a company or a co-operative society, the deduction”, the words “The deduction” shall be substituted.

Note

Clause 32 seeks to amend section 80-IA of the Income-tax Act relating to deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

Under the existing provisions contained in sub-section (2) of the said section, an assessee at his option can claim deduction for any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking or the enterprise develops and begins to operate any infrastructure facility or starts providing telecommunication service or develops an industrial park or generates power or commences transmission or distribution of power.

Sub-clause (a) seeks to amend sub-section (2) so as to provide an option to the assessee who develops or develops and operates or maintains and operates a special economic zone referred to in clause (iii) of sub-section (4) of the said section, to opt the year from which the tax holiday for ten consecutive assessment years out of fifteen years, may be claimed.

Under the existing provisions contained in sub-section (7) of the said section, assessees being companies or co-operative societies, are not required to furnish along with their return of income, separate audit report in the prescribed form and manner required under that sub-section.

Sub-clause (b) seeks to amend sub-section (7) so as to make the requirement of furnishing such separate audit report in the prescribed form and in the prescribed manner mandatory for companies and co-operative societies also for the purpose of claiming deduction under sub-section (1) of section 80-IA.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 80-IB.

33. In section 80-IB of the Income-tax Act, with effect from the 1st day of April, 2003,—

(*a*) after sub-section (*7*), the following sub-sections shall be inserted, namely:—

"(*7A*) The amount of deduction in the case of any multiplex theatre shall be—

(*a*) fifty per cent of the profits and gains derived, from the business of building, owning and operating a multiplex theatre, for a period of five consecutive years beginning from the initial assessment year in any place:

Provided that nothing contained in this clause shall apply to a multiplex theatre located at a place within the municipal jurisdiction (whether known as a municipality, municipal corporation, notified area committee or a cantonment board or by any other name) of Kolkata, Chennai, Delhi or Mumbai;

(*b*) the deduction under clause (*a*) shall be allowable only if—

(*i*) such multiplex theatre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(*ii*) the business of the multiplex theatre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or of plant previously used for any purpose;

(*iii*) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (*2*) of section 288, certifying that the deduction has been correctly claimed.

(*7B*) The amount of deduction in the case of any convention centre shall be–

(*a*) fifty per cent of the profits and gains derived, by the assessee from the business of building, owning and operating a convention centre, for a period of five consecutive years beginning from the initial assessment year;

(*b*) the deduction under clause (*a*) shall be allowable only if—

(*i*) such convention centre is constructed at any time during the period beginning on the 1st day of April, 2002 and ending on the 31st day of March, 2005;

(*ii*) the business of the convention centre is not formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or plant previously used for any purpose;

(*iii*) the assessee furnishes alongwith the return of income, the report of an audit in such form and containing such particulars as may be prescribed, and duly signed and verified by an accountant, as defined in the *Explanation* below sub-section (*2*) of section 288, certifying that the deduction

has been correctly claimed.";

(*b*) in sub-section (*14*),–

(*i*) after clause (*a*), the following clause shall be inserted, namely:–

'(*aa*) "convention centre" means a building of a prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities, as may be prescribed;';

(*ii*) in clause (*c*), after sub-clause (*iv*), the following sub-clauses shall be inserted, namely:–

"(*v*) in the case of a multiplex theatre, means the assessment year relevant to the previous year in which a cinema hall, being a part of the said multiplex theatre, starts operating on a commercial basis;

(*vi*) in the case of a convention centre, means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis;";

(*iii*) after clause (*d*), the following clause shall be inserted, namely:—

'(*da*) "multiplex theatre" means a building of a prescribed area, comprising of two or more cinema theatres and commercial shops of such size and number and having such other facilities and amenities as may be prescribed;'.

Note

Clause 33 seeks to amend section 80-IB of the Income-tax Act relating to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

Sub-clause (a) seeks to insert new sub-sections (7A) and (7B) in the said section.

The proposed sub-section (7A) seeks to provide that the profits from the business of building, owning and operating a multiplex theatre shall be eligible for a deduction of fifty per cent. of such profits and gains for five assessment years beginning from the initial assessment year in which the multiplex theatre, constructed any time during the period 1st April, 2002 to 31st March, 2005 starts operating. The deduction shall, however, not be applicable to such businesses in the cities of Kolkata, Chennai, Delhi or Mumbai. It shall also not be allowed where the business is formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or plant previously used for any purpose. For the claim of deduction, the assessee has to file an audit report in the prescribed form and in the manner specified therein.

The proposed sub-section (7B) seeks to provide that the profits from the business of building, owning and operating a convention centre shall be eligible for a deduction of fifty per cent. of such profits and gains for five assessment years beginning from the initial assessment year in which the convention centre constructed between 1st April, 2002 and 31st March, 2005, starts commercial operation. The deduction shall not be allowed where the business is formed by the splitting up, or the reconstruction, of a business already in existence or by the transfer to a new business of any building or of any machinery or plant previously used for any purpose. For the claim of deduction, the assessee has to file an audit report in the prescribed form and the manner specified therein.

Sub-clause (b) (i) seeks to insert a new clause (aa) in sub-section (14) so as to define the expression "convention centre" as a building of prescribed area comprising of convention halls to be used for the purpose of holding conferences and seminars, being of such size and number and having such other facilities and amenities as may be prescribed.

Sub-clause (b) (ii) seeks to amend clause (c) of sub-section (14) of the said section so as to provide that the initial assessment year in the case of a multiplex theatre, means the assessment year relevant to the previous year in which a cinema hall being a part of the said multiplex theatre, starts operating on a commercial basis and in the case of a convention centre means the assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis.

Sub-clause (b) (iii) seeks to insert a new clause (da) after clause (d) so as to define the expression "multiplex theatre" as a building of prescribed area, comprising of two or more cinema theatres and commercial shops, of such size and number and having such other facilities and amenities as may be prescribed.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment

year 2003-2004 and subsequent years.

Insertion of new section 80M.

34. After section 80L of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2003, namely:—

'80M. *Deduction in respect of certain inter-corporate dividends.*— (*1*) Where the gross total income of a domestic company, in any previous year, includes any income by way of dividends from another domestic company, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of such domestic company, a deduction of an amount equal to so much of the amount of income by way of dividends from another domestic company as does not exceed the amount of dividend distributed by the first-mentioned domestic company on or before the due date.

(*2*) Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under sub-section (*1*) in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

Explanation.–For the purposes of this section, the expression "due date" means the date for furnishing the return of income under sub-section (*1*) of section 139.'.

Note

Clause 34 seeks to insert a new section 80M regarding deduction in respect of certain inter-corporate dividends.

It is proposed to insert the said new section so as to provide a deduction for domestic companies which receive dividends from other domestic companies and again distribute them as dividend. The amount of deduction on dividends received by a domestic company from another domestic company shall be to the extent of dividends distributed by the recipient company.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 88.

35. In section 88 of the Income-tax Act, with effect from the 1st day of April, 2003,—

(*a*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

'(*1*) Subject to the provisions of this section, an assessee, being an individual, or a Hindu undivided family, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to—

(*i*) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, is one lakh fifty thousand rupees or less, twenty per cent of the aggregate of the sums referred to in sub-section (*2*):

Provided that an individual shall be entitled to a deduction of an amount equal to thirty per cent of the aggregate of the sums referred to in sub-section (*2*) if his income under the head "Salaries"—

(*a*) does not exceed one lakh rupees during the previous year before allowing the deduction under section 16; and

(*b*) is not less than ninety per cent of his gross total income, as defined in sub-section (*5*) of section 80B;

(*ii*) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, is more than one lakh fifty thousand rupees but does not exceed five lakh rupees, ten per cent of the aggregate of the sums referred to in sub-section (*2*);

(*iii*) in the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, exceeds five lakh rupees, *nil*.';

(*b*) in sub-section (*2*), the words "out of his income chargeable to tax" shall be omitted;

(*c*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) The sums referred to in sub-section (*2*) shall be paid or deposited at any time during the previous year, and the assessee, being an individual or a Hindu undivided family, shall be entitled to a deduction under sub-section (*1*) on so much of the aggregate of such sums paid or deposited as does not exceed the total

income of the assessee, chargeable to tax during the relevant previous year.";

(*d*) for sub-section (*5*), the following sub-section shall be substituted, namely:—

"(*5*) Where the aggregate of any sums specified in clause (*i*) to clause (*xvii*) of sub-section (*2*) exceeds an amount of eighty thousand rupees, a deduction under sub-section (*1*) shall be allowed with reference to so much of the aggregate as does not exceed an amount of eighty thousand rupees:

Provided that where the aggregate of any sums specified in clause (*i*) to clause (*xv*) of sub-section (*2*) exceeds an amount of sixty thousand rupees, a deduction under sub-section (*1*) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of sixty thousand rupees:

Provided further that where the aggregate of any sums specified in clause (*xv*) of sub-section (*2*) exceeds an amount of twenty thousand rupees, a deduction under sub-section (*1*) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of twenty thousand rupees.";

(*e*) sub-section (*5A*) shall be omitted;

(*f*) sub-section (*6*) shall be omitted.

Note

Clause 35 seeks to amend section 88 of the Income-tax Act relating to rebate on life insurance premia, contribution to provident fund, etc.

The existing provisions contained in sub-section (1) of the said section provide for deduction, from the tax payable on the total income of a previous year of an assessee, being an individual or a Hindu undivided family, of an amount equal to a fixed percentage of sums paid or deposited in specified schemes out of his income chargeable to tax.

Sub-clause (a) seeks to substitute sub-section (1) so as to provide that an assessee, being an individual, or a Hindu undivided family, shall be entitled to a deduction, from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to, in the case of an individual or a Hindu undivided family, whose income before giving effect to deductions under Chapter VI-A, is one lakh fifty thousand rupees or less, twenty per cent of the aggregate of the sums referred to in sub-section (2). However, an individual shall be entitled to a deduction of an amount equal to thirty per cent. of the aggregate of the sums referred to in sub-section (2) if his income under the head "Salaries" does not exceed one lakh rupees during the previous year before allowing the deduction under section 16 and is not less than ninety per cent of his gross total income, as defined in sub-section (5) of section 80B. In the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, is more than one lakh fifty thousand rupees but does not exceed five lakh rupees, the deduction from the amount of income-tax shall be ten per cent of the aggregate of the sums referred to in sub-section (2). In the case of an individual or a Hindu undivided family, whose gross total income before giving effect to deductions under Chapter VI-A, exceeds five lakh rupees, no tax rebate shall be allowed.

A higher tax rebate of twenty-five per cent is allowed under the existing provisions for an individual whose income derived from the exercise of his profession as an author, playwright, artist, musician, actor or sportsman (including an athlete). Under the proposed new sub-section (1), the authors, playwrights, artists, musicians, actors and sportsmen (including athletes) shall not be entitled to a higher rebate of twenty-five per cent. Such persons shall be entitled to the rebate in accordance with the provisions of the proposed sub-section (1).

Sub-clause (b) seeks to amend sub-section (2) so as to remove the condition that the sums paid or deposited in the previous year by the assessee be out of his income chargeable to tax for that previous year.

Sub-clause (c) seeks to insert a new sub-section (3) so as to provide that the sums shall be paid or deposited at any time during the previous year in the specified schemes and an assessee being an individual or a Hindu undivided family, shall be entitled to deduction under sub-section (1) on so much of the aggregate of such sums paid or deposited as does not exceed the total income of the assessee, chargeable to tax during the relevant previous year.

Sub-clause (d) seeks to substitute sub-section (5) so as to provide that where the aggregate of any sums specified in clause (i) to clause (xvii) of sub-section (2) exceeds an amount of eighty thousand rupees, a deduction under sub-section (1) shall be allowed with reference to so much of the aggregate as does not exceed

an amount of eighty thousand rupees. However, (a) where the aggregate of any sums specified in clauses (i) to (xv) of sub-section (2) exceeds an amount of sixty thousand rupees, a deduction under sub-section (1) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of sixty thousand rupees; and (b) where the aggregate of any sums specified in clause (xv) of sub-section (2) exceeds an amount of twenty thousand rupees, a deduction under sub-section (1) in respect of such sums shall be allowed with reference to so much of the aggregate as does not exceed an amount of twenty thousand rupees.

Sub-clauses (e) and (f) seek to omit sub-sections (5A) and (6) which is of consequential nature.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 89.

36. For section 89 of the Income-tax Act, the following section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1996, namely:—

"89. *Relief when salary, etc., is paid in arrears or in advance.*— Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (*3*) of section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the *Explanation* to clause (*iia*) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed.".

Note

Clause 36 seeks to substitute a new section for section 89 of the Income-tax Act relating to relief when salary, etc., is paid in arrears or in advance.

Under the existing provisions contained in section 89, an assessee is entitled to tax relief, if on account of receipt of salary or a payment being a profit in lieu of salary, under clause (3) of section 17, in arrears or in advance, his tax liability is increased in the year of receipt.

It is proposed to substitute the said section so as to provide similar tax relief to the assessees who receive arrears of family pension.

This amendment will take effect retrospectively from 1st April, 1996 and will, accordingly, apply in relation to the assessment year 1996-97 and subsequent years.

Substitution of new section for section 92.

37. For section 92 of the Income-tax Act, the following section shall be substituted, namely:—

"92. *Computation of income from international transaction having regard to arm's length price.*— (*1*) Any income arising from an international transaction shall be computed having regard to the arm's length price.

Explanation.—For the removal of doubts, it is hereby clarified that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

(*2*) Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises, the cost or expense allocated or apportioned to, or, as the case may be, contributed by, any such enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be.

(*3*) The provisions of this section shall not apply in a case where the computation of income under sub-section (*1*) or the determination of the allowance for any expense or interest under that sub-section, or the determination of any cost or expense allocated or apportioned, or, as the case may be, contributed under sub-section (*2*), has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into.".

Note

Clause 37 seeks to substitute section 92 of the Income-tax Act relating to computation of income from an international transaction having regard to arm's length price.

The proposed sub-section (1) of the said section provides that any income arising from an international transaction shall be computed having regard to the arm's length price. It is proposed to insert an *Explanation* to sub-section (1) so as to clarify that the allowance for any expense or interest arising from an international transaction shall also be determined having regard to the arm's length price.

The proposed sub-section (2) is on the lines of sub-section (3) of the existing section 92.

The proposed sub-section (3) provides that the provisions of this section shall not apply in a case where the computation of income or the determination of the allowance for any expense or interest or the determination of any cost or expense allocated or apportioned or contributed, has the effect of reducing the income chargeable to tax or increasing the loss, as the case may be, computed on the basis of entries made in the books of account in respect of the previous year in which the international transaction was entered into.

These amendments will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Amendment of section 92A.

38. In section 92A of the Income-tax Act, in sub-section (*2*), for the brackets, figure and words "(*2*) Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,–", the brackets, figures and words "(*2*) For the purposes of sub-section (*1*), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year,–" shall be substituted.

Note

Clause 38 seeks to amend section 92A of the Income-tax Act relating to meaning of associated enterprise.

The existing provisions contained in sub-section (2) of the said section provide as to when two enterprises shall be deemed to be associated enterprises.

It is proposed to amend the said sub-section (2) so as to insert the words "For the purposes of sub-section (1)". The proposed amendment is of clarificatory nature.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Amendment of section 92C.

39. In section 92C of the Income-tax Act,–

(*a*) in sub-section (*2*), for the proviso, the following proviso shall be substituted, namely:—

"**Provided** that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices, or, at the option of the assessee, a price which may vary from the arithmetical mean by an amount not exceeding five per cent of such arithmetical mean.";

(*b*) in sub-section (*4*), in the second proviso, after the words "from which tax has been deducted", the words "or was deductible" shall be inserted.

Note

Clause 39 seeks to amend section 92C of the Income-tax Act relating to computation of arm's length price.

Under the existing provisions contained in sub-section (2) of the said section, the most appropriate method shall be applied for determination of arm's length price in the manner prescribed. The proviso to sub-section (2) provides that if the application of the most appropriate method leads to determination of more than one price, the arithmetical mean of such prices shall be taken to be the arm's length price in relation to the international transaction.

It is proposed to substitute the aforesaid proviso to sub-section (2) so as to provide that where the most appropriate method results in more than one price, the arithmetical mean of such prices or, at the option of the

assessee, a price which differs from the arithmetical mean by an amount not exceeding five per cent of such mean may be taken to be the arm's length price in relation to the international transaction.

Under the existing provisions contained in sub-section (4) of the said section, where an arm's length price is determined by the Assessing Officer under sub-section (3), the Assessing Officer may compute the total income of the assessee having regard to the arm's length price so determined. The second proviso to sub-section (4) provides that where the total income of an enterprise is computed by the Assessing Officer on determination of the arm's length price paid to another associated enterprise from which tax has been deducted under the provisions of Chapter XVII-B, the income of the associated enterprise shall not be recomputed by reason of such determination of arm's length price in the case of the first-mentioned enterprise.

It is proposed to amend the second proviso so as to clarify that the provisions contained therein apply not only in a case where tax has been deducted under Chapter XVII-B, but also in cases where such tax was deductible, even if not actually deducted.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Amendment of section 92F.

40. In section 92F of the Income-tax Act,—

(*a*) in clause (*iii*), after the words "or the provision of services of any kind", the words "or in carrying out any work in pursuance of a contract," shall be inserted;

(*b*) after clause (*iii*), the following clause shall be inserted, namely:—

'(*iiia*) "permanent establishment", referred to in clause (*iii*), includes a fixed place of business through which the business of the enterprise is wholly or partly carried on;';

(*c*) for clause (*iv*), the following clause shall be substituted, namely:—

'(*iv*) "specified date" shall have the same meaning as assigned to "due date" in *Explanation 2* below sub-section (*1*) of section 139;'.

Note

Clause 40 seeks to amend section 92F of the Income-tax Act relating to definitions of certain terms relevant to computation of arm's length price, etc.

Clause (iii) of the said section defines the expression "enterprise", *inter alia*, to mean a person (including a permanent establishment of such person) who is, or has been or is proposed to be, engaged in any of the activities specified in the said clause.

Sub-clause (a) seeks to amend the said clause (iii) so as to clarify that the activities mentioned in the said clause include the carrying out of any work in pursuance of a contract.

Sub-clause (b) seeks to insert a new clause after clause (iii) so as to define the expression "permanent establishment" to include a fixed place of business through which the business of an enterprise is wholly or partly carried on.

The existing provisions contained in clause (iv) of the said section defines "specified date" to mean the 31st October of the relevant assessment year in the case of a company and the 31st July of the relevant assessment year in any other case.

Sub-clause (c) seeks to substitute clause (iv) so as to define "specified date" to provide that it shall have the same meaning as assigned to "due date" in *Explanation 2* below sub-section (1) of section 139.

These amendments will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Amendment of section 113.

41. In section 113 of the Income-tax Act, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

"**Provided** that the tax chargeable under this section shall be increased by a surcharge, if any, levied by any

Central Act and applicable in the assessment year relevant to the previous year in which the search is initiated under section 132 or the requisition is made under section 132A.".

Note

Clause 41 seeks to amend section 113 of the Income-tax Act relating to tax in the case of block assessment of search cases.

Under the existing provision of the said section, the total undisclosed income of the block period, determined under section 158BC, shall be chargeable to tax at the rate of sixty per cent.

It is proposed to insert a proviso in the said section to provide that the tax chargeable under that section shall be increased by a surcharge, if any, levied by any Central Act and applicable in the assessment year relevant to the previous year in which the search was initiated under section 132 or requisition was made under section 132A.

This amendment will take effect from 1st June, 2002.

Amendment of section 115A.

42. In section 115A of the Income-tax Act, in sub-section (*1*), in clause (*a*), the words, figures and letter "other than dividends referred to in section 115-O", at both the places where they occur, shall be omitted with effect from the 1st day of April, 2003.

Note

Clause 42 seeks to amend section 115A of the Income-tax Act relating to tax on dividends, royalty and fees for technical services in the case of foreign companies.

It is proposed to omit the references to "other than dividends referred to in section 115-O" in the said section. The proposed amendment is of consequential nature.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 115AC.

43. In section 115AC of the Income-tax Act,—

(*a*) the words, figures and letter "other than dividends referred to in section 115-O", wherever they occur, shall be omitted with effect from the 1st day of April, 2003;

(*b*) in sub-section (*1*), in clause (*b*),—

(*i*) in sub-clause (*iii*), for the word "re-issued", the words "issued or re-issued" shall be substituted;

(*ii*) sub-clause (*iv*) shall be omitted.

Note

Clause 43 seeks to amend section 115AC of the Income-tax Act relating to tax on income from bonds or Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer.

Sub-clause (a) seeks to omit the references to "other than dividends referred to in section 115-O" in section 115AC. The proposed amendment is of consequential nature.

Under the existing provisions contained in sub-clause (iii) of clause (b) of sub-section (1) of the said section, in the case of an assessee who is a non-resident, income by way of dividend and long-term capital gains arising from Global Depository Receipts re-issued in accordance with such scheme as the Central Government may specify, by notification in the Official Gazette, against the existing shares of an Indian company purchased by him in foreign currency through an approved intermediary is taxed at the rate of ten per cent.

Sub-clause (b)(i) seeks to amend the said sub-clause (iii) so as to extend the concessional tax rate on income by way of dividend and long-term capital gains arising from Global Depository Receipts issued or re-issued in accordance with a scheme as the Central Government may specify, by notification in the Official Gazette, against the existing shares of an Indian company purchased by the assessee in foreign currency through an approved intermediary.

Under the existing provisions contained in sub-clause (iv) of clause (b) of sub-section (1) of the aforesaid section, in the case of an assessee who is a non-resident, income by way of dividend and long-term capital gains arising from Global Depository Receipts issued in accordance with such scheme as the Central Government may specify, by notification in the Official Gazette, and purchased by him in foreign currency through an approved intermediary, against the shares of an Indian company arising out of disinvestment by such company in its subsidiary company, and the shares of both such Indian companies are listed in a recognised stock exchange in India, is taxed at the rate of ten per cent.

Sub-clause (b)(ii) seeks to omit the said sub-clause (iv).

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 115ACA.

44. In section 115ACA of the Income-tax Act, the words, figures and letter "other than dividends referred to in section 115-O", wherever they occur, shall be omitted with effect from the 1st day of April, 2003.

Note

Clause 44 seeks to amend section 115ACA of the Income-tax Act relating to tax on income from Global Depository Receipts purchased in foreign currency or capital gains arising from their transfer.

It is proposed to omit the references to "other than dividends referred to in section 115-O" in section 115ACA. The proposed amendment is of consequential nature.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 115AD.

45. In section 115AD of the Income-tax Act, in sub-section (*1*), in clause (*a*), the words, figures and letter "other than income by way of dividends referred to in section 115-O", shall be omitted with effect from the 1st day of April, 2003.

Note

Clause 45 seeks to amend section 115AD of the Income-tax Act relating to tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer.

It is proposed to omit the reference to "other than income by way of dividends referred to in section 115-O" in clause (a) of sub-section (1) of section 115AD. The proposed amendment is of consequential nature.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Insertion of new section 115BBB.

46. After section 115BBA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2003, namely:–

'115BBB. *Tax on income from units of an open-ended equity oriented fund of the Unit Trust of India or of Mutual Funds.*— (*1*) Where the total income of an assessee includes any income from units of an open-ended equity oriented fund of the Unit Trust of India or of a Mutual Fund, the income-tax payable shall be the aggregate of—

(*a*) the amount of income-tax calculated on income from units of an open-ended equity oriented fund of the Unit Trust of India or of a Mutual Fund, at the rate of ten per cent; and

(*b*) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (*a*).

(*2*) Nothing contained in sub-section (*1*) shall apply in relation to any income from units of an open-ended equity oriented fund of the Unit Trust of India or of the Mutual Fund arising after the 31st day of March, 2003.

Explanation.—For the purposes of this section, the expressions "Mutual Fund", "open-ended equity oriented

fund" and "Unit Trust of India" shall have the meanings respectively assigned to them in the *Explanation* to section 115T.'.

Note

Clause 46 seeks to insert a new section 115BBB in the Income-tax Act relating to tax on income from units of an open-ended equity oriented fund of the Unit Trust of India and Mutual Funds.

The proposed amendment seeks to provide that income from units of an open-ended equity oriented fund of the Unit Trust of India or of a Mutual Fund, shall be charged to income-tax at a flat rate of ten per cent.

The proposed amendment also seeks to provide that the provisions of the section shall not be applicable in relation to any such income arising after the 31st day of March, 2003.

It is also proposed to define the expressions "Mutual Fund", "open-ended equity oriented fund" and "Unit Trust of India" for the purposes of the proposed section.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 115C.

47. In section 115C of the Income-tax Act, in clause (*c*), the words, figures and letter "other than dividends referred to in section 115-O", shall be omitted with effect from the 1st day of April, 2003.

Note

Clause 47 seeks to amend section 115C of the Income-tax Act relating to definitions in Chapter XII-A.

It is proposed to omit the reference to "other than dividends referred to in section 115-O" occurring in the definition of the expression "investment income" in clause (c). The proposed amendment is of consequential nature.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 115JA.

48. In section 115JA of the Income-tax Act, in sub-section (*2*), in the *Explanation*, for clause (*iii*) and the *Explanation* thereto, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1997, namely:—

"(*iii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,–

(*a*) the loss shall not include depreciation;

(*b*) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation, is *nil;* or*".*

Note

Clause 48 seeks to amend section 115JA of the Income-tax Act relating to charging of minimum tax on deemed income in case of certain companies.

This proposed amendment seeks to substitute clause (iii) of *Explanation* to sub-section (2) of the said section with a view to clarifying that where the value of either the amount of loss brought forward or unabsorbed depreciation is '*nil*', no amount on account of such loss brought forward or unabsorbed depreciation would be reduced from the book profit.

This amendment will take effect retrospectively from 1st April, 1997 and will, accordingly, apply in relation to the assessment year 1997-1998 and subsequent years.

Amendment of section 115JB.

49. In section 115JB of the Income-tax Act,—

(*a*) in sub-section (*1*), for the words, "the tax payable for the relevant previous year shall be deemed to be seven and one-half per cent of such book profit,", the words "such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of seven and one-half per cent" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001;

(*b*) in sub-section (*2*), in the *Explanation* below the second proviso,—

(*i*) in clause (*b*), after the words "by whatever name called", the words, figures and letters ", other than a reserve specified under section 33AC" shall be inserted with effect from the 1st day of April, 2003;

(*ii*) for clause (*i*) and the proviso, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001, namely:—

"(*i*) the amount withdrawn from any reserve or provision (excluding a reserve created before the 1st day of April, 1997 otherwise than by way of a debit to the profit and loss account), if any such amount is credited to the profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year relevant to the assessment year commencing on or after the 1st day of April, 1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) under this *Explanation* or *Explanation* below second proviso to section 115JA, as the case may be; or";

(*iii*) for clause (*iii*) and the *Explanation*, the following shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2001, namely:–

"(*iii*) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation.—For the purposes of this clause,—

(*a*) the loss shall not include depreciation;

(*b*) the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation, is *nil;* or".

Note

Clause 49 seeks to amend section 115JB of the Income-tax Act relating to special provision for payment of tax by certain companies.

The existing provisions of the said section provide for levy of a minimum tax on domestic companies of an amount equal to seven and one-half per cent. of the book profit, if the tax payable on the total income chargeable to tax as per the provisions of the Income-tax Act, 1961, is less than seven and one-half per cent of the book profit.

Sub-clause (a) seeks to provide that where the tax payable on the total income chargeable to tax is less than seven and one-half per cent of book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee on such total income shall be the amount of income-tax at the rate of seven and one-half per cent.

This amendment will take effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

Sub-clause (b) (i) seeks to amend clause (b) of *Explanation* to sub-section (2) so as not to increase the book profit when the amounts are transferred to a reserve specified under section 33AC.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Sub-clause b(ii) seeks to substitute the existing clause (i) in the *Explanation* below the second proviso to sub-section (2), so as to provide that the amount withdrawn from any reserve created before the 1st day of April, 1997, otherwise than by way of a debit to the profit and loss account, shall not be reduced from the book profit. Further, the amendments seek to provide that the amounts withdrawn from any reserves or provisions created on or after 1st April, 1997, which are credited to the profit and loss account shall not be reduced from the book profit unless the book profits were increased by the amount transferred to such reserves or provisions in the year of creation of such reserves (out of which the said amount was withdrawn).

Sub-clause (b) (iii) seeks to amend item (iii) of *Explanation*, so as to clarify that where the value of the amount either loss brought forward or unabsorbed depreciation is '*nil*', no amount on account of such loss brought forward or unabsorbed depreciation would be reduced from the book profit.

These amendments will take effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

Amendment of section 115-O.

50. In section 115-O of the Income-tax Act, in sub-section (*1*), after the words, figures and letters "on or after the 1st day of June, 1997", the words, figures and letters "but on or before the 31st day of March, 2002" shall be inserted with effect from the 1st day of April, 2003.

Note

Clause 50 seeks to amend section 115-O relating to tax on distributed profits of domestic companies.

Under the existing provisions contained in the said section, a domestic company is liable to pay tax on distributed profits. The tax so paid by the company is treated as the final payment of tax in respect of the amount declared, distributed or paid by way of dividend.

It is proposed to amend section 115-O so as to make the provisions of this section applicable only in respect of the profits distributed by domestic companies on or after the 1st day of June, 1997 but on or before the 31st day of March, 2002.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 115-R.

51. In section 115R of the Income-tax Act, with effect from the 1st day of April, 2003,—

(*a*) in sub-section (*1*), for the words "any amount of income distributed by the Unit Trust of India to its unit holders", the words, figures and letters "any amount of income distributed on or before the 31st day of March, 2002 by the Unit Trust of India to its unit holders" shall be substituted;

(*b*) in sub-section (*2*), for the words "any amount of income distributed by a Mutual Fund to its unit holders", the words, figures and letters "any amount of income distributed on or before the 31st day of March, 2002 by a Mutual Fund to its unit holders" shall be substituted.

Note

Clause 51 seeks to amend section 115R relating to tax on the distributed income to unit holders.

Under the existing provisions contained in the said section, the Unit Trust of India or a Mutual Fund is liable to pay additional income-tax at the rate of ten per cent on income distributed to its unit holders.

Sub-clause (a) seeks to amend sub-section (1) of the said section so as to make it applicable in respect of the income distributed by the Unit Trust of India to its unit holders on or before the 31st day of March, 2002.

Sub-clause (b) seeks to amend sub-section (2) of the abovesaid section, so as to make it applicable only in respect of the income distributed by a Mutual Fund to its unit holders on or before the 31st day of March, 2002.

These amendments will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 119.

52. In section 119 of the Income-tax Act, in sub-section (*2*), in clause (*a*), after the figures "155", the figures and letters ", 158BFA" shall be inserted with effect from the 1st day of June, 2002.

Note

Clause 52 seeks to amend section 119 of the Income-tax Act relating to instructions to subordinate authorities.

Under the existing provisions contained in clause (a) of sub-section (2) of the said section, the Board may, if it

considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time, whether by way of relaxation of any of the provisions of the sections specified therein or otherwise, general or special orders in respect of any class of incomes or class of cases, setting forth directions or instructions not being prejudicial to the assessees and for this purpose issue guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties.

It is proposed to amend the said clause so as to provide that such general or special orders may be issued by the Board by way of relaxation of the provisions of section 158BFA also.

This amendment will take effect from 1st June, 2002.

Amendment of section 132.

53. In section 132 of the Income-tax Act, with effect from the 1st day of June, 2002,—

(*a*) in sub-section (*1*), after clause (*iia*), the following clause shall be inserted, namely:–

"(*iib*) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (*t*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000, to afford the authorised officer the necessary facility to inspect such books of account or other documents;";

(*b*) sub-sections (*5*) to (*7*) shall be omitted;

(*c*) in sub-section (*8*), for the words "one hundred and eighty days from the date of the seizure", the words, brackets, letters and figures "thirty days from the date of the order of assessment under clause (*c*) of section 158BC" shall be substituted;

(*d*) for sub-section (*8A*), the following sub-section shall be substituted, namely:—

"(*8A*) An order under sub-section (*3*) shall not be in force for a period exceeding sixty days from the date of the order.";

(*e*) for sub-section (*9A*), the following sub-section shall be substituted, namely:—

"(*9A*) Where the authorised officer has no jurisdiction over the person referred to in clause (*a*) or clause (*b*) or clause (*c*) of sub-section (*1*), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (*8*) or sub-section (*9*) shall be exercisable by such Assessing Officer.";

(*f*) sub-sections (*11*), (*11A*) and (*12*) shall be omitted;

(*g*) for *Explanation 1* below sub-section (*14*), the following *Explanation* shall be substituted, namely:—

'Explanation 1.—For the purposes of sub-section (*9A*), "execution of an authorisation for search" shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.'.

Note

Clause 53 seeks to amend section 132 of the Income-tax Act relating to search and seizure.

Under the existing provisions contained in sub-section (1) of the said section, the authorised officer is empowered, *inter alia*, to enter and search any building, place, vessel, vehicle or aircraft and seize any books of account or other documents found as a result of search.

It is proposed to insert a new clause (iib) in the said sub-section to provide that where any books of account or other documents available at the place of search are maintained in the form of electronic records, the person who is found to be in possession or control of such books of account or other documents shall be required to afford the necessary facility to the authorised officer to inspect all such books of account or other documents.

Under the existing provisions contained in sub-section (5), where any money, bullion, jewellery or other valuable article or thing is seized as a result of search initiated or requisition made before 1st July, 1995, the Assessing Officer is required to pass an order within one hundred and twenty days of such seizure, estimating the undisclosed income in a summary manner, calculating the amount of tax and determining the amount of interest payable and the amount of penalty which would be payable thereon by the assessee.

It is proposed to omit the said sub-section (5) which was applicable in respect of searches initiated or requisitions made on or before 1st July, 1995. It is also proposed to omit sub-sections (6), (7), (11), (11A) and (12) which relate to the estimate of undisclosed income under sub-section (5) proposed to be omitted by this clause.

Under the existing provisions contained in sub-section (8), the books of account or other documents seized shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief Commissioner, Commissioner, Director General or Director for such retention is obtained.

It is proposed to amend the said sub-section to provide that the books of account or other documents seized shall not be retained for a period exceeding thirty days from the date of the order of assessment under clause (c) of section 158BC, unless the reasons for retaining the same are recorded in writing and the approval of the specified authorities is obtained.

Under the existing provisions contained in sub-section (8A), an order passed under sub-section (3) restraining the owner or the person who is in immediate possession or control of any books of account, documents or assets from dealing with them in any manner except with the previous permission of the authorized officer, may remain in force for a period of sixty days from the date of such order. Such period of sixty days can be extended, for reasons to be recorded in writing and with the approval of the authorities specified in the section, for any period upto the expiry of thirty days after the completion of all relevant proceedings under the Income-tax Act.

It is proposed to amend the said sub-section so as to provide that an order passed under sub-section (3) shall not be in force for a period exceeding sixty days from the date of such order and the said period cannot be extended for any reasons whatsoever.

Under the existing provisions contained in sub-section (9A), where the authorised officer has no jurisdiction over the person in whose case the search was conducted, the books of account or other documents or assets seized shall be handed over by him to the Income-tax Officer having jurisdiction over such person within a period of fifteen days of the seizure.

It is proposed to substitute the said sub-section so as to extend the said time limit to sixty days from the date on which the last of the authorisations for search was executed.

The existing provisions of *Explanation 1* occurring below sub-section (14) of the said section relate to the provisions of sub-section (5), which is proposed to be omitted.

It is, therefore, proposed to substitute the said *Explanation 1* so as to clarify that for the purposes of the proposed sub-section (9A), "execution of an authorisation for search" shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.

These amendments will take effect from 1st June, 2002, and will, accordingly, apply in respect of a search initiated on or after that date.

Substitution of new section for section 132B.

54. For section 132B of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002,—

'132B. *Application of seized or requisitioned assets.*— (*1*) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely:–

(*i*) the amount of any existing liability under this Act, the Wealth-tax Act, 1957 (27 of 1957), the Expenditure-tax Act, 1987 (35 of 1987), the Gift-tax Act, 1958 (18 of 1958) and the Interest-tax Act, 1974 (45 of 1974), and the amount of the liability determined on completion of the assessment under Chapter XIV-B for the block period (including any penalty levied or interest payable in connection with such assessment) and in respect of which such person is in default or is deemed to be in default, may be recovered out of such assets:

Provided that where the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized:

Provided further that such asset or any portion thereof as is referred to in the first proviso shall be

released within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed;

(*ii*) if the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (*i*) and the assessee shall be discharged of such liability to the extent of the money so applied;

(*iii*) the assets other than money may also be applied for the discharge of any such liability referred to in clause (*i*) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Chief Commissioner or Commissioner under sub-section (*5*) of section 226 and the Assessing Officer or, as the case may be, the Tax Recovery Officer may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(*2*) Nothing contained in sub-section (*1*) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(*3*) Any assets or proceeds thereof which remain after the liabilities referred to in clause (*i*) of sub-section (*1*) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(*4*) (*a*) The Central Government shall pay simple interest at the rate of eight per cent per annum on the amount by which the aggregate amount of money seized under section 132 or requisitioned under section 132A, as reduced by the amount of money, if any, released under the first proviso to clause (*i*) of sub-section (*1*), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (*i*) of sub-section (*1*), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (*i*) of sub-section (*1*) of this section.

(*b*) Such interest shall run from the date immediately following the expiry of the period of one hundred and twenty days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment under Chapter XIV-B.

Explanation.—In this section,–

(*i*) "block period" shall have the meaning assigned to it in clause (*a*) of section 158B;

(*ii*) "execution of an authorisation for search or requisition" shall have the same meaning as assigned to it in *Explanation 2* to section 158BE.'.

Note

Clause 54 seeks to substitute a new section 132B of the Income-tax Act relating to application of seized or requisitioned assets.

The existing provisions contained in the said section provide for the manner in which assets seized during search and retained under sub-section (5) of section 132 shall be dealt with in the discharge of any existing liability as well as the amount of the liability arising on assessments or re-assessments made as a result of such search.

It is proposed to substitute clause (i) of sub-section (1) of the said section to harmonise the provisions contained therein with the provisions for assessment in search cases laid down under Chapter XIV-B.

It is further proposed to substitute clause (i) to include therein a provision for release of assets seized during search if the nature and source of acquisition of such assets is explained to the satisfaction of the Assessing Officer, after recovery therefrom of any existing liability. However, such assets or any portion thereof shall be released within a period of one hundred and twenty days from the date on which the last of the authorizations for search or for requisition was executed.

The proposed clauses (ii) and (iii) of sub-section (1) and sub-sections (2) and (3) are on the lines of clauses (ii) and (iii) of sub-section (1) and sub-sections (2) and (3) of the existing section 132B.

Under the existing provisions contained in sub-section (4), the Central Government is required to pay simple interest at the rate of fifteen per cent per annum on the amount by which the aggregate of the amount of money retained under section 132 and of the proceeds, if any, of the assets sold towards the discharge of the existing liability, which exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of that section. The interest is payable for the period commencing from six months after the date of

the order under sub-section (5) of section 132 and ending with the date of the last assessment or reassessment.

It is proposed to substitute sub-section (4) so as to provide for the new procedure for assessment in search cases laid down in Chapter XIV-B, and to reduce the rate at which interest is payable by the Central Government from fifteen per cent to eight per cent. per annum.

It is further proposed to insert an *Explanation* to clarify the meaning of "block period" and "execution of an authorisation for search or requisition".

These amendments will take effect from 1st June, 2002 and will, accordingly, apply in respect of a search initiated on or after that date.

Amendment of section 133A.

55. In section 133A of the Income-tax Act, with effect from the 1st day of June, 2002,—

(*a*) in sub-section (*3*), after clause (*i*), the following clause shall be inserted, namely:—

"(*ia*) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:

Provided that such income-tax authority shall not—

(*a*) impound any books of account or other documents except after recording his reasons for so doing; or

(*b*) retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director General or Commissioner or Director therefor, as the case may be.";

(*b*) in sub-section (*4*), the words "any books of account or other documents or" shall be omitted.

Note

Clause 55 seeks to amend section 133A of the Income-tax Act relating to power of survey.

Under the existing provisions contained in sub-section (3) of the said section, an income-tax authority, acting under the section may, if he so deems necessary, place marks of identification on the books of account or other documents inspected by him, make copies or extracts therefrom, make an inventory of any cash, stock or other valuable article or thing checked or verified by him and record the statement of any person which may be useful for, or relevant to, any proceedings under the Income-tax Act.

It is proposed to amend sub-section (3) so as to provide that an income-tax authority (other than an Income-tax Inspector) acting under the said section may impound and retain in his custody books of account or other documents inspected by him after recording his reasons for so doing. It is further proposed to provide that such books of account or other documents shall not be retained for more than fifteen days without obtaining the approval of the Chief Commissioner of Income-tax or Director-General or Commissioner or Director therefor.

Under the existing provision contained in sub-section (4) of the said section, an income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing.

It is proposed to omit the words "any books of account or other documents or" in sub-section (4) to enable the income-tax authority acting under this section to remove or cause to be removed any books of account or other documents.

These amendments will take effect from 1st June, 2002.

Amendment of section 139.

56. In section 139 of the Income-tax Act,—

(*a*) after sub-section (*1*), the following sub-section shall be inserted, namely:–

'(*1A*) Without prejudice to the provisions of sub-section (*1*), any person, being an individual who is in receipt of income chargeable under the head "Salaries" may, at his option, furnish a return of his income for any previous year to his employer, in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, and

such employer shall furnish all returns of income received by him on or before the due date, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and manner as may be specified in that scheme, and in such case, any employee who has filed a return of his income to his employer shall be deemed to have furnished a return of income under sub-section (*1*), and the provisions of this Act shall apply accordingly.';

(*b*) after sub-section (*4B*), the following sub-section shall be inserted with effect from the 1st day of April, 2003, namely:—

"(*4C*) Every—

(*a*) scientific research association referred to in clause (*21*) of section 10;

(*b*) news agency referred to in clause (*22B*) of section 10;

(*c*) association or institution referred to in clause (*23A*) of section 10;

(*d*) institution referred to in clause (*23B*) of section 10;

(*e*) fund or institution referred to in sub-clause (*iv*) or trust or institution referred to in sub-clause (*v*) or any university or other educational institution referred to in sub-clause (*vi*) or any hospital or other medical institution referred to in sub-clause (*via*) of clause (*23C*) of section 10;

(*f*) trade union referred to in sub-clause (*a*) or association referred to in sub-clause (*b*) of clause (*24*) of section 10,

shall, if the total income in respect of which such scientific research association, news agency, association or institution, fund or trust or university or other educational institution or any hospital or other medical institution or trade union is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (*1*).";

(*c*) in sub-section (*9*), in the *Explanation*, in clause (*c*), in sub-clause (*i*), the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

"**Provided** that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted at source, the return of income shall not be regarded as defective if–

(*a*) a certificate for tax deducted was not furnished under section 203 to the person furnishing his return of income;

(*b*) such certificate is produced within a period of two years specified under sub-section (*14*) of section 155;".

Note

Clause 56 seeks to amend section 139 of the Income-tax Act relating to return of income.

Under the existing provisions contained in sub-section (1) of the said section, every company whether it has income or loss and every person other than a company, if the total income in respect of which he is assessable under this Act during the previous year exceeded the maximum amount not chargeable to income-tax, is required to furnish a return of such income on or before the due date in the prescribed form and manner.

Sub-clause (a) seeks to insert a new sub-section (1A) after sub-section (1) of the said section so as to provide that any person being an individual, who is in receipt of income chargeable under the head "Salaries", may, at his option, furnish the return of his income for any previous year to his employer and such employer shall furnish returns received by him on or before the due date in accordance with such scheme as may be specified by the Board in this behalf by notification in the Official Gazette, and subject to such conditions as may be specified therein, and in such case, such return shall be deemed to be a return furnished under sub-section (1) of section 139. It is also proposed to provide that such return of income may be furnished by the employer in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and manner as may be specified in such scheme.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Sub-clause (b) seeks to insert a new sub-section (4C) in the said section so as to provide that every scientific

research association referred to in clause (21), news agency referred to in clause (22B), association or institution referred to in clause (23A), institution referred to in clause (23B), fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C), trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10, shall, if the total income in respect of which such scientific research association, news agency, association or institution, fund and trade union, is assessable without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1) of section 139.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Sub-clause (c) seeks to insert a proviso in sub-clause (i) of clause (c) of the *Explanation* to sub-section (9) of the said section so as to provide that where the return is not accompanied by proof of the tax, if any, claimed to have been deducted at source, the return of income shall not be regarded as defective if a certificate for tax deducted was not furnished under section 203 to the person furnishing his return of income and such person produces such certificate within a period of two years specified under sub-section (14) of section 155.

This amendment will take effect from 1st June, 2002.

Amendment of section 143.

57. In section 143 of the Income-tax Act,—

(*a*) for sub-section (*2*), the following sub-section shall be substituted with effect from the 1st day of June, 2002, namely:—

"(*2*) Where a return has been furnished under section 139, or in response to a notice under sub-section (*1*) of section 142, the Assessing Officer shall,—

(*i*) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim;

(*ii*) notwithstanding anything contained in clause (*i*), if he considers it necessary or expedient to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.";

(*b*) for sub-section (*3*), the following sub-section shall be substituted, with effect from the 1st day of June, 2002, namely:—

"(*3*) On the day specified in the notice,—

(*i*) issued under clause (*i*) of sub-section (*2*), or as soon afterwards as may be, after hearing such evidence and after taking into account such particulars as the assessee may produce, the Assessing Officer shall, by an order in writing, allow or reject the claim or claims specified in such notice and make an assessment determining the total income or loss accordingly, and determine the sum payable by the assessee on the basis of such assessment;

(*ii*) issued under clause (*ii*) of sub-section (*2*), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.";

(*c*) after sub-section (*3*), the following proviso shall be inserted with effect from the 1st day of April, 2003, namely:

—

"**Provided** that in the case of a–

(*a*) scientific research association referred to in clause (*21*) of section 10;

(*b*) news agency referred to in clause (*22B*) of section 10;

(*c*) association or institution referred to in clause (*23A*) of section 10;

(*d*) institution referred to in clause (*23B*) of section 10;

(*e*) fund or institution referred to in sub-clause (*iv*) or trust or institution referred to in sub-clause (*v*) or any university or other educational institution referred to in sub-clause (*vi*) or any hospital or other medical institution referred to in sub-clause (*via*) of clause (*23C*) of section 10,

which is required to furnish the return of income under sub-section (*4C*) of section 139, no order making an assessment of the total income or loss of such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, shall be made by the Assessing Officer, without giving effect to the provisions of section 10, unless–

(*i*) the Assessing Officer has intimated the Central Government or the prescribed authority the contravention of the provisions of clause (*21*) or clause (*22B*) or clause (*23A*) or clause (*23B*) or sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10, as the case may be, by such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, where in his view such contravention has taken place; and

(*ii*) the approval granted to such scientific research association or other association or institution or university or other educational institution or hospital or other medical institution has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded.".

Note

Clause 57 seeks to amend section 143 of the Income-tax Act relating to assessment.

Under the existing provisions contained in sub-section (2) of the said section, where a return has been made under section 139 or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date specified in the notice either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return. Such notice shall not be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.

Sub-clause (a) seeks to substitute the said sub-section so as to provide that where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall, where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and requiring him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim and also seeks to provide that if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return. It is further proposed to provide that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.

Under the existing provisions contained in sub-section (3) of the said section, the Assessing Officer shall, on the day specified in the notice issued under sub-section (2) of that section, or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points and after taking into account all relevant material which he has gathered, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Sub-clause (b) seeks to substitute the said sub-section so as to provide that on the day specified in the notice,

issued under clause (i) of sub-section (2), or as soon afterwards as may be, after hearing such evidence and after taking into account such particulars as the assessee may produce, the Assessing Officer shall, by an order in writing, allow or reject the claim or claims specified in such notice and make an assessment determining the total income or loss accordingly, and determine the sum payable by the assessee on the basis of such assessment and also seeks to provide that on the day specified in the notice issued under clause (ii) of sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

These amendments will take effect from 1st June, 2002.

Sub-clause (c) seeks to insert a proviso in sub-section (3) of section 143 to provide that in the case of a scientific research association referred to in clause (21), news agency referred to in clause (22B), association or institution referred to in clause (23A), institution referred to in clause (23B), fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via) of clause (23C) of section 10, which is required to furnish a return of income under sub-section (4C) of section 139, the Assessing Officer shall not make an assessment order of the total income or loss of such scientific research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution (without giving effect to the provisions of section 10), unless he has intimated the Central Government or the prescribed authority, the contravention of the provisions contained in such clauses where in his view such contravention has taken place, and the notification issued or approval granted to such a body has been rescinded or withdrawn.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 153.

58. In section 153 of the Income-tax Act, in sub-section (*3*), in *Explanation 1*, after clause (*ii*), the following clause shall be inserted with effect from the 1st day of April, 2003, namely:—

"(*iia*) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (*21*) or clause (*22B*) or clause (*23A*) or clause (*23B*) or sub-clause (*iv*) or sub-clause (*v*) or sub-clause (*vi*) or sub-clause (*via*) of clause (*23C*) of section 10, under clause (*i*) of the proviso to sub-section (*3*) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer;".

Note

Clause 58 seeks to amend section 153 of the Income-tax Act relating to time limit for completion of assessments and re-assessments.

It is proposed to amend the said section so as to provide that the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority the contravention of the provisions of clause (21) or clause (22B) or clause (23A) or clause (23B) or sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, under clause (a) of the second proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer, shall be excluded in computing the period of limitation under this section.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of section 155.

59. In section 155 of the Income-tax Act, after sub-section (*13*) and before the *Explanation*, the following sub-sections shall be inserted with effect from the 1st day of June, 2002, namely:—

"(*14*) Where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (*1*) of section 143 for any previous year, credit for tax deducted in accordance with the provisions of

section 199 has not been given on the ground that the certificate furnished under section 203 was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under sub-section (*1*) of section 143, as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto:

Provided that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted has been disclosed in the return of income filed by the assessee for the relevant assessment year.

(*15*) Where in the assessment for any year, a capital gain arising from the transfer of a capital asset, being land or building or both, is computed by taking the full value of the consideration received or accruing as a result of the transfer to be the value adopted or assessed by any authority of a State Government for the purpose of payment of stamp duty in accordance with sub-section (*1*) of section 50C, and subsequently such value is revised in any appeal or revision or reference referred to in clause (*b*) of sub-section (*2*) of that section, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the full value of the consideration to be the value as so revised in such appeal or revision or reference; and the provisions of section 154 shall, so far as may be, apply thereto, and the period of four years shall be reckoned from the end of the previous year in which the order revising the value was passed in that appeal or revision or reference.".

Note

Clause 59 seeks to amend section 155 of the Income-tax Act relating to other amendments.

The proposed amendment seeks to insert a new sub-section (14) in the said section so as to provide that where in the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, credit for tax deducted in accordance with the provisions of section 199 has not been given on the ground that the certificate furnished under section 203 was not filed with the return and subsequently such certificate is produced before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, credit of tax deducted at source shall be given to the assessee on production of such certificate. It is also proposed to provide that nothing contained in the proposed sub-section shall apply unless the income from which tax has been deducted has been disclosed in the return of income filed by the assessee for that assessment year.

The proposed amendment will enable the Assessing Officer to rectify the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143.

It is further proposed to insert a new sub-section (15) in the said section so as to provide that where in the assessment for any year, a capital gain arising from the transfer of a capital asset, being land or building or both, is computed by taking the full value of the consideration to be the value adopted or assessed by any authority of a State Government for the purposes of payment of stamp duty in accordance with sub-section (1) of section 50C, and subsequently such value is revised in any appeal or revision or reference referred to in clause (b) of sub-section (2) of that section, then, the Assessing Officer shall revise the computation of said capital gain by taking the full value of the consideration to be the value so revised in such appeal or revision or reference.

The proposed amendment is of consequential nature.

These amendments will take effect from 1st June, 2002.

Amendment of section 158A.

60. In section 158A of the Income-tax Act, with effect from the 1st day of June, 2002,–

(*a*) in sub-section (*1*),—

(*i*) for the words and figures "before the Supreme Court on a reference under section 257 or in appeal under section 261", the words, figures and letter "before the Supreme Court on a reference under section 257 or in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court" shall be substituted;

(*ii*) for the words and figures "for a reference before the High Court under section 256 or the Supreme Court under section 257 or in appeal before the Supreme Court under section 261", the words, figures and letter "in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261" shall be substituted;

(*b*) in sub-section (*4*), in clause (*b*), for the words and figures "for a reference before the High Court under section

256 or the Supreme Court under section 257 or in appeal before the Supreme Court under section 261", the words, figures and letter "in appeal before the High Court under section 260A or the Supreme Court under section 261" shall be substituted.

Note

Clause 60 seeks to amend section 158A of the Income-tax Act relating to procedure when assessee claims identical question of law is pending before High Court or Supreme Court.

The existing provisions contained in section 158A provide for a special procedure in cases where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending before the High Court on a reference under section 256 or before the Supreme Court on a reference under section 257 or in appeal before the Supreme Court under section 261. In such cases, the assessee may furnish a declaration that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply the final decision of the High Court or the Supreme Court on the question of law to the relevant case, the assessee shall not raise such question of law in the relevant case in appeal before any appellate authority or for a reference before the High Court or the Supreme Court or in appeal before the High Court or the Supreme Court.

Section 260A relating to appeal to High Court was inserted in the Income-tax Act by the Finance (No. 2) Act, 1998. It is proposed to amend sub-sections (1) and (4) of section 158A so as to include at the appropriate places therein, the references relating to "appeals to High Court under section 260A", and omit references to "section 256 and section 257" in the portion at the end of sub-section (1) and in clause (b) of sub-section (4) of section 158A.

These amendments are of consequential nature.

These amendments will take effect from 1st June, 2002.

Amendment of section 158B.

61. In section 158B of the Income-tax Act, in clause (*b*), after the words "for the purposes of this Act", the words ", or any expense, deduction or allowance claimed under this Act which is found to be false" shall be inserted with effect from the 1st day of June, 2002.

Note

Clause 61 seeks to amend section 158B of the Income-tax Act relating to definitions.

Under the existing provisions contained in clause (b) of the said section, "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery or valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Income-tax Act.

It is proposed to amend the said clause so as to specifically provide that any expense, deduction or allowance claimed under the said Act which is found to be false shall be included in the undisclosed income as defined in the said clause.

This amendment will take effect from 1st June, 2002.

Amendment of section 158BB.

62. In section 158BB of the Income-tax Act, in sub-section (*1*), with effect from the 1st day of June, 2002,—

(*i*) for the portion beginning with the words and figure "in accordance with the provisions of Chapter IV," and ending with the words "as are available with the Assessing Officer", the words "in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence" shall be substituted;

(*ii*) in clause (*a*), for the words "have been concluded", the words "have been concluded prior to the date of commencement of the search or the date of requisition" shall be substituted;

(*iii*) in clause (*b*), for the words and figures "or section 147", the words, brackets and figures "or in response to a notice issued under sub-section (*1*) of section 142 or section 148" shall be substituted;

(*iv*) for clause (*c*), the following clauses shall be substituted, namely:—

"(*c*) where the due date for filing a return of income has expired, but no return of income has been filed,–

(*A*) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period; or

(*B*) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;

(*ca*) where the due date for filing a return of income has expired, but no return of income has been filed, as *nil*, in cases not falling under clause (*c*);";

(*v*) in the *Explanation*, in clause (*a*),–

(*i*) for the word and figures "Chapter IV", the words "this Act" shall be substituted;

(*ii*) the following proviso shall be inserted, namely:–

"**Provided** that in computing deductions under Chapter VI-A for the purposes of the said aggregation, effect shall be given to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (*2*) of section 32;".

Note

Clause 62 seeks to amend section 158BB of the Income-tax Act relating to computation of undisclosed income of the block period.

Under the existing provisions contained in sub-section (1) of the said section, the aggregate of the total income of the previous years falling within the block period shall be computed in accordance with the provisions of Chapter IV, on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer.

It is proposed to amend the opening portion of the said sub-section so as to provide that such aggregate of total income is to be computed in accordance with the provisions of the Income-tax Act on the basis of evidence found as a result of search or requisition and on the basis of such other materials or information gathered in relation to such evidence, as are available with the Assessing Officer.

Under the existing provisions contained in clause (a) of the said sub-section, the aggregate of the total income of the block period shall be reduced by the total income, or, as the case may be, increased by the loss of a previous year determined on the basis of assessments concluded under section 143 or section 144 or section 147.

It is proposed to amend the said clause (a) so as to clarify that the assessments mentioned therein are those which have been concluded prior to the date of commencement of the search or the date of requisition.

Under the existing provisions contained in clause (b), where returns of income have been filed under section 139 or section 147 but assessments have not been made till the date of search or requisition, the aggregate total income of the block period shall be adjusted by the income or loss disclosed in such returns.

It is proposed to amend the said clause (b) so as to make the provision applicable also in respect of income or loss disclosed in the returns filed, in response to a notice issued under sub-section (1) of section 142 or section 148.

Under the existing provisions contained in clause (c), where the due date for filing a return of income has expired but no return has been filed, no adjustment shall be made to the aggregate total income of the block period.

It is proposed to substitute the said clause (c) by clauses (c) and (ca) so as to provide that where the due date for filing a return of income has expired, but no return of income has been filed, the aggregate total income of the block period shall be adjusted by an amount determined on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of search or requisition where such entries result in computation of loss for any previous year falling in the block period, or on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period, and in other cases no adjustment shall be made.

Under the existing provisions contained in clause (a) of the *Explanation*, the total income or loss of each previous year shall, for the purpose of aggregation, be taken as the total income or loss computed in accordance with the provisions of Chapter IV without giving effect to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32.

It is proposed to substitute the said clause so as to provide that for the purpose of aggregation, the total income or loss of each previous year shall be computed in accordance with the provisions of the Income-tax Act without giving effect to set off of the said brought forward losses or unabsorbed depreciation, and further to provide that in computing deductions under Chapter VI-A for the purposes of the said aggregation, effect shall be given to the set off of such brought forward losses or unabsorbed depreciation.

These amendments will take effect from 1st June, 2002.

Amendment of section 158BC.

63. In section 158BC of the Income-tax Act, with effect from the 1st day of June, 2002,—

(*a*) in clause (*b*), for the words and figures "and section 144", the words and figures ", section 144 and section 145" shall be substituted;

(*b*) for clause (*d*), the following clause shall be substituted, namely:—

"(*d*) the assets seized under section 132 or requisitioned under section 132A shall be dealt with in accordance with the provisions of section 132B.".

Note

Clause 63 seeks to amend section 158BC of the Income-tax Act relating to procedure for block assessment.

Under the existing provisions contained in clause (b) of the said section, the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143 and section 144 shall, so far as may be, apply.

It is proposed to amend the said clause so as to provide that the provisions of section 145 relating to method of accounting shall also apply, so far as may be, in determining the undisclosed income of the block period in the manner laid down in section 158BB.

The existing provisions in clause (d) of the said section provide that the assets seized under section 132 or requisitioned under section 132A shall be retained to the extent necessary and the provisions of section 132B shall apply subject to such modifications as may be necessary and as are specified in the said clause.

It is proposed to amend section 132B *vide* clause 54 of the Bill so as to make the provisions contained in that section directly relatable to the procedure for assessment in cases of search under section 132 or requisition under section 132A laid down under Chapter XIV-B.

It is proposed to substitute clause (d) of section 158BC so as to provide that the assets seized under section 132 or requisitioned under section 132A shall be dealt with in accordance with the provisions of section 132B.

These amendments will take effect from 1st June, 2002.

Amendment of section 158BD.

64. In section 158BD of the Income-tax Act, after the words "that Assessing Officer shall proceed", the words, figures and letters "under section 158BC" shall be inserted with effect from the 1st day of June, 2002.

Note

Clause 64 seeks to amend section 158BD of the Income-tax Act relating to undisclosed income of any other person.

Under the existing provisions contained in the said section, where the Assessing Officer is satisfied that any undisclosed income belongs to any person other than the person with respect to whom the search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, the books of account or other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and the provisions of Chapter XIV-B shall apply accordingly.

It is proposed to insert the words “under section 158BC” after the words “that Assessing Officer shall proceed” so as to clarify that the Assessing Officer shall proceed against such other person under section 158BC.

This amendment will take effect from 1st June, 2002.

Amendment of section 158BE.

65. In section 158BE of the Income-tax Act, for *Explanation 1*, the following shall be substituted with effect from the 1st day of June, 2002, namely:–

“*Explanation 1*.—In computing the period of limitation for the purposes of this section,–

(*i*) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(*ii*) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (*2A*) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

(*iii*) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(*iv*) in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (*1*) of section 245D is received by the Commissioner under sub-section (*2*) of that section,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (*1*) or sub-section (*2*) available to the Assessing Officer for making an order under clause (*c*) of section 158BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.”.

Note

Clause 65 seeks to amend section 158BE of the Income-tax Act relating to time limit for completion of block assessment.

Under the existing provisions contained in *Explanation 1* below sub-section (2) of the said section, in computing the period of limitation for completion of block assessment referred to in sub-sections (1) and (2), the period during which the assessment proceeding is stayed by an order or injunction of any Court, and the time taken in furnishing a report of audit as directed by the Assessing Officer under sub-section (2A) of section 142, shall be excluded.

It is proposed to substitute the said *Explanation* so as to provide that in computing the said period of limitation, the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be reheard under the proviso to section 129 shall be excluded. It is further proposed that in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section shall also be excluded.

The proposed proviso in the *Explanation* provides that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (1) or sub-section (2) available to the Assessing Officer for making an order of assessment under clause (c) of section 158BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

These amendments will take effect from 1st June, 2002.

Insertion of new section 174A.

66. In Chapter XV of the Income-tax Act, after section 174 and before the sub-heading “*K.–Persons trying to alienate their assets*”, the following sub-heading and section shall be inserted, namely:—

“*JA.–Association of persons or body of individuals or artificial juridical person formed for a particular event or purpose*

174A. *Assessment of association of persons or body of individuals or artificial juridical person formed for a particular event or purpose.*— Notwithstanding anything contained in section 4, where it appears to the

Assessing Officer that any association of persons or a body of individuals or an artificial juridical person, formed or established or incorporated for a particular event or purpose is likely to be dissolved in the assessment year in which such association of persons or a body of individuals or an artificial juridical person was formed or established or incorporated or immediately after such assessment year, the total income of such person or body or juridical person for the period from the expiry of the previous year for that assessment year up to the date of its dissolution shall be chargeable to tax in that assessment year, and the provisions of sub-sections (*2*) to (*6*) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.".

Note

Clause 66 seeks to insert a new section 174A in Chapter XV of the Income-tax Act to provide for assessment of association of persons or body of individuals or artificial juridical person formed for a particular event or purpose.

The proposed new section 174A seeks to provide that where it appears to the Assessing Officer that any association of persons or a body of individuals or an artificial juridical person formed or established or incorporated for a particular event or purpose is likely to be dissolved in the assessment year in which such association of persons or body of individuals or artificial juridical person was formed or established or incorporated or immediately after such assessment year, the total income of such person or body or juridical person, for the period from the expiry of the previous year for that assessment year up to the date of its dissolution, shall be chargeable to tax in that assessment year. The proposed section further provides that the provisions of sub-sections (2) to (6) of section 174 shall, so far as may be, apply to any proceedings in the case of any such person as they apply in the case of persons leaving India.

This amendment will take effect retrospectively from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

Amendment of section 190.

67. In section 190 of the Income-tax Act, after the words "by advance payment", the words, brackets, figures and letter "or by payment under sub-section (*1A*) of section 192" shall be inserted with effect from the 1st day of June, 2002.

Note

Clause 67 seeks to amend section 190 of the Income-tax Act relating to deduction at source and advance payment.

It is proposed to insert a new clause (10CC) in section 10 of the Income-tax Act vide sub-clause (*i*) of clause 4 of the Bill so as to provide that in the case of an employee, being an individual deriving income in the nature of a perquisite, not provided for by way of monetary payment within the meaning of clause (2) of section 17, the tax on such income actually paid by his employer, at the option of employer, on behalf of such employee notwithstanding anything contained in section 200 of the Companies Act, 1956, shall be exempt from income-tax. It is accordingly proposed to make consequential amendment in section 190 to provide for payment of tax by the employer on behalf of his employee.

This amendment will take effect from 1st June, 2002.

Amendment of section 192.

68. In section 192 of the Income-tax Act, with effect from the 1st day of June, 2002,—

(*a*) after sub-section (*1*), the following sub-sections shall be inserted, namely:—

"(*1A*) Without prejudice to the provisions contained in sub-section (*1*), the person responsible for paying any income in the nature of a perquisite which is not provided for by way of monetary payment, referred to in clause (*2*) of section 17, may pay, at his option, tax on the whole or part of such income without making any deduction therefrom at the time when such tax was otherwise deductible under the provisions of sub-section (*1*).

(*1B*) For the purpose of paying tax under sub-section (*1A*), tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries" including the income referred to in sub-section (*1A*), and the tax so payable shall be construed as if it were, a tax deductible at source, from the income under the head "Salaries" as per the

provisions of sub-section (*1*), and shall be subject to the provisions of this Chapter.";

(*b*) in sub-section (*3*), after the words, brackets and figure "sub-section (*1*)", the words, brackets, figure and letter "or sub-section (*1A*)" shall be inserted.

Note

Clause 68 seeks to amend section 192 of the Income-tax Act relating to deduction of tax at source from salary.

Sub-clause (a) seeks to insert two new sub-sections (1A) and (1B) in the said section. The proposed sub-section (1A) provides that the person responsible for paying any income in the nature of a perquisite (not provided for by way of monetary payment) referred to in clause (2) of section 17 may pay at his option, tax on the whole or part of such income without making any deduction therefrom at the time when such tax was otherwise deductible under the provisions of sub-section (1).

The proposed sub-section (1B) provides that for the purposes of sub-section (1A), tax shall be determined at the average of income-tax computed on the basis of the rates in force for the financial year, on the income chargeable under the head "Salaries" including the income referred to in sub-section (1A), and the tax so payable shall be construed as if it were, a tax deductible at source from the income under the head "Salaries" as per the provisions of sub-section (1), and shall be subject to the provisions of Chapter XVII-B.

Sub-clause (b) seeks to amend sub-section (3) which is of consequential nature.

These amendments will take effect from 1st June, 2002.

Amendment of section 193.

69. In section 193 of the Income-tax Act, in the proviso, after clause (*v*) and before the *Explanation,* the following clauses shall be inserted with effect from the 1st day of June, 2002, namely:—

"(*vi*) any interest payable to the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, in respect of any securities owned by it or in which it has full beneficial interest; or

(*vii*) any interest payable to the General Insurance Corporation of India (hereafter in this clause referred to as the Corporation) or to any of the four new companies (hereafter in this clause referred to as such company), formed by virtue of the schemes framed under sub-section (*1*) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), in respect of any securities owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest; or

(*viii*) any interest payable to any other insurer in respect of any securities owned by it or in which it has full beneficial interest.".

Note

Clause 69 seeks to amend section 193 of the Income-tax Act relating to deduction of tax at source from interest on securities.

The proposed amendment seeks to provide that no deduction of tax at source shall be made under the said section in respect of any interest payable to the Life Insurance Corporation of India or the General Insurance Corporation of India or to any of the four companies formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 or any other insurer in respect of any security owned by them or in which they have full beneficial interest.

These amendments will take effect from 1st June, 2002.

Amendment of section 194.

70. In section 194 of the Income-tax Act, for the first and second provisos, the following proviso shall be substituted with effect from the 1st day of June, 2002, namely:—

"**Provided** that the provisions of this section shall not apply to such income credited or paid to–

(*a*) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), in respect of any shares owned by it or in which it has full beneficial interest;

(*b*) the General Insurance Corporation of India (hereafter in this proviso referred to as the Corporation) or to

any of the four companies (hereafter in this proviso referred to as such company), formed by virtue of the schemes framed under sub-section (*1*) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972), in respect of any shares owned by the Corporation or such company or in which the Corporation or such company has full beneficial interest;

(*c*) any other insurer in respect of any shares owned by it or in which it has full beneficial interest.".

Note

Clause 70 seeks to amend section 194 of the Income-tax Act relating to deduction of tax at source from dividends.

Under the existing provisions contained in the said section, no tax is required to be deducted at source in the case of a shareholder, being an individual, of a company in which the public are substantially interested, if the dividend is paid by an account payee cheque and the amount of the dividend or, as the case may be, the aggregate of the amounts of the dividend does not exceed two thousand five hundred rupees. Further, the second proviso to the said section provides that the provisions of the section shall not apply in the cases where declaration or distribution or payment of dividend is made after 1st June, 1997 as contained in sub-section (1) of section 115-O.

The proposed amendment seeks to substitute the first and second provisos with a new proviso in the said section so as to provide that no deduction of tax at source shall be made under this section in respect of any dividend payable to the Life Insurance Corporation of India or the General Insurance Corporation of India or to any of the four companies formed by virtue of the schemes framed under sub-section (1) of section 16 of the General Insurance Business (Nationalisation) Act, 1972 or any other insurer in respect of any shares owned by them or in which they have full beneficial interest.

This amendment will take effect from 1st June, 2002.

Amendment of section 194A.

71. In section 194A of the Income-tax Act, after sub-section (*1*) and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

"**Provided** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.".

Note

Clause 71 seeks to amend section 194A of the Income-tax Act relating to deduction of tax at source from interest other than "Interest on securities".

Under the existing provisions contained in sub-section (1) of the said section, deduction of tax at source from interest other than "Interest on securities" is to be made by any person other than an individual or a Hindu undivided family.

It is proposed to insert a proviso in the said sub-section so as to provide that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.

This amendment will take effect from 1st June, 2002.

Amendment of section 194C.

72. In section 194C of the Income-tax Act, after sub-section (*2*) and before *Explanation I*, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:–

"Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the sub-contractor, shall be liable to deduct income-tax under this sub-section." .

Note

Clause 72 seeks to amend section 194C of the Income-tax Act relating to deduction of tax at source from payments to contractors and sub-contractors.

Under the existing provisions contained in sub-section (2) of the said section, deduction of tax at source is to be made by any person other than an individual or a Hindu undivided family being a contractor, responsible for paying any sum to a resident, being a sub-contractor at the time of credit or payment of any sum to the account of the sub-contractor.

It is proposed to insert a proviso in the said sub-section so as to provide that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the sub-contractor, shall be liable to deduct income-tax under this sub-section.

This amendment will take effect from 1st June, 2002.

Amendment of section 194H.

73. In section 194H of the Income-tax Act, with effect from the 1st day of June, 2002,—

(*a*) for the words "ten per cent", the words "five per cent" shall be substituted;

(*b*) after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

"**Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section.".

Note

Clause 73 seeks to amend section 194H of the Income-tax Act relating to deduction of tax at source from commission or brokerage.

The existing provisions contained in section 194H provide that deduction of income-tax at source is to be made by any person other than an individual or a Hindu undivided family at the rate of ten per cent on any income by way of commission (not being insurance commission referred to in section 194D) or brokerage at the time of credit or payment of such income to the account of the payee.

Sub-clause (*a*) seeks to provide that tax deduction at source for the purpose of the aforesaid section shall be made at the rate of five per cent instead of ten per cent.

Sub-clause (*b*) seeks to insert a proviso in the said section so as to provide that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section.

These amendments will take effect from 1st June, 2002.

Amendment of section 194-I.

74. In section 194-I of the Income-tax Act, after the proviso and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:–

"**Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.".

Note

Clause 74 seeks to amend section 194-I of the Income-tax Act relating to deduction of tax at source from rent.

Under the existing provisions contained in the said section, deduction of tax at source is to be made by any person other than an individual or a Hindu undivided family at the time of credit or payment of rent to the account of the payee.

It is proposed to insert a new proviso in the said section so as to provide that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such income by way of rent is credited or paid, shall be liable to deduct income-tax under this section.

This amendment will take effect from the 1st June, 2002.

Amendment of section 194J.

75. In section 194J of the Income-tax Act, in sub-section (*1*), after the proviso, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

"**Provided further** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which such sum by way of fees for professional services or technical services is credited or paid, shall be liable to deduct income-tax under this section.".

Note

Clause 75 seeks to amend section 194J of the Income-tax Act relating to deduction of tax at source from fees for professional or technical services.

Under the existing provisions contained in sub-section (1) of the said section, deduction of tax at source is to be made by any person other than an individual or a Hindu undivided family at the time of credit or payment of fees for professional or technical services to the account of the payee.

It is proposed to insert a new proviso in the said sub-section so as to provide that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which fees for professional or technical services is credited or paid, shall be liable to deduct income-tax under this sub-section.

This amendment will take effect from the 1st June, 2002.

Substitution of new section for section 194K.

76. For section 194K of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002, namely:—

'194K. *Income in respect of units.*—Where any income is payable to a resident in respect of units of a Mutual Fund specified under clause (*23D*) of section 10 or of the Unit Trust of India, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.

Explanation.–For the purposes of this section,—

(*a*) "Unit Trust of India" means the Unit Trust of India established under the Unit Trust of India Act, 1963;

(*b*) where any income as aforesaid is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.'.

Note

Clause 76 seeks to substitute section 194K of the Income-tax Act relating to deduction of tax at source from income in respect of units.

Under the existing provisions contained in the said section, tax is required to be deducted at source by the person responsible for making the payment of any income to a resident in respect of units of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India at the rate of twenty per cent if the payee is a company and fifteen per cent in case of other payees. Further, no deduction is to be made under sub-section (1) of the said section from any income credited or paid on or after 1st June, 1999. No deduction is required to be made in cases where the amount of such income does not exceed ten thousand rupees.

The proposed amendment seeks to substitute the said section with a new section so as to provide that where any income is payable to a resident in respect of units of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India, the person responsible for making the payment 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 issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of ten per cent.

The *Explanation* below the proposed section defines the expression "Unit Trust of India" and clarifies that tax would be required to be deducted at source from such income credited to suspense account.

This amendment will take effect from the 1st June, 2002.

Amendment of section 195.

77. In section 195 of the Income-tax Act, in sub-section (*1*), the second proviso shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 77 seeks to amend section 195 of the Income-tax Act relating to deduction of tax at source from other sums.

Under the existing provisions contained in the second proviso to sub-section (1) of the said section, no tax is required to be deducted at source from any dividends declared, distributed or paid by a domestic company on or after 1st June, 1997.

The proposed amendment seeks to omit the said proviso and is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 195A.

78. In section 195A of the Income-tax Act, for the words "Where, under an agreement", the words, brackets, figures and letter "In a case other than that referred to in sub-section (*1A*) of section 192, where under an agreement" shall be substituted with effect from the 1st day of June, 2002.

Note

Clause 78 seeks to amend section 195A of the Income-tax Act relating to income being payable "net of tax".

Under the existing provisions, where under an agreement or other arrangement, the tax chargeable on any income is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax, such income is to be increased to such amount as would, after deduction of tax, be equal to the net amount payable.

It is proposed to insert two new sub-sections (1A) and (1B) in section 192 *vide* clause 68 of the Bill so as to provide an option to the employer to pay tax on behalf of the employee, without deducting tax from his income, on income in the nature of perquisite (not provided for by way of monetary payment) referred to in clause (2) of section 17, notwithstanding the provisions of section 200 of the Companies Act, 1956.

It is, therefore, proposed to exclude payment of tax on income in the nature of perquisite, not provided for by way of monetary payments, made by an employer, at the option of the employer, on behalf of any employee for calculating the income for the purpose of deducting tax at source.

The proposed amendment is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 196A.

79. In section 196A of the Income-tax Act, in sub-section (*1*), the proviso shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 79 seeks to amend section 196A of the Income-tax Act relating to income in respect of units of non-residents.

Under the existing provisions contained in the proviso to sub-section (1) of the said section, no tax is required to be deducted at source from any income paid to a non-resident, not being a company, or to a foreign company, in respect of units of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India, if such income is credited or paid on or after 1st June, 1999.

The proposed amendment seeks to omit the said proviso and is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 196C.

80. In section 196C of the Income-tax Act, the proviso shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 80 seeks to amend section 196C of the Income-tax Act relating to deduction of tax at source from income from foreign currency bonds or shares of an Indian company.

Under the existing provisions contained in the proviso to the said section, no tax is required to be deducted at source from any dividends declared, distributed or paid by a domestic company on or after 1st June, 1997.

The proposed amendment seeks to omit the said proviso.

This amendment will take effect from 1st June, 2002.

Amendment of section 196D.

81. In section 196D of the Income-tax Act, in sub-section (*1*), the proviso shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 81 seeks to amend section 196D of the Income-tax Act relating to deduction of tax at source from income of Foreign Institutional Investors from securities.

Under the existing provisions contained in the proviso to sub-section (1) of the said section, no tax is required to be deducted at source from any dividends declared, distributed or paid by a domestic company on or after 1st June, 1997.

The proposed amendment seeks to omit the said proviso and is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 197A.

82. In section 197A of the Income-tax Act, after sub-section (*1A*), the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely:—

> "(*1B*) The provisions of this section shall not apply where the amount of any income of the nature referred to in sub-section (*1*) or sub-section (*1A*), as the case may be, or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.".

Note

Clause 82 seeks to amend section 197A of the Income-tax Act which provides that no deduction of tax at source is to be made in certain cases.

Under the existing provisions contained in section 197A, no tax is deducted at source if an individual who is a resident in India makes a declaration that the tax on his estimated total income of the previous year in which such income is to be included will be *nil*.

The proposed amendment seeks to provide that the provisions of the section shall not apply where the incomes referred to in sub-section (1) or sub-section (1A) of the said section or the aggregate of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the maximum amount which is not chargeable to income-tax.

This amendment will take effect from 1st June, 2002.

Amendment of section 198.

83. In section 198 of the Income-tax Act, the following proviso shall be inserted with effect from the 1st day of June, 2002, namely:—

"Provided that the sum being the tax paid, under sub-section (*1A*) of section 192 for the purpose of computing the income of an assessee, shall not be deemed to be income received.".

Note

Clause 83 seeks to amend section 198 of the Income-tax Act which provides that tax deducted is income received.

It is proposed to amend the said section so as to provide that the sum being the tax paid under the proposed sub-section (1A) of section 192, shall not be deemed to be the income received for the purpose of computing the income of an assessee.

The proposed amendment is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 199.

84. Section 199 of the Income-tax Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely:—

"(*2*) Any sum referred to in sub-section (*1A*) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made and credit shall be given to him for the amount so paid on production of the certificate furnished under section 203 in the assessment under this Act for the assessment year for which such income is assessable.".

Note

Clause 84 seeks to amend section 199 of the Income-tax Act in relating to credit for tax deducted.

It is proposed to insert a new sub-section (2) in the said section so as to provide that any sum referred to under sub-section (1A) of section 192 and paid to the Central Government shall be treated as tax paid on behalf of the person in respect of whose income, such payment of tax has been made and credit shall be given to him for the amount so paid on production of the certificate furnished under section 203 in the assessment under the said Act for the assessment year for which such income is assessable.

The proposed amendment is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 200.

85. Section 200 of the Income-tax Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely :

—

"(*2*) Any person being an employer, referred to in sub-section (*1A*) of section 192 shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.".

Note

Clause 85 seeks to amend section 200 of the Income-tax Act which provides for duty of person deducting tax.

It is proposed to insert a new sub-section (2) in the said section so as to provide that any person being an employer, referred to in sub-section (1A) of section 192 shall pay within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

The proposed amendment is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 201.

86. In section 201 of the Income-tax Act, in sub-section (*1*), after the words "If any such person", the words and figures "referred to in section 200" shall be inserted with effect from the 1st day of June, 2002.

Note

Clause 86 seeks to amend section 201 of the Income-tax Act which provides for consequences of failure to deduct or pay tax.

It is proposed to amend the said section so as to insert reference to section 200 of the Income-tax Act.

The proposed amendment is of clarificatory nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 203.

87. Section 203 of the Income-tax Act shall be re-numbered as sub-section (*1*) thereof, and after sub-section (*1*) as so re-numbered, the following sub-section shall be inserted with effect from the 1st day of June, 2002, namely:–

"(*2*) Every person, being an employer, referred to in sub-section (*1A*) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.".

Note

Clause 87 seeks to amend section 203 of the Income-tax Act which provides for furnishing of certificate for tax deducted.

It is proposed to insert a new sub-section (2) in the said section so as to provide that every person referred to in sub-section (1A) of section 192 shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

The amendment is of consequential nature.

This amendment will take effect from 1st June, 2002.

Insertion of new section 206CA.

88. After section 206C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

"206CA. *Tax-collection account number.*— (*1*) Every person collecting tax in accordance with the provisions of section 206C, shall, within such time as may be prescribed, apply to the Assessing Officer for the

allotment of a tax-collection account number.

(*2*) Where a tax collection account number has been allotted to a person, such person shall quote such number–

(*a*) in all challans for the payment of any sum in accordance with the provisions of sub-section (*3*) of section 206C;

(*b*) in all certificates furnished under sub-section (*5*) of section 206C;

(*c*) in all the returns delivered in accordance with the provisions of sub-section (*5A*) or sub-section (*5B*) of section 206C to any income-tax authority; and

(*d*) in all other documents pertaining to such transactions as may be prescribed in the interest of revenue.".

Note

Clause 88 seeks to insert a new section 206CA in the Income-tax Act relating to tax-collection account number.

Under the existing provisions contained in section 206C, every person, being a seller, shall at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount from the said buyer in cash or by the issue of a cheque or draft or by any other mode, collect from him a sum equal to the percentage, specified in the Table under sub-section (1) of that section.

The proposed new section seeks to provide that every person collecting tax at source in accordance with the provisions of section 206C shall apply to the Assessing Officer for the allotment of a tax-collection account number. It is further proposed that such tax-collection account number shall be quoted in all challans for payment of any sum under sub-section (3), in all certificates furnished under sub-section (5), in all the returns delivered under sub-section (5A) or sub-section (5B) of section 206C and in all other documents pertaining to such transactions as may be prescribed.

This amendment will take effect from 1st June, 2002.

Amendment of section 210.

89. In section 210 of the Income-tax Act, in sub-section (*3*), the words, brackets and figure "and who has not paid any advance tax under sub-section (*1*)" shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 89 seeks to amend section 210 of the Income-tax Act relating to payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.

It is proposed to omit "and who has not paid any advance tax under sub-section (1)" occurring in sub-section (3) of the said section so as to clarify that the Assessing Officer, may by order in writing, require any person liable to pay advance tax, if he is of the opinion that such person has not paid any of the specified instalments of advance tax by the dates specified under section 211.

This amendment will take effect from 1st June, 2002.

Amendment of section 244A.

90. In section 244A of the Income-tax Act, in sub-section (*1*), in clauses (*a*) and (*b*), for the words "three-fourth per cent.", the words "two-third per cent." shall be substituted with effect from the 1st day of June, 2002.

Note

Clause 90 seeks to amend section 244A of the Income-tax Act relating to interest on refunds.

Under the existing provisions contained in sub-section (1), where refund of any amount becomes due to the assessee under the Income-tax Act, the assessee is entitled to receive, in addition to the said amount, simple interest thereon at the rate of three-fourth per cent for every month or part of a month comprised in the period of delay specified in the said section.

It is proposed to amend clauses (a) and (b) of the said sub-section so as to reduce the rate of interest from three-fourth per cent to two-third per cent for every month or part of a month, as the case may be.

These amendments will take effect from 1st June, 2002.

Amendment of section 254C.

91. In section 245C of the Income-tax Act, sub-section (*1E*) shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 91 seeks to amend section 245C of the Income-tax Act relating to application for settlement of cases.

Under the existing provisions contained in sub-section (1E) of section 245C, where any books of account or other documents or assets referred to therein are seized under section 132, the assessee shall not be entitled to make an application under sub-section (1) of section 245C before the expiry of one hundred and twenty days from the date of the seizure. The provisions contained in sub-section (5) of the said section 132 are applicable only to a search initiated or requisition made before 1st July, 1995.

It is, therefore, proposed to omit the said sub-section (1E). The proposed amendment is of consequential nature.

This amendment will take effect from 1st June, 2002.

Amendment of section 245D.

92. In section 245D of the Income-tax Act, with effect from the 1st day of June, 2002,—

(*a*) in sub-section (*1*), for the words "the Settlement Commission may, by order, allow the application to be proceeded with or reject the application", the words, figures and letter "the Settlement Commission, shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 245C" shall be substituted;

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) In every application allowed to be proceeded with under sub-section (*1*), the Settlement Commission shall, where it is possible, pass an order under sub-section (*4*) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with.".

Note

Clause 92 seeks to amend section 245D of the Income-tax Act relating to procedure on receipt of an application under section 245C.

Under the existing provisions contained in section 245D, the Settlement Commission, on receipt of an application for settlement under section 245C, shall call for a report from the Commissioner having jurisdiction over the case. On the basis of the report of the Commissioner and having regard to the nature, circumstances of the case or complexity of the investigation involved therein, the Settlement Commission may pass an order either allowing the application to be proceeded with or rejecting the same. Where an application is allowed to be proceeded with, the Settlement Commission may direct the Commissioner to make such further enquiry or investigation as it considers necessary, and call for the relevant records from the Commissioner for its examination. After examining the relevant records and the Commissioner's report and after giving an opportunity to the applicant of being heard, the Settlement Commission may pass an order as it thinks fit on the matters covered by the application and any other matter referred to in that section.

It is proposed to amend sub-section (1) of the said section so as to provide that the Settlement Commission shall, where it is possible, pass an order either rejecting the application or allowing the application to be proceeded with within a period of one year from the end of the month in which such application is made under section 245C.

It is further proposed to insert a new sub-section (4A) in the aforesaid section so as to provide that in every application, the Settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with.

These amendments will take effect from 1st June, 2002.

Omission of section 245HA.

93. Section 245HA of the Income-tax Act shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 93 seeks to omit section 245HA of the Income-tax Act relating to power of Settlement Commission to send a case back to the Assessing Officer if the assessee does not co-operate.

Under the existing provisions contained in section 245HA, the Settlement Commission has been vested with the power to send a case back to the Assessing Officer if in its opinion the assessee has not co-operated in the proceedings before the Commission, and in such cases, the Assessing Officer shall dispose of the case in accordance with the provisions of the Act as if no application under section 245C had been made.

It is proposed to omit the said section so as to withdraw the power of Settlement Commission to send the case back to the Assessing Officer.

This amendment will take effect from 1st June, 2002.

Amendment of section 252.

94. In section 252 of the Income-tax Act, for sub-section (*3*), the following sub-section shall be substituted, namely:—

"(*3*) The Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President thereof.".

Note

Clause 94 seeks to amend section 252 of the Income-tax Act relating to Appellate Tribunal.

Under the existing provisions contained in sub-section (3) of the said section, the Central Government ordinarily appoints a judicial member of the Appellate Tribunal to be the President thereof.

It is proposed to substitute the said sub-section so as to provide that the Central Government shall appoint the Senior Vice-President or one of the Vice-Presidents of the Appellate Tribunal to be the President of the Appellate Tribunal.

This amendment will take effect retrospectively from 1st April, 2002.

Substitution of new section for section 269T.

95. For section 269T of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002, namely:—

'269T. *Mode of repayment of certain loans or deposits.*— No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if–

(*a*) the amount of the loan or deposit together with the interest, if any, payable thereon, or

(*b*) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits,

is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid.

Explanation.—For the purposes of this section,–

(*i*) "banking company" shall have the meaning assigned to it in clause (*i*) of the *Explanation* to section 269SS;

(*ii*) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(*iii*) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.'.

Note

Clause 95 seeks to substitute a new section for section 269T of the Income-tax Act relating to mode of repayment of certain loans or deposits.

The existing provisions contained in section 269T provide that no branch of a banking company or a co-operative bank and no other company or co-operative society or firm or other person shall repay to any person any deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the deposit, in cases where the amount of deposit exceeds rupees twenty thousand. The *Explanation* below sub-section (2) of the said section defines 'deposit' to mean any deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes deposit of any nature.

The said section is applicable only to deposits. It is proposed to substitute the existing section 269T by a new section so as to extend the scope of the aforesaid section to loans also.

This amendment will take effect from 1st June, 2002.

Insertion of new section 269UP.

96. After section 269UO of the Income-tax Act, the following section shall be inserted with effect from the 1st day of July, 2002, namely:–

"269UP. *Chpater not to apply where transfer of immovable property effected after certain date.*— The provisions of this Chapter shall not apply to, or in relation to, the transfer of any immovable property effected on or after the 1st day of July, 2002.".

Note

Clause 96 seeks to insert a new section 269UP in the Income-tax Act to provide that the provisions of the Chapter shall not apply where transfer of immovable property is effected after a certain date.

Under the existing provisions contained in Chapter XX-C, any person intending to transfer immovable property in specified areas at values exceeding specified amounts is required to file a statement in the prescribed form before the appropriate authority within the prescribed time before the intended date of transfer. Within a period of three months from the end of the month in which the statement is filed, the appropriate authority may pass an order in writing for purchase by the Central Government of such immovable property at an amount equal to the amount of apparent consideration.

It is proposed to insert a new section 269UP so as to make the provisions of Chapter XX-C inapplicable in respect of any transfer of immovable property effected on or after 1st July, 2002.

This amendment will take effect from 1st July, 2002.

Amendment of section 271.

97. In section 271 of the Income-tax Act, in sub-section (*1*),—

(*a*) in the opening portion, after the words and brackets "Commissioner (Appeals)", the words "or the Commissioner" shall be inserted with effect from the 1st day of June, 2002;

(*b*) in clause (*ii*), for the words "in addition to any tax payable", the words "in addition to tax, if any, payable" shall be substituted with effect from the 1st day of April, 2003;

(*c*) in clause (*iii*), for the words "in addition to any tax payable", the words "in addition to tax, if any, payable" shall be substituted with effect from the 1st day of April, 2003;

(*d*) in *Explanation 1*, in clause (*A*), after the words and brackets "Commissioner (Appeals)", the words "or the Commissioner" shall be inserted with effect from the 1st day of June, 2002;

(*e*) in *Explanation 3*, the words "who has not previously been assessed under this Act," shall be omitted with effect from the 1st day of April, 2003;

(*f*) in *Explanation 4*, for clause (*a*), the following clause shall be substituted with effect from the 1st day of April, 2003, namely:—

"(*a*) in any case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, means the tax that would have been chargeable on the income in

respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income;";

(*g*) in *Explanation 7*, after the words and brackets "Commissioner (Appeals)", the words "or the Commissioner" shall be inserted with effect from the 1st day of June, 2002.

Note

Clause 97 seeks to amend section 271 of the Income-tax Act relating to failure to furnish returns, comply with notices, concealment of income, etc.

Under the existing provisions contained in sub-section (1) of the said section, if the Assessing Officer or the Commissioner (Appeals), in the course of any proceedings under the Income-tax Act, is satisfied that any person has failed to comply with certain notices or directions issued under the sections referred to in that sub-section or has concealed the particulars of his income or furnished inaccurate particulars thereof, he may levy a penalty equal to the amount referred to in clause (*ii*) or, as the case may be, clause (*iii*) of the said sub-section.

Sub-clauses (*a*), (*d*) and (*g*) of this clause propose to amend sub-section (1) so as to include a reference to the Commissioner as being an authority who can initiate and levy penalty under the said sub-section. Similar references to the Commissioner are also proposed to be inserted in *Explanation 1* and *Explanation 7* of the said sub-section, being consequential in nature.

These amendments will take effect from 1st June, 2002.

The existing provisions contained in clause (*ii*) of the aforesaid sub-section (1) provide for a penalty of ten thousand rupees, in addition to any tax payable, for failure to comply with a notice issued under sub-section (1) of section 142 or sub-section (2) of section 143 or direction issued under sub-section (2A) of section 142.

Sub-clause (*b*) of this clause proposes to amend the said clause (*ii*) so as to clarify that the penalty for failure to comply with the abovementioned notice or direction can be levied even if no tax is payable on the total income assessed.

The proposed amendment is of clarificatory nature.

The existing provision contained in clause (*iii*) of the aforesaid sub-section (1) provides for a penalty, in addition to any tax payable, of a sum which shall not be less than, but which shall not exceed three times the amount of tax sought to be evaded, for concealing particulars of income, or furnishing inaccurate particulars in respect thereof.

Sub-clause (*c*) of this clause proposes to amend the said clause (*iii*) so as to clarify that the penalty referred to therein can be levied even if no tax is payable on the total income assessed.

The proposed amendment is of clarificatory nature.

Under the existing provisions contained in *Explanation 3* to the aforesaid sub-section (1), if any person who has not been assessed previously is found to have taxable income for a year, and fails to furnish a return for that year until the expiry of the period during which he was assessable therefor, and no notice under sub-section (1) of section 142 or section 148 requiring him to furnish a return was issued to him, it will be deemed that the person has concealed the particulars of his income for that year.

Sub-clause (*e*) of this clause proposes to amend the said *Explanation 3* so as to make its provisions applicable even to persons who have been assessed earlier.

The existing provisions contained in clause (*a*) of *Explanation 4* to the aforesaid sub-section (1) provide that the expression "the amount of tax sought to be evaded" in a case where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished exceeds the total income assessed, means the tax that would have been chargeable on the income in respect of which particulars have been concealed or inaccurate particulars have been furnished had such income been the total income.

Sub-clause (*f*) of this clause proposes to amend *Explanation 4* so as to clarify that in cases where the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished has the effect of reducing the loss declared in the return or converting that loss into income, the amount of tax sought to the evaded shall be the tax that would have been chargeable on the amount of such income as if it were the total income.

The proposed amendment is of clarificatory nature.

Sub-clauses (*b*), (*c*), (*e*) and (*f*) will take effect from 1st April, 2003.

Substitution of new section for section 271F.

98. For section 271F of the Income-tax Act, the following section shall be substituted with effect from the 1st day of June, 2002, namely:—

"271F. *Penalty for failure to furnish return of income.*— If a person who is required to furnish a return of his income, as required under sub-section (*1*) of section 139 or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.".

Note

Clause 98 seeks to substitute section 271F of the Income-tax Act relating to penalty for failure to furnish return of income.

Under the existing provisions contained in section 271F, if a person who is required to furnish a return of income as required under sub-section (1) of section 139, fails to furnish such return before the end of the relevant assessment year, such person shall be liable to pay a penalty of five thousand rupees. The proviso to section 271F provides for a penalty of five thousand rupees for failure to furnish a return of income as required by the proviso to sub-section (1) of section 139 on or before the due date.

It is proposed to substitute the existing section 271F so as to provide that if a person who is required to furnish a return of income, as required under sub-section (1) of section 139 or by the provisos to that sub-section, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of five thousand rupees.

This amendment will take effect from 1st June, 2002.

Amendment of section 272A.

99. In section 272A of the Income-tax Act,—

(*a*) in sub-section (*1*), clause (*d*) shall be omitted with effect from the 1st day of June, 2002;

(*b*) in sub-section (*2*), for clause (*e*), the following clause shall be substituted with effect from the 1st day of April, 2003, namely:—

"(*e*) to furnish the return of income which he is required to furnish under sub-section (*4A*) or sub-section (*4C*) of section 139 or to furnish it within the time allowed and in the manner required under those sub-sections; or".

Note

Clause 99 seeks to amend section 272A of the Income-tax Act relating to penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.

Under the existing provisions contained in clause (*d*) of sub-section (1) of section 272A, a penalty of ten thousand rupees is leviable, *inter alia*, for failure to comply with the provisions of section 139A relating to permanent account number.

Sub-clause (*a*) seeks to omit clause (*d*) of sub-section (1) of section 272A. Similar provision is, however, proposed to be inserted *vide* clause 100 of the Bill.

This amendment will take effect from 1st June, 2002.

Sub-clause (*b*) seeks to substitute clause (*e*) of sub-section (2) of the said section so as to provide that if any person fails to furnish the return of income which he is required to furnish under sub-section (4A) or sub-section (4C) of section 139 or to furnish it within the time allowed and in the manner required under those sub-sections, he shall pay, by way of penalty, a sum of one hundred rupees for every day of such default.

The proposed amendment is of consequential nature.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Insertion of new section 272B.

100. After section 272AA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

"272B. *Penalty for failure to comply with the provisions of section 139A*—(*1*) If a person fails to comply with the provisions of section 139A, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

(*2*) If a person who is required to quote his permanent account number in any document referred to in clause (*c*) of sub-section (*5*) of section 139A, or to intimate such number as required by sub-section (*5A*) of that section, quotes or intimates a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

(*3*) No order under sub-section (*1*) or sub-section (*2*) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.".

Note

Clause 100 seeks to insert a new section 272B of the Income-tax Act providing for penalty for failure to comply with the provisions of section 139A and for certain other related purposes.

Sub-section (1) of the proposed new section seeks to provide that if a person fails to comply with the provisions of section 139A, the Assessing Officer may direct that he shall pay, by way of penalty, a sum of ten thousand rupees.

Sub-section (2) of the proposed new section seeks to provide that if a person who is required to quote his permanent account number in any document referred to in clause (*c*) of sub-section (5) of section 139A or to intimate such number as required by sub-section (5A) of that section, quotes or intimates a number which is false and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten thousand rupees.

Sub-section (3) of the proposed new section seeks to provide the person an opportunity of being heard in the matter before imposition of penalty under sub-section (1) or sub-section (2) of the said section.

These amendments will take effect from 1st June, 2002.

Insertion of new section 272BBB.

101. After section 272BB of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

"272BBB. *Penalty for failure to comply with the provisions of section 206CA.*—(*1*) If a person fails to comply with the provisions of section 206CA, he shall, on an order passed by the Assessing Officer, pay, by way of penalty, a sum of ten thousand rupees.

(*2*) No order under sub-section (*1*) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.".

Note

Clause 101 seeks to insert a new section 272BBB in the Income-tax Act, which provides for penalty for failure to comply with the provisions of section 206CA relating to the allotment of tax-collection account number to the person responsible for collection of tax at source. The proposed new section provides for a levy of a fixed amount of penalty of a sum of ten thousand rupees.

This amendment will take effect from 1st June, 2002.

Amendment of section 273B.

102. In section 273B of the Income-tax Act, with effect from the 1st day of June, 2002,—

(*a*) after the words, brackets, figures and letters "sub-section (*1*) of section 272AA or", the words, figures and letter "section 272B or" shall be inserted;

(*b*) for the words, figures and letters "section 272BB or", the words, figures, letters and brackets "section 272BB or sub-section (*1*) of section 272BBB or" shall be substituted with effect from the 1st day of June, 2002.

Note

Clause 102 seeks to amend section 273B of the Income-tax Act which provides that penalty shall not be imposed in certain cases.

The existing provisions contained in section 273B provide that no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in certain provisions specified in the said section if he proves that there was reasonable cause for such failure.

Sub-clause (*a*) seeks to amend the said section so as to make a reference to "section 272B" also for the above purpose.

Sub-clause (*b*) proposes to amend the said section of the Income-tax Act so as to include a reference to "sub-section (1) of section 272BBB" also for the above purpose.

The proposed amendments are of consequential nature.

These amendments will take effect from 1st June, 2002.

Insertion of new section 275B.

103. After section 275A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2002, namely:—

> "275B. *Failure to comply with the provisions of clause (*iib*) of sub-section (1) of section 132.*— If a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under clause (*iib*) of sub-section (*1*) of section 132, fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.".

Note

Clause 103 seeks to insert a new section 275B in the Income-tax Act to provide for punishment for failure to comply with the provisions of clause (*iib*) of sub-section (1) of section 132.

The proposed new section 275B seeks to provide that if any person who is required to afford the necessary facility to the authorised officer to inspect any books of account or other documents, as required under clause (*iib*) of sub-section (1) of section 132, fails to afford such facility, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

This amendment will take effect from 1st June, 2002.

Amendment of section 279.

104. In section 279 of the Income-tax Act, in sub-section (*1*), after the word, figures and letter "section 275A", the word, figures and letter ", section 275B" shall be inserted with effect from the 1st day of June, 2002.

Note

Clause 104 seeks to amend section 279 of the Income-tax Act which provides for prosecution to be at the instance of certain specified authorities.

Under the existing provisions contained in sub-section (1) of the said section, prosecution can be launched with the previous sanction of the Commissioner or Commissioner (Appeals) or the Appropriate Authority. However, the Chief Commissioner or Director–General may issue such instructions or directions to such authority as he may deem fit for institution of the proceedings under that sub-section.

It is proposed to insert a new section 275B in the Income-tax Act *vide* clause 103 of the Bill so as to provide that if any person, who is required to afford necessary facility to the authorised officer to inspect any books of account and other documents referred to in sub-section (1) of section 132, fails to offer such facility, he shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.

It is proposed to insert a reference to "section 275B" in sub-section (1) of section 279 so as to provide that a person shall not be proceeded against for an offence under section 275B except with the previous sanction of the any of the authorities specified in the said section.

This amendment will take effect from 1st June, 2002.

Amendment of Second Schedule.

105. In the Second Schedule to the Income-tax Act, in rule 68A, in sub-rule (*3*), for the words "nine per cent", the words "eight per cent" shall be substituted with effect from the 1st day of June, 2002.

Note

Clause 105 seeks to amend rule 68A of the Second Schedule to the Income-tax Act relating to acceptance of property in satisfaction of amount due from the defaulter.

Under the existing provisions contained in sub-rule (3) of the said rule, where the price of the property agreed upon between the Assessing Officer and the defaulter under sub-rule (1) exceeds the amount due from the defaulter, such excess shall be paid by the Assessing Officer to the defaulter within a period of three months from the date of delivery of possession of the property to the Assessing Officer and where the Assessing Officer fails to pay such excess within the period aforesaid, the Central Government is required to pay simple interest at the rate of nine per cent per annum to the defaulter on such amount for the period of delay.

It is proposed to amend sub-rule (3) so as to reduce the rate of interest which is payable by the Central Government under that sub-rule from nine per cent to eight per cent per annum.

This amendment will take effect from 1st June, 2002.

Wealth-tax

Amendment of section 18.

106. In section 18 of the Wealth-tax Act, 1957 (27 of 1957) (hereinafter referred to as the Wealth-tax Act), in sub-section (*1*),—

(*a*) in *Explanation 2*, in clause (*A*), after the words and brackets "Commissioner (Appeals)", the words "or the Commissioner" shall be inserted, with effect from the 1st day of June, 2002;

(*b*) in *Explanation 3*, the words "who has not previously been assessed under this Act," shall be omitted, with effect from the 1st day of April, 2003.

Note

Wealth-tax

Clause 106 seeks to amend section 18 of the Wealth-tax Act relating to penalty for failure to furnish returns, to comply with notices and concealment of assets, etc.

The provisions contained in sub-section (1) of the said section provide for levy of penalty in cases of failure to comply with notices issued under sub-section (2) or sub-section (4) of section 16 in the course of any proceedings under the Wealth-tax Act and in cases wherein particulars of any assets have been concealed or inaccurate particulars of any assets or debts have been furnished. Clause (A) of *Explanation 2* to sub-section (1) provides that where a person fails to offer an explanation in respect of any facts material to the computation of net wealth in his case, or offers an explanation which is found by the authorities specified in the provision to be false, the amount added or disallowed in computing the net wealth as a result thereof shall be deemed to represent the value of the assets in respect of which particulars have been concealed.

It is proposed to amend the said clause so as to include a reference therein to the Commissioner as being one of the authorities for the purposes of the clause.

This amendment will take effect from 1st June, 2002.

Under the existing provisions contained in *Explanation 3* to sub-section (1), if any person who has not been assessed previously is found to have taxable net wealth for a year, and fails to furnish a return for that year until the expiry of the period during which he was assessable therefor, and no notice under sub-section (1) of section 17A requiring him to furnish a return was issued to him, such person will be deemed to have concealed the particulars of his assets or furnished inaccurate particulars of his assets or debts for that year.

It is proposed to omit the reference to the person who has not previously been assessed under the said *Explanation 3* so as to make its provisions applicable even to persons who have been assessed earlier.

This amendment will take effect from 1st April, 2003.

Amendment of section 18C.

107. In section 18C of the Wealth-tax Act, with effect from the 1st day of June, 2002,—

(*a*) in sub-section (*1*),—

(*i*) after the words and figures "before the High Court or the Supreme Court on a reference under section 27", the words, figures and letter "or in appeal under section 27A before the High Court" shall be inserted;

(*ii*) for the words and figures "for a reference before the High Court or the Supreme Court under section 27 or in appeal before the Supreme Court under section 29", the words, figures and letter "in appeal before the High Court under section 27A or the Supreme Court under section 29" shall be substituted;

(*b*) in sub-section (*4*), in clause (*b*), for the words and figures "for a reference before the High Court or the Supreme Court under section 27 or in appeal before the Supreme Court under section 29", the words, figures and letter "in appeal before the High Court under section 27A or the Supreme Court under section 29" shall be substituted.

Note

Clause 107 seeks to amend section 18C of the Wealth-tax Act relating to procedure when assessee claims identical question of law is pending before the High Court or the Supreme Court.

The existing provisions contained in section 18C provide for a special procedure in cases where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending before the High Court or before the Supreme Court on a reference under section 27 or in appeal before the Supreme Court under section 29. In such cases, the assessee may furnish a declaration that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply the final decision of the High Court or the Supreme Court on the question of law to the relevant case, the assessee shall not raise such question of law in the relevant case in appeal before any appellate authority or for a reference before the High Court or the Supreme Court or in appeal before the Supreme Court.

Section 27A relating to appeal to High Court was inserted in the Wealth-tax Act by the Finance (No. 2) Act, 1998. It is proposed to amend sub-section (1) of section 18C so as to include therein references relating to "appeals to the High Court under section 27A", and omit reference relating to "section 27" in sub-section (4) of section 18C.

This amendment is of consequential nature.

These amendments will take effect from 1st June, 2002.

Amendment of section 22D.

108. In section 22D of the Wealth-tax Act, with effect from the 1st day of June, 2002,—

(*a*) in sub-section (*1*), for the words "the Settlement Commission may, by order, allow the application to be proceeded with or reject the application", the words, figures and letter "the Settlement Commission shall, where it is possible, by order, reject the application or allow the application to be proceeded with within a period of one year from the end of the month in which such application was made under section 22C" shall be substituted;

(*b*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*4A*) In every application, allowed to be proceeded with under sub-section (*1*), the Settlement Commission shall, where it is possible, pass an order under sub-section (*4*) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with.".

Note

Clause 108 seeks to amend section 22D of the Wealth-tax Act relating to procedure on receipt of an application under section 22C.

Under the existing provisions contained in section 22D, the Settlement Commission, on receipt of an application for settlement under section 22C, shall call for a report from the Commissioner having jurisdiction over the case. On the basis of the report of the Commissioner and having regard to the nature, circumstances of the case or complexity of the investigation involved therein, the Settlement Commission may pass an order either allowing the

application to be proceeded with or rejecting the same. Where an application is allowed to be proceeded with, the Settlement Commission may direct the Commissioner to make such further enquiry or investigation as it considers necessary, and may call for the relevant records from the Commissioner for its examination. After examining the relevant records and the Commissioner's report and after giving an opportunity to the applicant of being heard the Settlement Commission may pass such orders as it thinks fit on the matters covered by the application and any other matter referred to in that section.

It is proposed to amend sub-section (1) of the said sub-section so as to provide that the Settlement Commission shall, where it is possible, pass an order either rejecting the application or allowing the application to be proceeded with within a period of one year from the end of the month in which such application is made under section 22C.

It is further proposed to insert a new sub-section (4A) in the aforesaid section so as to provide that in every application, the Settlement Commission shall, where it is possible, pass an order under sub-section (4) within a period of four years from the end of the financial year in which such application was allowed to be proceeded with.

These amendments will take effect from 1st June, 2002.

Omission of section 22HA.

109. Section 22HA of the Wealth-tax Act shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 109 seeks to omit section 22HA of the Wealth-tax Act relating to power of Settlement Commission to send a case back to the Assessing Officer if the assessee does not co-operate.

Under the existing provisions contained in section 22HA, the Settlement Commission has been vested with the powers to send a case back to the Assessing Officer if in its opinion the assessee has not co-operated in the proceedings before the Commission, and in such cases, the Assessing Officer shall dispose of the case in accordance with the provisions of the Act as if no application under section 22C had been made.

It is proposed to omit section 22HA so as to withdraw the power of Settlement Commission to send the case back to the Assessing Officer.

This amendment will take effect from 1st June, 2002.

Amendment of section 34A.

110. In section 34A of the Wealth-tax Act, with effect from the 1st day of June, 2002,—

(*a*) in sub-section (*3*), for the words "nine per cent", the words "eight per cent" shall be substituted;

(*b*) in sub-section (*4B*), in clause (*a*), for the words "three-fourth per cent", the words "two-third per cent" shall be substituted.

Note

Clause 110 seeks to amend section 34A of the Wealth-tax Act relating to refunds.

Under the existing provision contained in sub-section (3) of the said section, where a refund is due to the assessee in pursuance of an order referred to in sub-section (1) and the Assessing Officer does not grant the refund within a period of six months from the date of such order, the Central Government shall pay to the assessee simple interest at nine per cent per annum on the amount of refund due for the period specified in the said sub-section.

Sub-clause (*a*) seeks to amend the said sub-section (3) so as to reduce the rate of interest from nine per cent per annum to eight per cent per annum.

Under the existing provision contained in clause (*a*) of sub-section (4B) of the said section, where refund of any amount becomes due to the assessee under the said Act, he shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of three-fourth per cent for every month or part of a month for the period specified in the said clause.

Sub-clause (*b*) seeks to amend the said clause (*a*) of sub-section (4B) so as to reduce the rate of interest from three-fourth per cent to two-third per cent for every month or part thereof, as the case may be.

These amendments will take effect from 1st June, 2002.

Expenditure-tax

Amendment of section 3.

111. In the Expenditure-tax Act, 1987 (35 of 1987) (hereinafter referred to as the Expenditure-tax Act), in section 3, in clause (*1*), for the words "two thousand rupees or more per day per individual", the words "three thousand rupees or more per day", shall be substituted with effect from the 1st day of June, 2002.

Note

Expenditure-tax

Clause 111 seeks to amend section 3 of the Expenditure-tax Act so as to make the provisions of the Act applicable to hotels wherein room charges for any unit of residential accommodation are three thousand rupees or more per day, instead of two thousand rupees or more per day per individual.

This amendment will take effect from 1st June, 2002 and will, accordingly, apply in relation to expenditure incurred on or after that date.

Amendment of section 5.

112. In the Expenditure-tax Act, in section 5, in clause (*1*), sub-clauses (*b*) and (*d*) shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 112 seeks to amend section 5 of the Expenditure-tax Act relating to meaning of chargeable expenditure.

Under the existing provisions contained in clause (1) of the said section, the expenditure-tax is levied on chargeable expenditure incurred in, or payments made to, a hotel in connection with the provision of any accommodation, residential or otherwise; or food or drink; or any accommodation in such hotel on hire or lease; or any other services at the hotel by way of beauty parlour, health club, swimming pool or other services.

It is proposed to omit clauses (*b*) and (*d*) so as to provide that chargeable expenditure shall not include expenditure incurred in, or the payments made to, the hotel on or after the 1st June, 2002, in connection with the provision of food or drink by the hotel whether at the hotel or outside, or by any other person at the hotel; or any other services at the hotel, either by the hotel or by any other person, by way of beauty parlour, health club, swimming pool or other services.

This amendment will take effect from 1st June, 2002 and will, accordingly, apply in relation to expenditure incurred on or after that date.

** ** **

CHAPTER V

SERVICE TAX

Modification of Act 32 of 1994

141. (*1*) During the period commencing on and from the 16th day of July, 2001 and ending with such date as the Central Government may appoint under section 142, for the purposes of that section, the provisions of Chapter V of the Finance Act, 1994 shall be deemed to have had effect subject to the following modifications, namely:—

in section 65,—

(*i*) for clause (*13*), the following had been substituted, namely:—

'(*13*) "broadcasting" has the meaning assigned to it in clause (*c*) of section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (250 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for

public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner.

(*13A*) "broadcasting agency or organisation" means any agency or organisation engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation;';

(*ii*) in clause (*72*), for sub-clause (*zk*), the following sub-clause had been substituted, namely:—

"(*zk*) to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation.

*Explanation***.—**For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of the signals or beaming thereof through the satellite might have taken place outside India;".

(*2*) Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under this Chapter at any time during the period commencing on and from the 16th day of July, 2001 and ending with the day, on which the Finance Bill, 2002 receives the assent of the President, shall be deemed to be and to always have been, for all purposes, as validly and effectively taken or done or omitted to be done as if sub-section (*1*) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, recovery shall be made of all such service tax which has not been collected but which would have been collected, if sub-section (*1*) had been in force at all material times, within a period of thirty days from the date on which the Finance Bill, 2002 receives the assent of the President, and in the event of non-payment of such service tax so recoverable, interest at the rate of fifteen per cent. per annum shall be payable, from the date immediately after the expiry of the said period of thirty days, till the date of payment.

Explanation.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would have not been so punishable if this section had not come into force.

Note

Clause 141 seeks to amend section 65 of the Finance Act, 1994 so as to give retrospective effect from the 16th July, 2001 to such date as appointed by the Central Government under clause 141, for the purpose of that section, to the specified provisions of section 65 of the said Act relating to levy and collection of service tax on the service rendered by a broadcasting agency or organisation.

Amendment of Act 32 of 1994.

142. In the Finance Act, 1994, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint,—

(*a*) for section 65, the following section shall be substituted, namely:—

'65. *Definitions.*— (*1*) In this Chapter, unless the context otherwise requires,—

(*1*) "actuary" has the meaning assigned to it in clause (*1*) of section 2 of the Insurance Act, 1938 (4 of 1938);

(*2*) "advertisement" includes any notice, circular, label, wrapper, document, hoarding or any other audio or visual representation made by means of light, sound, smoke or gas;

(*3*) "advertising agency" means any commercial concern engaged in providing any service connected with

the making, preparation, display or exhibition of advertisement and includes an advertising consultant;

(*4*) "air travel agent" means any person engaged in providing any service connected with the booking of passage for travel by air;

(*5*) "Appellate Tribunal" means the Customs, Excise and Gold (Control) Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962);

(*6*) "architect" means any person whose name is, for the time being, entered in the register of architects maintained under section 23 of the Architects Act, 1972 and also includes any commercial concern engaged in any manner, whether directly or indirectly, in rendering services in the field of architecture;

(*7*) "assessee" means a person liable to pay the service tax and includes his agent;

(*8*) "authorised service station" means any service station, or centre, authorised by any motor vehicle manufacturer, to carry out any service or repair of any motor car or two wheeled motor vehicle manufactured by such manufacturer;

(*9*) "banking" shall have the meaning assigned to it in clause (*b*) of section 5 of the Banking Regulation Act, 1949;

(*10*) "banking company" shall have the meaning assigned to it in clause (*a*) of section 45A of the Reserve Bank of India Act, 1934;

(*11*) "banking and other financial services" means the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely:—

(*i*) financial leasing services including equipment leasing and hire-purchase by a body corporate;

(*ii*) credit card services;

(*iii*) merchant banking services;

(*iv*) securities and foreign exchange (forex) broking;

(*v*) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;

(*vi*) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy; and

(*vii*) provision and transfer of information and data processing;

(*12*) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(*13*) "body corporate" shall have the meaning assigned to it in clause (*7*) of section 2 of the Companies Act, 1956 (1 of 1956);

(*14*) "broadcasting" has the meaning assigned to it in clause (*c*) of section 2 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 (25 of 1990) and also includes programme selection, scheduling or presentation of sound or visual matter on a radio or a television channel that is intended for public listening or viewing, as the case may be; and in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes the activity of selling of time slots or obtaining sponsorships for broadcasting of any programme or collecting the broadcasting charges on behalf of the said agency or organisation, by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner;

(*15*) "broadcasting agency or organisation" means any agency or organisation engaged in providing service in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes its branch office or subsidiary or representative in India or any agent appointed in India or any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation;

(*16*) "beauty treatment" means face and beauty treatment, cosmetic treatment, manicure, pedicure or counseling services on beauty, face care or make-up;

(*17*) "beauty parlour" means any establishment providing beauty treatment services;

(*18*) "cab" means a motor cab or maxi cab;

(*19*) "cable operator" shall have the meaning assigned to it in clause (*a*) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

(*20*) "cable service" shall have the meaning assigned to it in clause (*b*) of section 2 of the Cable Television Networks (Regulation) Act, 1995 (7 of 1995);

(*21*) "cargo handling service" means loading, unloading, packing or unpacking of cargo and includes cargo handling services provided for freight in special containers or for non-containerised freight, services provided by a container freight terminal or any other freight terminal, for all modes of transport and cargo handling services incidental to freight, but does not include handling of export cargo or passenger baggage or mere transportation of goods;

(*22*) "caterer" means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion;

(*23*) "clearing and forwarding agent" means any person who is engaged in providing any service, either directly or indirectly, connected with the clearing and forwarding operations in any manner to any other person and includes a consignment agent;

(*24*) "computer network" has the meaning assigned to it in clause (*j*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(*25*) "consulting engineer" means any professionally qualified engineer or an engineering firm who, either directly or indirectly, renders any advice, consultancy or technical assistance in any manner to a client in one or more disciplines of engineering;

(*26*) "convention" means a formal meeting or assembly which is not open to the general public, and does not include a meeting or assembly, the principal purpose of which is to provide any type of amusement, entertainment or recreation;

(*27*) "courier agency" means a commercial concern engaged in the door-to-door transportation of time-sensitive documents, goods or articles utilising the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles;

(*28*) "credit rating agency" means any commercial concern engaged in the business of credit rating of any debt obligation or of any project or programme requiring finance, whether in the form of debt or otherwise, and includes credit rating of any financial obligation, instrument or security, which has the purpose of providing a potential investor or any other person any information pertaining to the relative safety of timely payment of interest or principal;

(*29*) "custom house agent" means a person licensed, temporarily or otherwise, under the regulations made under sub-section (*2*) of section 146 of the Customs Act, 1962 (52 of 1962);

(*30*) "data" has the meaning assigned to it in clause (*o*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(*31*) "dry cleaning" includes dry cleaning of apparels, garments or other textile, fur or leather articles;

(*32*) "dry cleaner" means any commercial concern providing service in relation to dry cleaning;

(*33*) "electronic form" has the meaning assigned to it in clause (*r*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(*34*) "event management" means any service provided in relation to planning, promotion, organising or presentation of any arts, entertainment, business, sports or any other event and includes any consultation provided in this regard;

(*35*) "event manager" means any person who is engaged in providing any service in relation to event management in any manner;

(*36*) "facsimile (FAX)" means a form of telecommunication by which fixed graphic images, such as printed texts and pictures are scanned and the information converted into electrical signals for transmission over the telecommunication system;

(*37*) "fashion designing" includes any activity relating to conceptualising, outlining, creating the designs and preparing patterns for costumes, apparels, garments, clothing accessories, jewellery or any other articles intended to be worn by human beings and any other service incidental thereto;

(*38*) "fashion designer" means any person engaged in providing service in relation to fashion designing;

(*39*) "financial institution" has the meaning assigned to it in clause (*c*) of section 45-I of the Reserve

Bank of India Act, 1934 (2 of 1934);

(*40*) "general insurance business" has the meaning assigned to it in clause (*g*) of section 3 of the General Insurance Business (Nationalisation) Act, 1972 (57 of 1972);

(*41*) "goods" has the meaning assigned to it in clause (*7*) of section 2 of the Sale of Goods Act,1930 (3 of 1930);

(*42*) "health and fitness service" means service for physical well-being such as, sauna and steam bath, turkish bath, solarium, spas, reducing or slimming salons, gymnasium, yoga, meditation, massage (excluding therapeutic massage) or any other like service;

(*43*) "health club and fitness centre" means any establishment, including a hotel or resort, providing health and fitness service;

(*44*) "information" has the meaning assigned to it in clause (*v*) of sub-section (*1*) of section 2 of the Information Technology Act, 2000 (21 of 2000);

(*45*) "insurance agent" has the meaning assigned to it in clause (*10*) of section 2 of the Insurance Act, 1938 (4 of 1938);

(*46*) "insurance auxiliary service" means any service provided by an actuary, an intermediary or insurance intermediary or an insurance agent in relation to general insurance business or life insurance business and includes risk assessment, claim settlement, survey and loss assessment;

(*47*) "intermediary or insurance intermediary" has the meaning assigned to it in sub-clause (*f*) of clause (*1*) of section 2 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(*48*) "insurer" means any person carrying on the general insurance business or life insurance business in India;

(*49*) "interior decorator" means any person engaged, whether directly or indirectly, in the business of providing by way of advice, consultancy, technical assistance or in any other manner, services related to planning, design or beautification of spaces, whether man-made or otherwise and includes a landscape designer;

(*50*) "leased circuit" means a dedicated link provided between two fixed locations for exclusive use of the subscriber and includes a speech circuit, a data circuit or a telegraph circuit;

(*51*) "life insurance business" has the meaning assigned to it in clause (*11*) of section 2 of the Insurance Act, 1938 (4 of 1938);

(*52*) "magnetic storage device" includes wax blanks, discs or blanks, strips or films for the purpose of original sound recording;

(*53*) "management consultant" means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation in any manner and includes any person who renders any advice, consultancy or technical assistance, relating to conceptualising, devising, development, modification, rectification or upgradation of any working system of any organisation;

(*54*) "mandap" means any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a consideration for organising any official, social or business function;

(*55*) "mandap keeper" means a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function;

(*56*) "manpower recruitment agency" means any commercial concern engaged in providing any service, directly or indirectly, in any manner for recruitment of manpower, to a client;

(*57*) "market research agency" means any commercial concern engaged in conducting market research in any manner, in relation to any product, service or utility, including all types of customised and syndicated research services;

(*58*) "maxi cab" has the meaning assigned to it in clause (*22*) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(*59*) "motor cab" has the meaning assigned to it in clause (*25*) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(*60*) "non-banking financial company" has the meaning assigned to it in clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(*61*) "on-line information and database access or retrieval" means providing data or information, retrievable or otherwise, to a customer, in electronic form through a computer network;

(*62*) "pager" means an instrument, apparatus or appliance which is a non-speech, one way personal calling system with alert and has the capability of receiving, storing and displaying numeric or alpha-numeric messages;

(*63*) "photography" includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photography;

(*64*) "photography studio or agency" means any professional photographer or a commercial concern engaged in the business of rendering service relating to photography;

(*65*) "policy holder" has the meaning assigned to it in clause (*2*) of section 2 of the Insurance Act, 1938 (4 of 1938);

(*66*) "port" has the meaning assigned to it in clause (*q*) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963);

(*67*) "port services" means any service rendered by a port or any person authorised by the port, in any manner, in relation to a vessel or goods;

(*68*) "practising chartered accountant" means a person who is a member of the Institute of Chartered Accountants of India and is holding a certificate of practice granted under the provision of the Chartered Accountants Act, 1949 and includes any concern engaged in rendering services in the field of chartered accountancy;

(*69*) "practising cost accountant" means a person who is a member of the Institute of Cost and Works Accountants of India and is holding a certificate of practice granted under the provisions of the Cost and Works Accountants Act, 1959 (23 of 1959) and includes any concern engaged in rendering services in the field of cost accountancy;

(*70*) "practising company secretary" means a person who is a member of the Institute of Company Secretaries of India and is holding a certificate of practice granted under the provisions of the Company Secretaries Act, 1980 (5 of 1980) and includes any concern engaged in rendering services in the field of company secretaryship;

(*71*) "prescribed" means prescribed by rules made under this Chapter;

(*72*) "rail travel agent" means any person engaged in providing any service connected with booking of passage for travel by rail;

(*73*) "real estate agent" means a person who is engaged in rendering any service in relation to sale, purchase, leasing or renting, of real estate and includes a real estate consultant;

(*74*) "real estate consultant" means a person who renders in any manner, either directly or indirectly, advice, consultancy or technical assistance, in relation to evaluation, conception, design, development, construction, implementation, supervision, maintenance, marketing, acquisition or management, of real estate;

(*75*) "recognised stock exchange" has the meaning assigned to it in clause (*f*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*76*) "rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;

(*77*) "scientific or technical consultancy" means any advice, consultancy, or scientific or technical assistance, rendered in any manner, either directly or indirectly, by a scientist or a technocrat, or any science or technology institution or organisation, to a client, in one or more disciplines of science or technology;

(*78*) "securities" has the meaning assigned to it in clause (*h*) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(*79*) "security agency" means any commercial concern engaged in the business of rendering services relating to the security of any property, whether movable or immovable, or of any person, in any manner and includes the services of investigation, detection or verification, of any fact or activity, whether of a personal nature or otherwise, including the services of providing security personnel;

(*80*) "service tax" means tax leviable under the provisions of this Chapter;

(*81*) "ship" means a sea-going vessel and includes a sailing vessel;

(*82*) "shipping line" means any person who owns or charters a ship and includes an enterprise which operates or manages the business of shipping;

(*83*) "sound recording" means recording of sound on a magnetic storage device and includes editing thereof, in any manner;

(*84*) "sound recording studio or agency" means any commercial concern engaged in the business of rendering any service relating to sound recording;

(*85*) "steamer agent" means any person who undertakes, either directly or indirectly ,—

(*a*) to perform any service in connection with the ship's husbandry or dispatch including the rendering of administrative work related thereto; or

(*b*) to book, advertise or canvass for cargo for or on behalf of a shipping line; or

(*c*) to provide container feeder services for or on behalf of a shipping line;

(*86*) "stock-broker" means a stock-broker who has either made an application for registration or is registered as a stock-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*87*) "storage and warehousing " includes storage and warehousing services for goods including liquids and gases but does not include any service provided for storage of agricultural produce or any service provided by a cold storage;

(*88*) "sub-broker" means a sub-broker who has either made an application for registration or is registered as a sub-broker in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(*89*) "subscriber" means a person to whom any service of a telephone connection or a facsimile or a leased circuit or a pager or a telegraph or a telex has been provided by the telegraph authority;

(*90*) "taxable service" means any service provided,—

(*a*) to an investor, by a stock-broker in connection with the sale or purchase of securities listed on a recognised stock exchange;

(*b*) to a subscriber, by the telegraph authority in relation to a telephone connection;

(*c*) to a subscriber, by the telegraph authority in relation to a pager;

(*d*) to a policy holder, by an insurer carrying on general insurance business in relation to general insurance business;

(*e*) to a client, by an advertising agency in relation to advertisement, in any manner;

(*f*) to a customer, by a courier agency in relation to door-to-door transportation of time-sensitive documents, goods or articles;

(*g*) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering;

(*h*) to a client, by a custom house agent in relation to the entry or departure of conveyances or the import or export of goods;

(*i*) to a shipping line, by a steamer agent in relation to a ship's husbandry or dispatch or any administrative work related thereto as well as the booking, advertising or canvassing of cargo, including container feeder services;

(*j*) to a client, by a clearing and forwarding agent in relation to clearing and forwarding operations, in any manner;

(*k*) to a client, by a manpower recruitment agency in relation to the recruitment of manpower, in any manner;

(*l*) to a customer, by an air travel agent in relation to the booking of passage for travel by air;

(*m*) to a client, by a mandap keeper in relation to the use of mandap in any manner including the facilities provided to the client in relation to such use and also the services, if any, rendered as a caterer;

(*n*) to any person, by a tour operator in relation to a tour;

(*o*) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab;

(*p*) to a client, by an architect in his professional capacity, in any manner;

(*q*) to a client, by an interior decorator in relation to planning, design or beautification of spaces, whether man-made or otherwise, in any manner;

(*r*) to a client, by a management consultant in connection with the management of any organisation, in any manner;

(*s*) to a client, by a practising chartered accountant in his professional capacity, in any manner;

(*t*) to a client, by a practising cost accountant in his professional capacity, in any manner;

(*u*) to a client, by a practising company secretary in his professional capacity, in any manner;

(*v*) to a client, by a real estate agent in relation to real estate;

(*w*) to a client, by a security agency in relation to the security of any property or person, by providing security personnel or otherwise and includes the provision of services of investigation, detection or verification of any fact or activity;

(*x*) to a client, by a credit rating agency in relation to credit rating of any financial obligation, instrument or security;

(*y*) to a client, by a market research agency in relation to market research of any product, service or utility, in any manner;

(*z*) to a client, by an underwriter in relation to underwriting, in any manner;

(*za*) to a client, by a scientist or a technocrat, or any science or technology institution or organisation, in relation to scientific or technical consultancy;

(*zb*) to a customer, by a photography studio or agency in relation to photography, in any manner;

(*zc*) to a client, by any commercial concern in relation to holding of a convention, in any manner;

(*zd*) to a subscriber, by the telegraph authority in relation to a leased circuit;

(*ze*) to a subscriber, by the telegraph authority in relation to a communication through telegraph;

(*zf*) to a subscriber, by the telegraph authority in relation to a communication through telex;

(*zg*) to a subscriber, by the telegraph authority in relation to a facsimile communication;

(*zh*) to a customer, by a commercial concern, in relation to on-line information and database access or retrieval or both in electronic form through computer network, in any manner;

(*zi*) to a client, by a video production agency in relation to video-tape production, in any manner;

(*zj*) to a client, by a sound recording studio or agency in relation to any kind of sound recording;

(*zk*) to a client, by a broadcasting agency or organisation in relation to broadcasting in any manner and, in the case of a broadcasting agency or organisation, having its head office situated in any place outside India, includes service provided by its branch office or subsidiary or representative in India or any agent appointed in India or by any person who acts on its behalf in any manner, engaged in the activity of selling of time slots for broadcasting of any programme or obtaining sponsorships for programme or collecting broadcasting charges on behalf of the said agency or organisation.

*Explanation.***–** For the removal of doubts, it is hereby declared that so long as the radio or television programme broadcast is received in India and intended for listening or viewing, as the case may be, by the public, such service shall be a taxable service in relation to broadcasting, even if the encryption of the signals or beaming thereof through the satellite might have taken place outside India;

(*zl*) to a policy holder or insurer, by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning general insurance business;

(*zm*) to a customer, by a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services;

(*zn*) to any person, by a port or any person authorised by the port, in relation to port services, in any manner;

(*zo*) to a customer, by an authorised service station, in relation to any service or repair of motor cars or two wheeled motor vehicles, in any manner;

(*zp*) to a customer, by a body corporate other than the body corporate referred to in sub-clause (*zm*), in relation to banking and other financial services;

(*zq*) to a customer, by a beauty parlour in relation to beauty treatment;

(*zr*) to any person, by a cargo handling agency in relation to cargo handling services;

(*zs*) to a subscriber, by a cable operator in relation to cable services;

(*zt*) to a customer, by a dry cleaner in relation to dry cleaning;

(*zu*) to a client, by an event manager in relation to event management;

(*zv*) to any person, by a fashion designer in relation to fashion designing;

(*zw*) to any person, by a health club and fitness centre in relation to health and fitness services;

(*zx*) to a policy holder, by an insurer carrying on life insurance business in relation to life insurance business;

(*zy*) to a policy holder or insurer by an actuary, or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business;

(*zz*) to a customer, by a rail travel agent in relation to booking of passage for travel by rail;

(*zza*) to any person, by a storage or warehouse keeper in relation to storage and warehousing of goods;

and the term "service provider" shall be construed accordingly;

(*91*) "telegraph" has the meaning assigned to it in clause (*1*) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885);

(*92*) "telegraph authority" has the meaning assigned to it in clause (*6*) of section 3 of the Indian Telegraph Act, 1885 (13 of 1885) and includes a person who has been granted a licence under the first proviso to sub-section (*1*) of section 4 of that Act;

(*93*) "telex" means a typed communication by using teleprinters through telex exchanges;

(*94*) "tour" means a journey from one place to another irrespective of the distance between such places;

(*95*) "tourist vehicle" has the meaning assigned to it in clause (*43*) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(*96*) "tour operator" means any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder;

(*97*) "underwriter" has the meaning assigned to it in clause (*f*) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;

(*98*) "underwriting" has the meaning assigned to it in clause (*g*) of rule 2 of the Securities and Exchange Board of India (Underwriters) Rules, 1993;

(*99*) "vessel" has the meaning assigned to it in clause (*z*) of section 2 of the Major Port Trusts Act, 1963 (38 of 1963);

(*100*) "video production agency" means any professional videographer or any commercial concern engaged in the business of rendering services relating to video-tape production;

(*101*) "video-tape production" means the process of any recording of any programme, event or function on a magnetic tape and includes editing thereof, in any manner;

(*102*) words and expressions used but not defined in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder, shall apply, so far as may be, in relation to service tax as they apply in relation to a duty of excise.';

(*b*) for section 66, the following section shall be substituted, namely:–

"66. *Charge of service tax.*— (1) On and from the date of commencement of this Chapter, there shall be levied a tax (hereinafter referred to as the service tax), at the rate of five per cent of the value of the taxable services referred to in sub-clauses (*a*), (*b*) and (*d*) of clause (*90*) of section 65 and collected in such manner as may be prescribed.

(*2*) With effect from the date notified under section 85 of the Finance (No. 2) Act, 1996, there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (*c*), (*e*) and (*f*) of clause (*90*) of section 65 and collected in such manner as may be prescribed.

(*3*) With effect from the date notified under section 88 of the Finance Act, 1997, there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (*g*), (*h*), (*i*), (*j*), (*k*), (*l*), (*m*), (*n*) and (*o*) of clause (*90*) of section 65 and collected in such manner as may be prescribed.

(*4*) With effect from the date notified under section 116 of the Finance (No. 2) Act, 1998 (21 of 1998), there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (*p*), (*q*), (*r*), (*s*), (*t*), (*u*), (*v*), (*w*), (*x*), (*y*) and (*z*) of clause (*90*) of section 65 and collected in such manner as may be prescribed.

(*5*) With effect from the date notified under section 130 of the Finance Act, 2001 (14 of 2001), there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (*za*), (*zb*), (*zc*), (*zd*), (*ze*), (*zf*), (*zg*), (*zh*), (*zi*), (*zj*), (*zk*), (*zl*), (*zm*), (*zn*) and (*zo*) of clause (*90*) of section 65

and collected in such manner as may be prescribed.

(*6*) With effect from the date notified under section 142 of the Finance Act, 2002, there shall be levied a service tax at the rate of five per cent of the value of the taxable services referred to in sub-clauses (*zp*), (*zq*), (*zr*), (*zs*), (*zt*), (*zu*), (*zv*), (*zw*), (*zx*), (*zy*), (*zz*) and (*zza*) of clause (*90*) of section 65 and collected in such manner as may be prescribed.";

(*c*) in section 67, in the *Explanation*,–

(*i*) in clause (*e*), the word "and" shall be omitted;

(*ii*) in clause (*f*), for the words "by such manufacturer,", the words "by such manufacturer; and" shall be substituted;

(*iii*) after clause (*f*), the following clause shall be inserted, namely:–

"(*g*) the commission or any amount received by the rail travel agent from the Railways or the customer,";

(*iv*) in the portion beginning with the brackets, letter and words "(*b*) the cost of" and ending with the words "providing the service; and", the word "and" shall be omitted;

(*v*) after the portion beginning with brackets, letter and words "(*c*) the cost of parts" and ending with the words "two wheeled motor vehicles", the following shall be inserted, namely:—

"(*d*) the airfare collected by air travel agent in respect of service provided by him; and

(*e*) the rail fare collected by rail travel agent in respect of service provided by him.";

(*d*) In section 73,—

(*a*) section 73 shall be numbered as sub-section (*1*) thereof, and in sub-section (*1*) as so numbered,–

(*i*) in clauses (*a*) and (*b*), for the words "has been under-assessed", occurring in both the clauses, the words "has been under-assessed or service tax has not been paid or has been short-paid" shall respectively be substituted;

(*ii*) for the portion beginning with the words "he may, in case falling" and ending with the words "of the taxable service.", the following shall be substituted, namely:—

"he may, in cases falling under clause (*a*), at any time within five years, and in cases falling under clause (*b*), at any time within one year, from the relevant date, serve notice on the person chargeable with the service tax which has escaped assessment or has been under-assessed or has not been paid or has been short-paid, or to whom any sum has been erroneously refunded, requiring him to show cause why he should not pay the amount specified in the notice.";

(*b*) after sub-section (*1*) as so numbered, the following sub-sections shall be inserted, namely:—

'(*2*) The Assistant Commissioner of Central Excise or, as the case may be, Deputy Commissioner of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (*1*), determine the amount of service tax due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(*3*) For the purposes of this section, "relevant date" means,—

(*i*) in the case of taxable service in respect of which service tax has escaped assessment or has been under-assessed or has not been paid or has been short-paid–

(*a*) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed*;*

(*b*) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(*c*) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(*ii*) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(*iii*) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.';

(*e*) in section 75, for the words "twenty-four per cent", the words "fifteen per cent" shall be substituted;

(*f*) in section 78, in the proviso, for the words "twenty-five thousand rupees", the words "two lakh rupees" shall be substituted;

(*g*) in section 82, in sub-section (*1*),—

(*i*) for the words “any other”, the word “any” shall be substituted;

(*ii*) for the words “to search or may himself search for such documents or books or things”, the words “to search for and seize or may himself search for and seize, such documents or books or things” shall be substituted;

(*h*) in section 83, after the figures and letters “11BB,”, the figures and letter “11D,” shall be inserted;

(*i*) in section 94, in sub-section (*2*), after clause (*e*), the following clause shall be inserted, namely:—

“(*ee*) the credit of service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service;”;

(*j*) for section 95, the following section shall be substituted, namely:–

“95. *Power to remove difficulty in implementing new services.*—(*1*) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance Act, 2002, the Central Government may, by order published in the Official Gazette, which is not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Finance Act, 2002 incorporating such taxable services in this Chapter come into force.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the Parliament.”.

Note

Clause 142 seeks to amend Chapter V of the Finance Act, 1994 relating to levy of service tax.

Sub-clauses (a), (b) and (c) seek to substitute sections 65 and 66 and amend section 67 of the said Act, so as to levy the tax on services rendered by—

(*i*) a beauty parlour relating to beauty treatment service;

(*ii*) a cable operator in relation to cable services;

(*iii*) a cargo handling agency in relation to cargo handling;

(*iv*) a dry cleaner in relation to dry cleaning;

(*v*) an event manager in relation to event management;

(*vi*) a fashion designer in relation to fashion designing;

(*vii*) a health club and a fitness centre in relation to health and fitness services;

(*viii*) an insurer in relation to life insurance business;

(*ix*) a storage or warehouse-keeper in relation storage and warehousing of goods;

(*x*) a rail travel agent in relation to booking of a passage for travel by rail;

(*xi*) an actuary or intermediary or insurance intermediary or insurance agent, in relation to insurance auxiliary services concerning life insurance business;

(*xii*) a body corporate (other than banking company or a financial institution including non-banking financial company), in relation to banking and financial service.

Service tax is sought to be levied on the above services at the rate of five per cent. on the gross amount charged to the client or customer or subscriber or policy-holder or any other person, as the case may be, provided by the service provider.

Sub-clause (*d*) seeks to amend section 73 of the said Act so as to define the words “relevant date” for the purposes of that section for computation of time-limit for issue of show-cause notice, in cases where periodic return is filed, or not filed, assessment is provisional, and where any sum has erroneously been refunded. It also seeks to increase limitation period for issuing show-cause notice from six months to one year.

Sub-clause (*e*) seeks to amend section 75 of the said Act so as to prescribe the interest at the rate of fifteen per cent. per annum on delayed payment of service tax.

Sub-clause (*f*) seeks to amend section 78 of the said Act to empower the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise to adjudicate penalty in cases where the value of taxable service suppressed or concealed or inaccurate value does not exceed two lakh rupees, without the prior approval of the Commissioner of Central Excise.

Sub-clause (*g*) seeks to amend section 82 of the said Act so as to authorise Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise to seize the documents or books or things.

Sub-clause (*h*) seeks to amend section 83 of the said Act so as to make applicable section 11D of the Central Excise Act, 1944 in relation to service tax.

Sub-clause (*i*) seeks to amend section 94 of the said Act so as to empower the Central Government to make rules to provide the credit of service tax paid on the services consumed for providing a taxable service in cases where the services consumed and service provided fall in the same category of taxable service.

Sub-clause (*j*) seeks to substitute section 95 in the said Act so as to empower the Central Government to issue orders to remove difficulty arises in respect of implementing or assessing the value any taxable service incorporated in Chapter V of this Bill, within a period of two years from the date on which the levy of service tax on the taxable service came into force.

CHAPTER VI

CENTRAL SALES TAX

Amendment of section 2.

143. In the Central Sales Tax Act, 1956 (74 of 1956) (hereinafter referred to as the Central Sales Tax Act), in section 2, for clause (*g*), the following clause shall be substituted, namely:–

'(*g*) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,–

(*i*) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(*ii*) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(*iii*) a delivery of goods on hire-purchase or any system of payment by instalments;

(*iv*) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(*v*) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(*vi*) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods;'.

Note

Clause 143 seeks to substitute clause (*g*) of section 2 of the Central Sales Tax Act, 1956 the definition of "sale" to widen the scope of the term "sale" in view of clause (29A) of article 366 of the Constitution.

Amendment of section 6A.

144. In section 6A of the Central Sales Tax Act, in sub-section (*1*), after the words "along with the evidence of despatch of such goods", the words "and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale" shall be inserted.

Note

Clause 144 seeks to amend section 6A of the Central Sales Tax Act, 1956 so as to make compulsory the furnishing of Form F by the dealer and to authorise levy of tax in case where the dealer fails to furnish Form F.

Amendment of section 8.

145. In section 8 of the Central Sales Tax Act,–

(*i*) in sub-section (*1*), after the words “four per cent of his turn-over”, the words “or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of that State” shall be inserted;

(*ii*) in sub-section (*2*),–

(*a*) in clause (*a*), the word “and” shall be omitted;

(*b*) in clause (*b*), for the words “whichever is higher,”, the words “whichever is higher; and” shall be substituted;

(*c*) for the portion beginning with the words “and for the purpose of” and ending with the words “liable under that law”, the following shall be substituted, namely:–

“(*c*) in the case of goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally shall be nil,

and for the purpose of making any such calculation under clause (*a*) or clause (*b*), any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law.

Explanation.– For the purposes of this sub-section, a sale or purchase of any goods shall not be deemed to be exempt from tax generally under the sales tax law of the appropriate State if under that law the sale or purchase of such goods is exempt only in specified circumstances or under specified conditions or the tax is levied on the sale or purchase of such goods at specified stages or otherwise than with reference to the turn-over of the goods.”;

(*iii*) sub-section (*2A*) shall be omitted;

(*iv*) in sub-section (*3*), in clause (*b*), after the words “for sale or”, the words “in the telecommunications network or” shall be inserted;

(*v*) in sub-section (*5*),–

(*a*) in the opening paragraph, after the words “State Government may,”, the words, brackets and figure “on the fulfilment of the requirements laid down in sub-section (*4*) by the dealer,” shall be inserted;

(*b*) in clause (*a*), after the words “inter-State trade or commerce,”, the words “to a registered dealer or the Government” shall be inserted;

(*c*) in clause (*b*), after the words “inter-State trade or commerce,”, the words “to a registered dealer or the Government” shall be inserted.

Note

Clause 145 seeks to amend section 8 of the Central Sales Tax Act, 1956 so as to—

(*i*) provide that central sales tax does not become greater than local sales tax in case of sale of goods to the Government and registered dealers;

(*ii*) provide for exemption from central sales tax in cases where goods are exempt from local sales tax;

(*iii*) make furnishing of Form C compulsory by the dealer except in respect of exempted goods;

(*iv*) include “telecommunication network” in the category of goods which can be specified in certificate of registration for the purposes of levy of tax, etc.;

(*v*) withdraw powers of the State Governments to waive the requirement of C Form.

Amendment of section 15.

146. In section 15 of the Central Sales Tax Act, in clause (*a*), the words “, and such tax shall not be levied at more than one stage” shall be omitted.

NOTE

Clause 146 seeks to amend clause (*a*) of section15 of the Central Sales Tax Act, 1956 with a view to allowing the State Governments to impose tax on declared goods at more than one stage in respect of sales of declared goods.

CHAPTER VII

MISCELLANEOUS

Amendment of Act 6 of 1898.

147. In the Indian Post Office Act, 1898, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for the First Schedule, the following Schedule shall be substituted, namely:—

"THE FIRST SCHEDULE

(*See* section 7)

INLAND POSTAGE RATES

Letters

For a weight not exceeding twenty grams	Rs. 5.00
For every twenty grams, or fraction thereof, exceeding twenty grams	Rs. 5.00.

Letter-cards

For a letter-card	Rs. 2.50.

Post cards

Post cards (not being post cards containing printed communication, competition post cards or Meghdoot post cards) Single	50 paise
Reply	Re. 1.00.

Meghdoot post cards

Post cards containing printed advertisement on the address side (not being post cards containing printed communication or competition post cards)

For a Meghdoot post card	25 paise.

Printed post cards

Post cards containing printed communication (not being competition post cards or Meghdoot post cards)

For a post card	Rs. 6.00.

Explanation.– A post card shall be deemed to contain a printed communication, if any matter (except the name and address of, and other particulars relating to, the sender and the place and date of despatch) is recorded by printing or by cyclostyling or by any other mechanical process, not being typewriting, on any part of the post card except the right hand half of the address-side thereof.

Competition post cards

For a post card	Rs.10.00.

Explanation.–A post card shall be deemed to be a competition post card if it is used in response to any competition organised on or through television, radio, newspaper, magazine or any other media.

Book, pattern and sample packets

For the first fifty grams or fraction thereof	Rs. 4.00
For every additional fifty grams, or fraction thereof, in excess of fifty grams	Rs. 3.00.

Registered newspapers

For a weight not exceeding fifty grams	25 paise
For a weight exceeding fifty grams but not exceeding one hundred grams	50 paise
For every additional one hundred grams, or fraction thereof, exceeding one hundred grams	20 paise.

In the case of more than one copy of the same issue of a registered newspaper being carried in the same packet–	
For a weight not exceeding one hundred grams	50 paise
For every additional one hundred grams, or fraction thereof, exceeding one hundred grams	20 paise:

Provided that such packet shall not be delivered at any addressee's residence but shall be given to a recognised agent at the Post Office.

Parcels

For a weight not exceeding five hundred grams	Rs.19.00
For every five hundred grams, or fraction thereof, exceeding five hundred grams	Rs. 16.00.".

Note

Clause 147 seeks to substitute the First Schedule to the Indian Post Office Act, 1898 so as to provide for the introduction of new Meghdoot Post Card and its rate of postage and for the revision of rates of postage for certain inland postal services, namely, letters, letter-cards, printed post cards, competition post cards, book, pattern and sample packets and parcels.

These revised rates will be effective from a date notified by the Central Government after this Bill is passed.

Omission of section 43A of Act 31 of 1956.

148. Section 43A of the Life Insurance Corporation Act, 1956 shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 148 seeks to omit section 43A of the Life Insurance Corporation Act, 1956.

Section 43A of the said Act provides that no deduction of income-tax shall be made on any interest or dividend payable to the Life Insurance Corporation of India in respect of any securities or shares owned by it or in which it has full beneficial interest.

It is proposed to omit the said section.

This amendment will take effect from 1st June, 2002.

Omission of section 35A of Act 57 of 1972.

149. Section 35A of the General Insurance Business (Nationalisation) Act, 1972 shall be omitted with effect from the 1st day of June, 2002.

Note

Clause 149 seeks to omit section 35A of the General Insurance Business (Nationalisation) Act, 1972.

Section 35A of the said Act provides that no deduction of income-tax shall be made on any interest or dividend payable to the General Insurance Corporation of India or to any of the four new companies formed by virtue of the schemes framed under sub-section (1) of section 16 of the said Act in respect of any securities or shares owned by such Corporation or such company or in which such Corporation or such company has full beneficial interest.

It is proposed to omit the said section.

This amendment will take effect from 1st June, 2002.

Omission of section 22A of Act 47 of 1974.

150. In the Oil Industry (Development) Act, 1974 (47 of 1974) [hereinafter referred to as the Oil Industry (Development) Act], section 22A shall be omitted with effect from the 1st day of April, 2003;

Note

Clause 150 seeks to omit section 22A of the Oil Industry (Development) Act, 1974.

Section 22A of the said Act provides that notwithstanding anything contained in the Income-tax Act, 1961, the Oil Industry Development Board shall not be liable to pay income-tax on its income, profits or gains.

It is proposed to omit the said section so as to make the Oil Industry Development Board liable to pay income-tax on its income, profits or gains.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Amendment of Schedule to Act 47 of 1974.

151. In the Schedule to the Oil Industry (Development) Act, against Sl. No.1 relating to crude oil , for the entry in column 3, the entry “Rupees two thousand per tonne.” shall be substituted.

Note

Clause 151 seeks to amend the Schedule to the Oil Industries (Development) Act, 1974 so as to increase the cess levied on crude oil.

Omission of section 44 of Act 37 of 1987.

152. Section 44 of the National Dairy Development Board Act, 1987 shall be omitted with effect from the 1st day of April, 2003.

Note

Clause 152 seeks to omit section 44 of the National Dairy Development Board Act, 1987.

Section 44 of the said Act provides that notwithstanding anything contained in the Income-tax Act, 1961 or any other enactment for the time being in force relating to tax on income, profits or gains, the National Dairy Development Board shall not be liable to pay income-tax or any other tax in respect of its income, profits or gains derived.

It is proposed to omit the said section so as to make the National Dairy Development Board liable to pay income-tax or any other tax in respect of its income, profits or gains derived.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Omission of section 22 of Act 25 of 1990.

153. Section 22 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 shall be omitted with effect from the 1st day of April, 2003.

Note

Clause 153 seeks to omit section 22 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

Section 22 of the said Act provides that notwithstanding anything contained in the Income-tax Act, 1961, or any other enactment for the time being in force relating to income-tax or any other tax on income, profits or gains, the Prasar Bharati (Broadcasting Corporation of India) shall not be liable to pay any income-tax or any other tax in respect of any income, profits or gains, accruing or arising out of the Fund of the Corporation or any amount received in that Fund; and any income, profits or gains, derived or any amount received, by the Corporation.

It is proposed to omit the said section so as to make the Prasar Bharati (Boradcasting Corporation of India) liable to pay income-tax or any other tax in respect of any income, profits or gains accruing or arising out of its Fund or any amount received in that Fund and any income, profits or gains derived or any amount received by it.

This amendment will take effect from 1st April, 2003 and will, accordingly, apply in relation to the assessment year 2003-2004 and subsequent years.

Declaration under the Provisional Collection of Taxes Act, 1931

It is hereby declared that it is expedient in the public interest that the provisions of clauses 125, 138, 139, 140 and 151 of this Bill shall have immediate effect under the Provisional Collection of Taxes Act, 1931.

THE FIRST SCHEDULE

(See section 2*)*

PART I

INCOME-TAX

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (*vii*) of clause (*31*) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

(1)	where the total income does not exceed Rs. 50,000	*Nil* ;
(2)	where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000	10 per cent of the amount by which the total income exceeds Rs. 50,000;
(3)	where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000	Rs. 1,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 60,000;
(4)	where the total income exceeds Rs. 1,50,000	Rs. 19,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 1,50,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 or section 113 shall,—

(*i*) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding sixty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent of such income-tax;

(*ii*) in the case of every person, other than those mentioned in item (*i*), be increased by a surcharge for purposes of the Union calculated at the rate of two per cent of such income-tax:

Provided that in case of persons mentioned in item (*i*) above having a total income exceeding sixty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of sixty thousand rupees by more than the amount of income that exceeds sixty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

(1)	where the total income does not exceed Rs.10,000	10 per cent of the total income;
(2)	where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000	Rs. 1,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 10,000;
(3)	where the total income exceeds Rs. 20,000	Rs. 3,000 plus 30 per cent of the amount by which the

total income exceeds Rs. 20,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 or section 113, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income	35 per cent

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified or in section 112 or section 113, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent of such income-tax.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income	30 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112 or section 113, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company	35 per cent of the total income.
II. In the case of a company other than a domestic company—	
(*i*) on so much of the total income as consists of,—	
(*a*) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976, or	50 per cent.
(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976, and where such agreement has, in either case, been approved by the Central Government	
(*ii*) on the balance, if any, of the total income	48 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of item I of this Paragraph, or in section 112 or section 113, shall, in the case of every domestic company, be increased by a surcharge for purposes of the Union calculated at the rate of two per cent of such income-tax.

PART II

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates:—

		Rate of income-tax
1.	In the case of a person other than a company—	
	(*a*) where the person is resident in India—	
	(*i*) on income by way of interest other than "Interest on securities"	10 per cent;
	(*ii*) on income by way of dividend	10 per cent;
	(*iii*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
	(*iv*) on income by way of winnings from horse races	30 per cent;
	(*v*) on income by way of insurance commission	10 per cent;
	(*vi*) on income by way of interest payable on—	10 per cent;
	(*A*) any debentures or securities other than a security of the Central or State Government for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;	
	(*B*) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder	
	(*vii*) on any other income	20 per cent;
	(*b*) where the person is not resident in India—	
	(*i*) in the case of a non-resident Indian—	
	(*A*) on any investment income	20 per cent;
	(*B*) on income by way of long-term capital gains referred to in section 115E	10 per cent;
	(*C*) on other income by way of long-term capital gains	20 per cent;
	(*D*) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency	20 per cent;
	(*E*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort	30 per cent;
	(*F*) on income by way of winnings from horse races	30 per cent;
	(*G*) on the whole of the other income	30 per cent;

(*ii*) in the case of any other person—

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(*A*) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency — 20 per cent;

(*B*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort — 30 per cent;

(*C*) on income by way of winnings from horse races — 30 per cent;

(*D*) on income by way of long-term capital gains — 20 per cent;

(*E*) on the whole of the other income — 30 per cent;

2. In the case of a company—

(*a*) where the company is a domestic company—

(*i*) on income by way of interest other than "Interest on securities" — 20 per cent;

(*ii*) on income by way of dividend — 10 per cent;

(*iii*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort — 30 per cent;

(*iv*) on income by way of winnings from horse races — 30 per cent;

(*v*) on any other income — 20 per cent;

(*b*) where the company is not a domestic company—

(*i*) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort - — 30 per cent;

(*ii*) on income by way of winnings from horse races — 30 per cent;

(*iii*) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency — 20 per cent;

(*iv*) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976, where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (*1A*) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (*1A*) of section 115A of the Income-tax Act, to a person resident in India—

(*A*) where the agreement is made before the 1st day of June, 1997 — 30 per cent;

(*B*) where the agreement is made on or after the 1st day of June, 1997 — 20 per cent;

(*v*) on income by way of royalty [not being royalty of the nature referred to in sub-item (*b*)(*iv*)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 — 50 per cent;

(*B*) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 — 30 per cent;

(*C*)	where the agreement is made on or after the 1st day of June, 1997	20 per cent;
(*vi*)	on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—	
(*A*)	where the agreement is made after the 29th day of February, 1964 but before the 1st day of April, 1976	50 per cent;
(*B*)	where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997	30 per cent;
(*C*)	where the agreement is made on or after the 1st day of June, 1997	20 per cent;
(*vii*)	on income by way of long-term capital gains	20 per cent;
(*viii*)	on any other income	40 per cent;

Explanation.—For the purpose of item 1(*b*)(*i*) of this Part, "investment income" and "non-resident Indian" shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of this Part shall be increased by a surcharge, for purposes of the Union, calculated at the rate of five per cent of such income-tax.

PART III

RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD "SALARIES" AND COMPUTING "ADVANCE TAX"

In cases in which income-tax has to be charged under sub-section (*4*) of section 172 of the Income-tax Act or sub-section (*2*) of section 174 or section 174A or section 175 or sub-section (*2*) of section 176 of the said Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" [not being "advance tax" in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or section 115JB or sub-section (*1A*) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge on such "advance tax" in respect of any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115BBB or section 115E or section 115JB] shall be charged, deducted or computed at the following rate or rates:—

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (*vii*) of clause (*31*) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

(1)	where the total income does not exceed Rs. 50,000	Nil
(2)	where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000	10 per cent of the amount by which the total income exceeds Rs. 50,000;
(3)	where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000	Rs. 1,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 60,000;

(4) where the total income exceeds Rs. 1,50,000	Rs. 19,000 *plus* 30 per cent of the amount by which the total income exceeds Rs. 1,50,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 112 shall,—

(*i*) in the case of every individual or Hindu undivided family, or association of persons or body of individuals having a total income exceeding sixty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent of such income-tax;

(*ii*) in the case of every person other than those mentioned in item (*i*), be increased by a surcharge for purposes of the Union calculated at the rate of five per cent of such income-tax:

Provided that in case of persons mentioned in item (*i*) above having a total income exceeding sixty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of sixty thousand rupees by more than the amount of income that exceeds sixty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

(1) where the total income does not exceed Rs. 10,000	10 per cent of the total income;
(2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000	Rs. 1,000 *plus* 20 per cent of the amount by which the total income exceeds Rs. 10,000;
(3) where the total income exceeds Rs. 20,000	Rs. 3,000 plus 30 per cent of the amount by which the total income exceeds Rs. 20,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income	35 per cent

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent of such income-tax.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income	30 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of

every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

I. In the case of a domestic company	35 per cent of the total income;
II. In the case of a company other than a domestic company—	
(*i*) on so much of the total income as consists of—	
(*a*) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976, or	
(*b*) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,	
and where such agreement has been approved by the Central Government	in either case, 50 per cent;
(*ii*) on the balance, if any, of the total income	40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of item 1 of this Paragraph, or in section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated at the rate of five per cent of such income-tax.

PART IV

[*See* section 2(*10*)(*c*)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.—Agricultural income of the nature referred to in sub-clause (*a*) of clause (*1A*) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from other sources" and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (*2*) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (*3*) and (*4*) of section 40A.

Rule 2.—Agricultural income of the nature referred to in sub-clause (*b*) or sub-clause (*c*) of clause (*1A*) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (*c*)] shall be computed as if it were income chargeable to income-tax under that Act under the head "Profits and gains of business or profession" and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (*3*) and (*4*) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.—Agricultural income of the nature referred to in sub-clause (*c*) of clause (*1A*) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (*c*) shall be computed as if it were income chargeable to income-tax under that Act under the head "Income from house property" and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(*a*) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent of such income shall be regarded as the agricultural income of the assessee;

(*b*) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) of technically specified block rubbers manufacturered or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent of such income shall be regarded as the agricultural income of the assessee;

(*c*) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent of such income shall be regarded as the agricultural income of the assessee.

Rule 5.—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family or a company or a firm) but has any agricultural income then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—(*1*) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2002, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1994 or the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001, is a loss, then, for the purposes of sub-section (*2*) of section 2 of this Act,—

(*i*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1994, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(*ii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(*iii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(*iv*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(*v*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001,

(*vi*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001,

(*vii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001,

(*viii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2002.

(*2*) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2003 or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than that previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1995 or the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002, is a loss, then, for the purposes of sub-section (*9*) of section 2 of this Act, —

(*i*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1995, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(*ii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(*iii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(*iv*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(*v*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002,

(*vi*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002,

(*vii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002,

(*viii*) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2003.

(*3*) Where any person deriving any agricultural income from any source has been succeeded in such capacity by

another person, otherwise than by inheritance, nothing in sub-rule (*1*) or sub-rule (*2*) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (*1*) or, as the case may be, sub-rule (*2*).

(*4*) Notwithstanding anything contained in this rule, no loss which has not been determined by the Assessing Officer under the provisions of these rules or the rules contained in Part IV of the First Schedule to the Finance Act, 1994 (32 of 1994), or of the First Schedule to the Finance Act, 1995 (22 of 1995), or of the First Schedule to the Finance (No. 2) Act, 1996 (33 of 1996), or of the First Schedule to the Finance Act, 1997 (26 of 1997), or of the First Schedule to the Finance (No. 2) Act, 1998 (21 of 1998), or of the First Schedule to the Finance Act, 1999 (27 of 1999), or of the First Schedule to the Finance Act, 2000 (10 of 2000), or of the First Schedule to the Finance Act, 2001 (14 of 2001), shall be set off under sub-rule (*1*) or, as the case may be, sub-rule (*2*).

Rule 9.—Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

Rule 10.—The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11.—For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to give effect to the financial proposals of the Central Government for the financial year 2002-2003. The notes on clauses explain the various provisions contained in the Bill.

YASHWANT SINHA.

NEW DELHI;

The 28*th February,* 2002.

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PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F. 2(11)-B(D)/2002, dated the 28th February, 2002 from Shri Yashwant Sinha, Minister of Finance, to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill, recommends under clause (1) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Finance Bill, 2002 to the Lok Sabha and also recommends to the Lok Sabha the consideration of the Bill.

2. The Bill will be introduced in the Lok Sabha immediately after the presentation of the Budget on the 28th February, 2002.

[`1]*Extracts relevant to Direct Tax Laws.