CIRCULAR NO. 1/2009

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Government of India
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Department of Revenue
(Central Board of Direct Taxes)

Dated, the 27th March, 2009

EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2008

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FINANCE ACT, 2008

Finance Act, 2008 - Explanatory Notes on provisions relating to Direct Taxes

CIRCULAR NO. 1/2009, DATED 27th March, 2009.

1. Introduction

1.1 The Finance Act, 2008 (hereafter referred to as "the Act") as passed by the Parliament, received the assent of the President on the 10th day of May, 2008 and has been enacted as Act No. 18 of 2008. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. Changes made by the Act.

2.1 The Act has,—

(i) specified the rates of income-tax for the assessment year 2008-09 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial Year 2008-09;

(ii) amended sections 2, 10,10A, 10B, 35, 35D, 36, 40, 40A, 43, 44AB, 47, 49, 80C, 80D, 80IB, 80ID, 88E, 111A, 115AD, 115JB, 115O, 115WB, 115WC, 115WE, 139, 142, 143, 147, 151, 153, 153A, 153B, 153C, 153D,156, 191, 193, 194C, 195, 199, 201, 203, 206C, 251, 254, 271, 292C and 295 of the Income-tax Act, 1961;

(iii) inserted new sections 115WKB, 268A, 273AA, 278AB, 282A and 292BB in the Income-tax Act, 1961;

(iv) amended rule 3 of the Part A of the fourth Schedule to the Income-tax Act, 1961;

(v) amended section 17, 17A, 18, 23A and 42D of the Wealth-tax Act, 1957;

(vi) inserted new section 18BA, 35GA and 42 in the Wealth-tax Act, 1957;

(vii) inserted sections 102 to 121 in Chapter-VII of the Act;

(viii) amended section 98 and 99 of Finance (No.2) Act, 2004;

(ix) amended section 95(3) of the Finance Act, 2005.

3. Rate structure

3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2008-09

3.1-1 In respect of income of all categories of taxpayers liable to tax for the assessment year 2008-09, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2007 for the purposes of computation of advance tax, deduction of tax at source from Salaries and charging of tax payable in certain cases during the financial year 2007-08.

3.1-2 The major features of the rates specified in the said Part I are as follows:

3.1-3 Individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person.

Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a cooperative society, firm, local authority and company) as under:

<table>
<tr><th rowspan="2">Income chargeable to tax</th><th colspan="3">Rate of income-tax</th></tr>
<tr><th>Individual (other than individual woman resident in India and senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person</th><th>Individual woman, resident in India and below the age of sixty- five years</th><th>Individual senior citizen, resident in India, who is of the age of sixty-five years or more</th></tr>
<tr><td>Up to Rs. 1,10,000</td><td>Nil</td><td rowspan="2">Nil</td><td rowspan="4">Nil</td></tr>
<tr><td>Rs. 1,10,001 - Rs. 1,45,000</td><td rowspan="2">10%</td></tr>
<tr><td>Rs. 1,45,001 - Rs. 1,50,000</td><td>10%</td></tr>
<tr><td>Rs. 1,50,001 - Rs. 1,95,000</td><td rowspan="2">20%</td><td rowspan="2">20%</td></tr>
<tr><td>Rs. 1,95,001 - Rs. 2,50,000</td><td>20%</td></tr>
<tr><td>Exceeding Rs. 2,50,000</td><td>30%</td><td>30%</td><td>30%</td></tr>
</table>

3.1-4 Surcharge - In the case of every individual, Hindu undivided family, association of persons or body of individuals, surcharge shall be levied only where the total income exceeds ten lakh rupees. For this purpose, the income-tax on such income shall be reduced by the amount of rebate of income-tax computed under Chapter VIII-A of the Income-tax Act, 1961. The income-tax so reduced shall thereafter be enhanced by a surcharge for the purposes of the Union at the rate of ten per cent. of such income-tax. Marginal relief shall be provided to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over Rs. 10,00,000/- is limited to the amount by which the income is more than Rs. 10,00,000/-. For instance, the amount of income-tax and surcharge on a total income of Rs. 10,20,000/- calculated at the rates specified would have been Rs. 2,81,600/- i.e. income-tax of Rs. 2,56,000/- and surcharge of Rs. 25,600/-. The additional tax liability incurred thereon as compared to a person having a total income of Rs. 10,00,000/- is Rs. 31,600/-. However, additional income as compared to a person having a total income of Rs. 10,00,000/- is only Rs. 20,000/-. Therefore, marginal relief to the extent of Rs. 11,600/- will be available in this case as the additional tax liability cannot be more than the additional income. The total tax liability will, therefore, be Rs. 2,70,000/- instead of Rs. 2,81,600/-.

3.1-5 In the case of artificial juridical person, surcharge shall be levied at the rate of ten per cent of the income-tax payable on all levels of income.

3.1-6 In respect of fringe benefits chargeable to tax under section 115WA of the Income Tax Act, in the case of every association of persons and body of individuals, surcharge shall be levied at the rate of ten per cent, where the fringe benefits exceed ten lakh rupees. In the case of artificial juridical person, surcharge shall be levied at the rate of ten per cent. irrespective of the amount of fringe benefits.

3.1-7 Education Cess- An additional surcharge called the "Education Cess on income-tax" shall continue to be levied at the rate of two per cent. on the amount of tax computed, inclusive of surcharge, if any, in all cases. For instance, if the income-tax computed is Rs. 1,00,000/- and the surcharge is Rs. 10,000/-, then the education cess of two per cent. is to be computed on Rs. 1,10,000/- which works out to Rs. 2,200/-. In addition, the amount of tax computed and surcharge shall also be increased by an additional surcharge called "Secondary and Higher Education Cess on income-tax" at the rate of one per cent. of such income-tax and surcharge. No marginal relief shall be available in respect of Education Cess.

3.1-8 Co-operative societies - In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	***Rate***
Up to Rs. 10,000	10%
Rs. 10,001 - Rs. 20,000	20%
Exceeding Rs. 20,000	30%

No surcharge shall be levied. "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall be levied at the rate of two per cent. and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.1-9 Firms - In the case of every firm, the rate of income-tax of thirty per cent. has been specified in Paragraph C of Part I of the First Schedule to the Act. Surcharge at the rate of ten per cent. shall be levied only in cases where the firm has total income exceeding one crore rupees. However, marginal relief shall be allowed to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. In respect of fringe benefits chargeable to tax under section 115WA of the Income Tax Act, surcharge shall be levied at the rate of ten per cent .of the amount of tax irrespective of the amount of fringe benefits.

Additional surcharge called the "Education Cess on Income-tax" shall continue to be levied at the rate of two per cent. on the amount of tax computed, inclusive of surcharge, in all cases. In addition, such amount of tax and surcharge shall be further increased by an additional surcharge called "Secondary and Higher Education Cess on income-tax" computed at the rate of one per cent. on the amount of tax, inclusive of

surcharge, in all cases. No marginal relief shall be available in respect of Education Cess.

3.1-10 Local authorities - In the case of every local authority, the rate of income-tax has been specified at thirty per cent. in Paragraph D of Part I of the First Schedule to the Act. No surcharge shall be levied. However, "Education Cess on Income-tax" and "Secondary and Higher Education Cess on income-tax" shall be levied at the rate of two per cent. and one per cent. respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.1-11 Companies - In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent. of the total income. The tax computed shall be enhanced by a surcharge of ten per cent. only where such domestic company has total income exceeding one crore rupees.

In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, in the case of fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two and one-half per cent. only where such company has total income exceeding one crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. Also, in the case of every company having total income chargeable to tax under section 115JB of the Income Tax Act and where such income exceeds one crore rupees, marginal relief shall be provided.

In respect of fringe benefits, in the case of a domestic company, surcharge shall be levied at the rate of ten per cent. of the amount of tax, irrespective of the amount of fringe benefits. In the case of a company other than a domestic company, in respect of fringe benefits, surcharge shall be levied at the rate of two and one-half per cent of the amount of tax, irrespective of the amount of fringe benefits

"Education Cess on income-tax" shall continue to be levied at the rate of two per cent. on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called "Secondary and Higher Education Cess on income-tax" at the rate of one per cent. of the amount of tax, computed, inclusive of surcharge.

3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2008-2009.

3.2-1 In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2008-09 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2008-09 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2007 except for the following changes:

3.2-2 In the case of a person who is resident in India (other than a company), the rate at which tax is to be deducted from income by way of interest payable on any security of the Central or State Government has been specified at ten percent.

3.2-3 Change in rate of short term capital gain from securities:

The special tax rate of 10% under section 111A and section 115AD has been increased to 15% from existing 10%. These special tax rates are applicable on short-term capital gain arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund, where such transaction is chargeable to securities transaction tax.

3.2-4 Surcharge - The tax deducted at source in each case shall be increased by a surcharge for purposes of the Union as follows:

(*i*) in the case of every individual, Hindu undivided family, association of persons and body of individuals, at the rate of ten per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten lakh rupees;

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

3.2-5 In the case of every firm and company, the tax deducted at source in each case shall be increased by a surcharge only where the income or the aggregate of such incomes paid or likely to be paid and subject to deduction exceeds one crore rupees. Such surcharge shall be computed as follows-

(i) in the case of every firm and domestic company, at the rate of ten per cent. of such income-tax.

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

3.2-6 No surcharge shall be levied on the amount of income-tax deducted in the case of a co-operative society and local authority.

3.2-7 Education Cess - The additional surcharge, called the "Education Cess on income-tax" shall continue to be levied for the purposes of the Union at the rate of two per cent. of income-tax and surcharge, if any, in all cases. For instance, if such tax is Rs. 1,00,000/- and the surcharge is Rs. 10,000/-, then the education cess of two per cent. is to be computed on Rs. 1,10,000/- which works out to be Rs. 2,200/- .

In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called "Secondary and Higher Education Cess on income-tax" at the rate of one per cent. in all cases. Thus in the earlier illustration, where the amount of tax deducted is Rs. 1,00,000/-, the surcharge is Rs. 10,000/-, the Education Cess of two per cent. is Rs. 2,200/-, the said Secondary and Higher Education Cess will be computed on Rs. 1,10,000/- which works out to be Rs. 1,100/-. The total cess in this case will amount to Rs. 3,300/- (i.e. Rs. 2,200/- + Rs. 1,100/-).

3.3 Rates for computation of advance tax, deduction of income-tax at source from Salaries, and charging of income-tax in certain cases during the financial year 2008-09.

3.3-1 The rates for deducting income-tax at source from Salaries and computing advance tax during the financial year 2008-09 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2008-09 on current incomes in cases where accelerated assessments have to be made, *e.g.,* provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:

3.3-2 Individual, Hindu Undivided Family, Association of Persons, Body of Individuals or Artificial Juridical Person

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). In the case of individuals, the basic exemption limit has been enhanced from Rs. 1,10,000/- to Rs. 1,50,000/-. The exemption limit for every woman resident in India and below the age of 65 years of age has been enhanced from Rs. 1,45,000/- to Rs. 1,80,000/-. Further, the exemption limit for every individual resident in India and of the age of 65 years or more at any time during the previous year has been raised from Rs. 1,95,000/- to Rs. 2,25,000/-.

The rates of tax during the financial year 2008-09 in the case of persons mentioned above are as follows:

Income chargeable to tax	**Rate of income-tax**		
	Individual (other than individual woman resident in India and senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person	**Individual woman, resident in India and below the age of sixty- five years**	**Individual senior citizen, resident in India, who is of the age of sixty-five years or more**
Up to Rs. 1,50,000	Nil	Nil	Nil

<table>
<tr><td>Rs. 1,50,001 - Rs. 1,80,000</td><td rowspan="3">10%</td><td></td><td rowspan="2"></td></tr>
<tr><td>Rs. 1,80,001 - Rs. 2,25,000</td><td rowspan="2">10%</td></tr>
<tr><td>Rs. 2,25,001 - Rs. 3,00,000</td><td>10%</td></tr>
<tr><td>Rs. 3,00,001 - Rs. 5,00,000</td><td>20%</td><td>20%</td><td>20%</td></tr>
<tr><td>Exceeding Rs 5,00,000</td><td>30%</td><td>30%</td><td>30%</td></tr>
</table>

3.3-3 Surcharge- In the case of every individual, Hindu undivided family, association of persons or body of individuals, surcharge shall be levied at the rate of 10% of income-tax only where the total income exceeds ten lakh rupees. Marginal relief shall be provided to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over Rs. 10,00,000/- is limited to the amount by which the income is more than Rs. 10,00,000/- as illustrated in para 3.1-4.

3.3-4 In the case of artificial juridical person, surcharge shall be levied at the rate of ten per cent. of the income-tax payable on all levels of income.

3.3-5 In respect of fringe benefits chargeable to tax under section 115WA of the Income Tax Act, in the case of every association of persons and body of individuals, surcharge shall be levied at the rate of ten per cent, where the fringe benefits exceed ten lakh rupees. In the case of artificial juridical person, surcharge shall be levied at the rate of ten per cent. irrespective of the amount of fringe benefits.

3.3-6 Education Cess- An additional surcharge called the "Education Cess on income-tax" shall continue to be levied at the rate of two per cent. on the amount of tax computed, inclusive of surcharge, if any, in all cases as illustrated in para 3.1-7.

In addition, the amount of tax computed and surcharge shall also be increased by an additional surcharge called "Secondary and Higher Education Cess on income-tax" at the rate of one per cent. of such income-tax and surcharge as illustrated in para 3.2.7. No marginal relief shall be available in respect of Education Cess.

3.3-7 Co-operative societies - In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	***Rate***
Up to Rs. 10,000	10%
Rs. 10,001 - Rs. 20,000	20%
Exceeding Rs. 20,000	30%

No surcharge shall be levied. "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall be levied at the rate of two per cent. and

one per cent. respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.3-8 Firms - In the case of every firm, the rate of income-tax of thirty per cent. has been specified in Paragraph C of Part III of the First Schedule to the Act. Surcharge at the rate of ten per cent. shall be levied only in cases where the firm has total income exceeding one crore rupees. However, marginal relief shall be allowed to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. In respect of fringe benefits chargeable to tax under section 115WA of the Income Tax Act, surcharge shall be levied at the rate of ten per cent .of the amount of tax irrespective of the amount of fringe benefits.

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

3.3-9 Local authorities - In the case of every local authority, the rate of income-tax has been specified at thirty per cent. in Paragraph D of Part III of the First Schedule to the Act. No surcharge shall be levied. However, "Education Cess on Income-tax" and "Secondary and Higher Education Cess on income-tax" shall be levied at the rate of two per cent. and one per cent. respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.3-10 Companies - In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent. of the total income. The tax computed shall be enhanced by a surcharge of ten per cent. only where such domestic company has total income exceeding one crore rupees.

In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, in the case of fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two and one-half per cent. only where such company has total income exceeding one crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. Also, in the case of every company having total income

chargeable to tax under section 115JB of the Income Tax Act and where such income exceeds one crore rupees, marginal relief shall be provided.

3.3-11 In respect of fringe benefits, in the case of a domestic company, surcharge shall be levied at the rate of ten per cent. of the amount of tax, irrespective of the amount of fringe benefits. In the case of a company other than a domestic company, in respect of fringe benefits, surcharge shall be levied at the rate of two and one-half per cent. of the amount of tax, irrespective of the amount of fringe benefits

3.3-12 "Education Cess on income-tax" shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called "Secondary and Higher Education Cess on income-tax" at the rate of one per cent. of the amount of tax, computed, inclusive of surcharge.

4. Widening the scope of "agricultural income"

4.1 "Agricultural income" is defined in sub-section (1A) of section 2 of the Act to mean, *inter-alia*, income derived from land which is situated in India and is used for agricultural purposes. Such agricultural income is exempt from tax under sub-section (1) of section 10 of the Income-tax Act, 1961. It has been held by judicial authorities that whether income from nursery operations constitutes agricultural income or not, will depend on the facts of each case. If the nursery is maintained by carrying out basic operations on land and subsequent operations are carried out in continuation of the basic operations, then income from such nursery would be agricultural income not liable to tax under section 10. However, if the nursery is maintained independently without resorting to basic operations on land, then income from such nursery would not be agricultural income and would be liable to be included in the total income.

4.2 With a view to giving finality to the issue, an Explanation in section 2 of the Income-tax Act, has been inserted providing that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. Accordingly, irrespective of whether the basic operations have been carried out on land, such income will be treated as agricultural income, thus qualifying for exemption under sub-section (1) of section 10 of the Act.

4.3 **Applicability**: This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

5. Streamlining the definition of "charitable purpose"

5.1 Sub-section (15) of section 2 of the Act defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under sub-section (23C) of section 10 or section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engaged in the "advancement of an object of general public utility" as is included in the fourth limb of the current

definition of "charitable purpose". Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

5.2 With a view to limiting the scope of the phrase "advancement of any other object of general public utility", sub-section (15) of section 2 has been amended to provide that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. Scope of this amendment has further been explained by the CBDT vide its circular no.11/2008 dated 19th Dec 2008.

5.3 **Applicability**: This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

6. Exemption to a "Sikkimese" individual

6.1 Section 10 of Income-tax Act relates to incomes which do not form part of total income. As a measure to promote socio-economic development, a new clause (26AAA) in section 10 has been inserted to provide exemption from income-tax to the following income, which accrues or arises to a Sikkemese individual –

(a) income from any source in the State of Sikkim; or
(b) income by way of dividend or interest on securities

6.2 However this exemption will not be available to a Sikkimese woman who, on or after 1st April, 2008, marries a non-Sikkimese individual. The term 'Sikkimese' has been defined under the Explanation to the said clause.

6.3 **Applicability**: This amendment has been made applicable with retrospective effect from 1st April, 1990 and shall accordingly apply for assessment year 1990-91 and subsequent assessment years.

7. Exemption of income of Agricultural Produce Marketing Committee or Board

7.1 Clause (26AAB) has been inserted in section 10 to provide for tax exemption with respect to the income of an Agricultural Produce Marketing Committee or Board which has been constituted under any law for the purpose of regulating the marketing of agricultural produce.

7.2 **Applicability**: This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

8. Exemption of income of Coir Board

8.1 Sub-section (29A) of Section 10 provides that any income of certain specified commodity boards and export development authorities shall be exempt from income tax. As a measure to promote socio-economic development, a similar exemption has been provided in respect of any income accruing or arising to the Coir Board established under the Coir Industry Act, 1953 by inserting sub-clause (h) in clause (29A) of section 10.

8.2 **Applicability**: This amendment has been made applicable with retrospective effect from 1st April, 2002 and shall accordingly apply for assessment year 2002-03 and subsequent assessment years.

9. Extension of time limit for availing deduction under section 10A and 10B

9.1 100% deduction on exports profits is allowed to an undertaking, if-

(i) the undertaking is set up in a free trade zone, Software Technology Park, Electronic Hardware Technology Park or a special economic zone and is engaged in the manufacture or production of articles or things or computer software; (section 10A)

(ii) the undertaking is declared as a hundred per cent export-oriented undertaking engaged in the manufacture or production of articles or things or computer software. (section 10B)

9.2 The deduction is available for a period of ten consecutive assessment years beginning with the initial assessment year in which the undertaking begins to manufacture or produce the article or things or computer software. However, no deduction was allowable, under these sections, to any undertaking beyond the assessment year 2009-10.

9.3 Section 10A and section 10B have now been amended to extend the sun-set date under these sections to assessment year 2010-11. Hence, no deduction will, therefore, be available under these sections beyond assessment year 2010-11.

9.4 **Applicability**: These amendments have been made applicable with effect from 1st April, 2008 and shall accordingly apply for assessment year 2008-09 and subsequent assessment years.

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

10.1 In order to encourage the outsourcing of scientific research, a new clause (iia) in sub-section (1) of section 35 of the Income-tax Act has been inserted to allow a weighted deduction of 125 per cent of the amount paid by a person to an approved company to be used for scientific research subject to prescribed conditions. To avoid multiple claims of deduction by a company approved to receive such payments under clause (iia) of sub-section (1) of section 35, sub-clause (6) has been inserted to provide that the existing deduction of 150% under sub-section (2AB) of section 35 for in-house research will not be available to a company which has been approved for receiving payments for outsourcing of scientific research under the provisions of clause (iia) of sub-section (1) of section 35. However, deduction to the extent of 100%

of the sum spent as expenditure on scientific research which is available under clause (i) of sub-section (1) of section 35 will continue to be allowed to such companies.

10.2 Applicability: These amendments have been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

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

11.1 Section 35D provides for deduction of certain specified preliminary expenses. After the commencement of business, the deduction was being allowed to only an industrial undertaking or unit. In order to provide a level playing field to the services sector, the section has been amended to provide the benefit of amortization to all assessees after commencement of his business, in connection with the extension of his undertaking or in connection with his setting up a new unit.

11.2 Applicability: This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

12 Amendment to the provisions of sub-clause (ia) of clause (a) of section 40 of the Income-tax Act.

12.1 As per the provisions of sub-clause (ia) of clause (a) of section 40, any interest, commission, brokerage, fees for professional services, fees for technical service payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work, rent and royalty on which tax is deductible at source and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200 shall not be allowed as deduction. However, the sum is allowed as a deduction in the year of actual payment of the TDS

12.2 To mitigate any hardship caused by the above provisions of section 40 while maintaining TDS discipline, the Act has amended provisions of sub-clause (ia) of clause (a) of section 40. The amendment allows additional time (till due date of filing of return of income) for deposit of TDS pertaining to deductions made for the month of March so that disallowance under sub-clause (ia) of clause (a) of section 40 is not attracted in such cases. Thus where the last date for filing the return of income in case of a taxpayer (deductor) is 30th September, he will get additional time of six months (April to September) for depositing the tax deducted at source on an expenditure incurred or payment made in the month of March so as to escape disallowance under sub-clause (ia) of clause (a) of section 40.

12.3 Applicability: This amendment has been made applicable with retrospective effect from 1st April, 2005 and shall accordingly apply for assessment year 2005-06 and subsequent assessment years.

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

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

13.2 Sub-section (3) of section 40A is an anti tax-evasion measure. By requiring payments to be made by an account payee instrument, it is possible to verify the genuineness of the transaction. Thereby the risk of evasion is substantially mitigated. Field formations have reported that assessees tend to circumvent the provisions of sub-section (3) of section 40A by splitting a particular high value payment to one person into several cash payments, each below Rs. 20,000/-. This splitting is also resorted to for payments made in the course of a single day. The courts have approved such splitting by interpreting the words ‘in a sum’ used in the section to mean a single sum thereby applying the limit to each transaction. This interpretation is against the legislative intent and has, consequently, adversely affected the efficacy of this anti-abuse provision.

13.3 Therefore, the provisions of sub-section (3) of section 40A have been amended providing that the provisions of sub-section (3) of section 40A shall also be attracted where the aggregate of payments made to a single party otherwise than by an account payee cheque drawn on a bank or account payee bank draft exceeds twenty thousand rupees in a day.

13.4 **Applicability**: This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

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

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

14.2 Some persons were exempt from tax and, therefore, not required to compute their income under the head “profits and gains of business or profession”. Upon withdrawal of exemption, such persons became liable to income-tax and hence were required to compute their income for income-tax purposes. In this context, dispute has arisen regarding the basis for allowing depreciation under the Income tax Act in respect of assets acquired during the years when such persons enjoyed tax exemption. The Income Tax Appellate Tribunal in the case of Kandla Port Trust v. Assistant Commissioner Of Income-Tax, 104 ITD 01 (Rajkot) has held that in the case of such

a previously exempt entity, since there was no liability to tax, there was no occasion to compute the income of such person under the provisions of the Income-tax Act. Hence, the depreciation provided in the books in the years when the income was exempt cannot be treated as the depreciation "actually allowed". Accordingly, it was held that as the assessee was not required to compute profits and gains of business or profession under the Income-tax Act, mere passing of accounting entry made for depreciation in the books of account was not the depreciation "actually allowed" as there was no liability to tax and hence no income-tax assessment for this period. It has further held that the written down value (WDV) for the purpose of assessment would be the original cost less nil i.e the original cost. This interpretation is not in conformity with the intent and purpose of the provisions of depreciation. Accordingly, Explanation 6 has been inserted in sub-section (6) of section 43 to clarify that in such a case -

(a) the actual cost of the asset shall be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of accounts of the assessee;
(b) the total amount of depreciation on such asset provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under the Income-tax Act for the purposes of sub-section (6) of section 43;
(c) the depreciation actually allowed as above shall be adjusted by the amount of depreciation attributable to such revaluation.

14.3 Applicability: This amendment has been made applicable with retrospective effect from 1st April, 2003 and shall accordingly apply for assessment years 2003-04 and subsequent assessment years.

15 Amendment to give effect to reverse mortgage scheme

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

15.2 In the context of the aforesaid scheme, it has been necessary to resolve the tax issues arising therefrom.

15.3 The first issue is whether mortgage of property for obtaining a loan under the reverse mortgage scheme is transfer within the meaning of the Income-tax Act thereby giving rise to capital gains. Sub-section (47) of section 2 of the Income-tax Act provides an inclusive definition of 'transfer'. Further, 'transfer' within the meaning of the Transfer of Properties Act includes some types of mortgage. Therefore, a mortgage of property, in certain cases, is a transfer within the meaning of sub-section (47) of section 2 of the Income-tax Act. Consequently, any gain arising upon mortgage of a property may give rise to capital gains under section 45 of the Income-tax Act. However, in the context of a reverse mortgage, the intention is to secure a stream of cash flow against the mortgage of a residential house and not to

alienate the property. Therefore a new clause (xvi) in section 47 of the Income-tax Act has been inserted to provide that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be regarded as a transfer and therefore shall not attract capital gains tax. Accordingly, in pursuance of above, Reverse Mortgage scheme has been notified vide notification No.93/2008 {S.O No. 2310(E)} dated 30th September, 2008.

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

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

15.6 **Applicability**: These amendments have been made applicable with effect from the 1st day of April, 2008 and will accordingly apply in relation to assessment year 2008-09 and subsequent assessment years.

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

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

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

16.3 **Applicability**: These amendments have been made applicable with effect from 1st April, 2008, and will accordingly apply in relation to assessment year 2008-09 and subsequent assessment years.

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

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

(i) making investments in certain saving instruments; or
(ii) incurring expenditure on tuition fee and repayment of housing loan.

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

(i) five year time deposit in an account under Post Office Time Deposit Rules, 1981; and
(ii) deposit in an account under the Senior Citizens Savings Scheme Rules, 2004.

17.3 Further, it has also been provided that where any amount is withdrawn by the assessee from such account before the expiry of a period of 5 years from the date of its deposit, the amount so withdrawn shall be deemed to be income of the assessee of the previous year in which the amount is withdrawn (sub-section (6A) of section 80C). The amount so withdrawn, accordingly, shall be chargeable to tax in the assessment year relevant to such previous year. The amount chargeable to tax shall also include that part of the amount withdrawn which represents interest accrued on the deposit. However if any part of the interest has suffered taxation in any of the earlier years, such amount shall not be taxed again.

17.4 It has also been provided that the in case the amount is received by the nominee or legal heir of the assessee, on the death of such assessee, the amount so received shall not be taxed in the hand of the nominee or the legal heir. However, if such amount includes any amount of interest which has not been included in the total income of the assessee for the previous year or years preceding such previous year, such interest shall be taxable.

17.5 It is hereby clarified that if no deduction under section 80C was claimed for investment of an amount in the above mentioned two schemes by an assessee, the withdrawl of such amount (principal only) will not attract the provision of sub-section (6) of section 80C and such amount (principal only) will not be taxable.

17.6 **Applicability -** The amendment shall apply to investments, as above, made during the financial year 2007-08 and subsequent years and the deduction under this section would be available from assessment year 2008-09 and subsequent years.

18 Additional deduction for health insurance premium paid for parents

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

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

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

18.2 In case the assessee or any other member of the family, on whose health the insurance has been effected or kept in force, is a senior citizen, the deduction allowed is up to twenty thousand rupees.

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

18.4 For example, an individual assessee pays (through any mode other than cash) during the previous year medical insurance premia, out of his taxable income, as under:
(i) Rs 12,000/- to keep in force an insurance policy on his health and on the health of his wife and dependent children;
(ii) Rs 17,000/- to keep in force an insurance policy on the health of his parents.

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

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

18.7 **Applicability -** This amendment has been made applicable with effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

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

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

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

(i) in which the commercial production under a production sharing contract has first started; or
(ii) in which the refining of mineral oil has begun.

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

19.3 However, it has also been provided that the deduction under this section will still be available to an undertaking which begins refining on or after the 1st day of April, 2009, if the undertaking fulfils all of the following conditions, namely:-

(i) it is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least forty-nine percent of the voting rights;
(ii) it is notified by the Central Government in this behalf on or before the 31st day of May, 2008; and
(iii) it begins refining not later than the 31st day of March, 2012.

19.4 Vide notification no S.O. 1273(E) dated 30th May, 2008, the Central Government has notified 8 undertakings for the purpose of this sub-section.

19.5 **Applicability -** This amendment has been made applicable with effect from the 1st day of April, 2008 and will accordingly apply from assessment year 2008-09 and and subsequent assessment years.

20. Five year tax holiday to hospitals located in certain areas

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

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

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

(ii) the tax benefit will be available to hospital which is constructed and has started or start functioning at any time during the period beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2013;
(iii) the excluded area shall mean an area comprising the urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmedabad, the districts of Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar and Gandhinagar and the city of Secunderabad;
(iv) the area comprising an urban agglomeration shall be the area included in such urban agglomeration on the basis of the 2001 census.

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

20.4 Applicability - This amendment has been made applicable with effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

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

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

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

21.3 Applicability - This amendment has been made applicable with effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

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

22.1 Section 115JB of the Income-tax Act provides for levy of minimum alternate tax (MAT) on the basis of book profits of a company. As per the Explanation after sub-section (2), the expression "book profit" means net profit as shown in the profit and loss account prepared in accordance with the provisions of Part II and III of Schedule VI to the Companies Act, 1956, as increased or reduced by certain adjustments, as specified in that section. Clause (a) of the aforesaid Explanation, inter-alia, provides for increasing the book profits by income-tax paid or payable and the provision therefor; if debited to profit and loss account. The intention behind these add backs is that the items which mainly appear "below the line" in the profit and loss account should be added back to arrive at the "book profit" if they appear "above the line" in the profit and loss account. Section 115JB has not specifically provided for add back of some such "below the line" items like deferred tax, dividend distribution tax, etc. as they were thought to be included in the term "income-tax". However, there has been some ambiguity regarding add back of these items, if debited to profit and loss account.

22.2 With a view to clarifying the intention, a new clause has been inserted after clause (g) of the Explanation 1, as so numbered, so as to provide that the book profit shall be increased by the amount of deferred tax and the provision thereof, if debited to profit and loss account.

22.3 Further, it has also been clarified that the amount of income tax shall include,-

(i) tax on distributed profits under section 115-O or distributed income under section 115R;
(ii) any interest charged under this Act;
(iii) surcharge, if any, as levied by the provisions of the Central Acts from time to time;
(iv) Education Cess on income-tax, if any, as levied by the Central Acts from time to time; and
(v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.

22.4 Applicability - These amendments have been made applicable retrospectively with effect from 1st April, 2001 and will accordingly apply in relation to assessment year 2001-02 and subsequent assessment years.

23. Relief in respect of tax on distributed profits of domestic companies

23.1 Provisions of sub-section (1) of section 115-O provide for levy of tax on distributed profits of a domestic company at the rate of fifteen per cent in addition to the income tax payable on its taxable profits. Where a parent company receives dividend from its subsidiary company, there is a cascading effect of the dividend distribution tax when the parent company also distributes dividend. Relief from this cascading effect of dividend distribution tax between a parent and its subsidiary company upto one level has now been provided for the purpose of which a new sub-

section (1A) has been inserted in section 115. Relief in respect of dividend received by a domestic company is available subject to following conditions –

(a) Such dividend is received from its subsidiary.

(b) The subsidiary has paid tax under this section on such dividend.

(c) The domestic company is not a subsidiary of any other company.

23.2 Relief is provided by allowing the parent company to reduce the amount of dividend received during the financial year from its subsidiary while calculating its liability towards dividend distribution tax under sub-section (1). The relief out of the amount mentioned in sub-section (1) is subject to the condition that the same amount of dividend shall not be considered for reduction more than once.

23.3 Applicability: This amendment has been made applicable with effect from 1st April, 2008 and shall accordingly apply with respect to dividend distributed on or after this date.

24 Rationalisation of the provision of the Fringe Benefit Tax

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

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

(i) Any expenditure on or payment through pre-paid electronic meal card shall also be excluded from the hospitality expenditure for calculation of the value of fringe benefit. Such electronic meal card should not be transferable, should be usable only at eating joints or outlets and should fulfil such other conditions, as may be prescribed. These conditions have subsequently been provided vide insertion of new Rule 40E in the Income-tax Rules, 1962.

(ii) Explanation to clause (E) has been amended to provide that any expenditure incurred or payment made, to –

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

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

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

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

24.4 **Applicability -** These amendments have been made applicable with effect from 1st April, 2009 and shall accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

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

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

25.2 Representations were received from taxpayers suggesting that this clarification should be incorporated in the Income-tax Act so as to provide a firm basis to enable the employees to claim credit for tax so paid. Since this demand is consistent with the clarification issued by the CBDT earlier, and does not have any adverse impact on revenues, a new section 115WKB has been inserted. This section provides that where fringe benefit tax (with respect to allotment or transfer of specified security or sweat equity shares) has been paid by the employer and subsequently recovered from the employee, the recovery of fringe benefit tax shall be deemed to be the tax paid by such employee in relation to value of fringe benefits provided to him. The deeming provision shall apply only to the extent to which the amount of recovery relates to the value of the fringe benefits provided to such employee.

25.3 The new section further seeks to provide that, not withstanding anything contained in this Act, in the above situation, the employee shall not be entitled for any refund out of such deemed payment of tax. The employee shall also not be entitled to claim any credit of such deemed payment of tax against tax liability on other income or against any other tax liability. For example if an employer has recovered Rs 1000 as FBT on ESOPs allotted to him; it will be deemed that the employee has paid Rs 1000 as tax on perquisite value of ESOPs allotted to him. This deemed payment of Rs 1000/- will be taken as the payment against tax liability on perquisite value of ESOPs allotted to him, if it were to be taxed in his hand. However, if the tax on the perquisite value of ESOPs, if it were to be taxed in his hand, is less than Rs 1000 (say 900); then the employee will neither be entitled for a refund of Rs 100; nor this amount will be allowed to be credited against tax liability on other income or against any other tax liability.

25.4 Applicability - This amendment has been made applicable with effect from 1st April, 2008 and shall accordingly apply in relation to assessment year 2008-09 and subsequent assessment years.

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

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

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

(i) a company;

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

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

26.3 The said clause (a) of this Explanation has been amended so as to provide that the due date for filing of return of income for the above categories of assessees shall be 30th day of September of the assessment year.

26.4 Similarly, the due date for filing of return of fringe benefits has been advanced from 31st day of October of the assessment year to 30th day of September of the assessment year by amending clause (a) of the explanation to sub-section (1) of section 115WD for the following categories of assessees:-

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

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

26.6 Applicability: These amendments have been made applicable with effect from 1st April, 2008 and will accordingly apply in relation to the returns for assessment year 2008-09 and for subsequent assessment years.

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

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

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

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

27.4 **Applicability**: This amendment has been made applicable with effect from 1st April, 2008. Hence, from this date and onwards, the Assessing Officer shall also have power to extend the period of furnishing of audit report suo motu.

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

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

28.2 In India, the scheme of summary assessment being in force since the 1st day of June, 1999 does not contain any provision allowing for prima facie adjustment. The scope of the present scheme is limited only to checking as to whether taxes have been correctly paid on the income returned. Under the existing provisions of sub-section (1) of section 143, there is no provision for correcting arithmetical mistakes or internal inconsistencies. This leads to avoidable revenue loss. With an objective to reduce such revenue loss, sub-section (1) of section 143 of the Income-tax Act has been amended to provide that the total income of an assessee shall be computed under sub-section (1) of 143 after making the following adjustments to the total income in the return:-

(a) any arithmetical error in the return; or

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

28.3 Further the meaning of the term “an incorrect claim apparent from any information in the return” has been defined by inserting an explanation in the said section. This term shall mean such claim on the basis of an entry, in the return, –

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

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

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

28.4 Further, it is clarified that above adjustments would be made only in the course of computerized processing without any human interface. In other words, the software would be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income. For this purpose the Department is in the process of establishing a system for Centralized Processing of Returns. To facilitate this, sub-sections (1A), (1B) and (1C) have been inserted in section 143 to provide that –

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

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

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

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

28.6 **Applicability**: These amendments have been made applicable with effect from 1st April, 2008.

29. Amendments in respect of reassessment proceedings to clarify correct legislative intention

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

(i) One of the judicial interpretation on this issue is that if the order of the Assessing Officer has been interfered by the CIT (A) and further

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

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

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

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

29.2 Hence, in order to correctly reflect the legislative intention, the following amendments have been carried out:-

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

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

29.3 Similar amendments have also been carried out in the Wealth-tax Act.

29.4 Applicability: The amendment relating to section 148 has been made applicable with effect from 1st April, 2008.

29.5 The amendment relating to section 151 has been made applicable with retrospective effect from 1st October, 1998.

30. Provision for assessment in the case of annulment of the proceeding under section 153A/153C

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

30.2 There were a number of questions relating to revival of proceedings and time limits which remain ambiguous. With the view to providing clarity and reducing disputes, amendments have been carried out to provide that –

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

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

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

30.3 Subsection (1) of section 153C provides that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person. The Assessing Officer shall then proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A. Accordingly, the provisions of newly inserted subsection (2) of section 153A shall also apply in case of annulment of assessment order or proceeding u/s 153C of Income tax Act.

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

- in accordance with the provision of second proviso to renumbered sub-section (1) of section 153A, the assessment for assessment year 2005-06 shall abate;

- assessment or reassessment with respect to each of the six assessment year, i.e., from assessment year 2002-03 to assessment year 2007-08 shall be required to be made under first proviso to renumbered sub-section (1) of section 153A; and

- the time limit for completion of these assessments shall be 31st December, 2009 under clause (a) of sub-section (1) of section 153B.

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

- the assessment with respect to any of the six assessment years (from assessment year 2002-03 to assessment year 2007-08), if already completed under first proviso to renumbered sub-section (1) of section 153A, shall automatically become annulled due to this order;

- no order of assessment or reassessment with respect to any of the six assessment year (from assessment year 2002-03 to assessment year 2007-08) can be made under first proviso to renumbered sub-section (1) of section 153A as the proceeding under section 153A has been annulled;

- the proceeding for assessment year 2005-06 which has been abated under second proviso to renumbered sub-section (1) of section 153A, shall revive under new sub-section (2); and

- the order in respect of this assessment can be made at any time before 31st December, 2007 (normal time limit under section 153) or 31st August, 2008 [new time limit under sub-section (4) of section 153], whichever is later.

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

- the assessment with respect to any of the six assessment year (from assessment year 2002-03 to assessment year 2007-08), if already completed under first proviso to renumbered sub-section (1) of section 153A, shall automatically get revived as the proceeding under section 153A has got revived;

- order of assessment or reassessment with respect to any of the six assessment years (from assessment year 2002-03 to assessment year 2007-08), if not already made, can now be made under first proviso to renumbered sub-section (1) of section 153A as the proceeding under section 153A has got revived;

- the time limit for making such order of assessment or reassessment, which was 31st December, 2009 under clause (a) of sub-section (1) of section 153B, shall get extended by a period starting from 3rd August, 2007 and ending on 3rd February, 2008 (i.e., six months) under the provision of new clause (vii) in *Explanation* occurring after sub-section (1) of section 153B; and

- the proceeding for assessment year 2005-06 which had got revived under new sub-section (2) of section 153A will again get abated due to the provision of its proviso. If assessment order has already been made with respect to this assessment proceeding, that assessment order will get annulled automatically.

30.7 Applicability: These amendments have been made applicable with retrospective effect from 1st June, 2003.

31. Intimation under subsection (1) of section 143 deemed to be a notice of demand

31.1 Consequent to amendment in subsection (1) of section 143 with effect from 1st April, 2008, consequential amendment has been made in section 156 so as to provide that intimation under subsection (1) of section 143 shall be deemed to be a notice of demand for the purpose section 156.

31.2 Applicability: This amendment has been made applicable with effect from 1st April, 2008.

32. Removal of TDS on Corporate Bonds

32.1 Section 193 of the Income-tax Act provides for deduction of tax at source (TDS) on any income by way of interest on securities payable to a resident. In order to facilitate development of the corporate bond market for improving the availability of finances for infrastructure development, the TDS on any interest payable to a resident on any security issued by a company has now been withdrawn, where such security is in dematerialised form and is listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

32.2 Applicability: This amendment has been made applicable with effect from 1st June, 2008.

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

33.1 Sub-section (1) of section 194C of the Income-tax Act provides for deduction of income-tax at source from any sum credited or paid to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the Government, local authorities, statutory corporations, companies, co-operative societies, statutory authorities engaged in providing housing accommodation, registered societies, trusts, universities, firms and those individuals/HUFs who are required to get their accounts audited under section 44AB. A number of Special Purpose Vehicles (SPVs) are being set-up to execute large works contracts. Some of these SPVs are structured as Joint Ventures(JVs)/Consortiums in the nature of an Association of Persons (AOP) or Body of Individuals (BOI). Since the provisions of section 194C currently do not specifically require an AOP or BOI to deduct tax at source, there is scope for leakage of revenue.

33.2 Therefore section 194C of the Income-tax Act, has been amended and it now stipulates that the following association of persons (AOPs) or body of individuals (BOIs), whether incorporated or not shall be liable to deduct income-tax at source at the time of credit or payment of such sum to the account of the contractor under sub-section (1) of section 194C:

(a) whose gross sales/receipts or turnover from business or profession exceeds the limit specified under section 44AB;

(b) whose gross sales/receipts or turnover from business or profession does not exceed the limit specified under section 44AB but who are specifically mentioned under clauses (a) to (j) of sub-section (1).

33.3 **Applicability**: This amendment has been made applicable with effect from 1st June, 2008.

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

34.1 Sub-section (1) of section 195 requires any person responsible for paying any interest or any other sum chargeable to tax (except dividends and income under the head "salaries") to a non-resident or to a foreign company, to deduct tax at source at the rates in force. Currently, the person making the remittance is required to furnish an undertaking (in duplicate) addressed to the Assessing Officer accompanied by a certificate from an Accountant in a specified format. This undertaking and certificate is submitted to the Reserve Bank of India or its authorized dealers who in turn are required to forward a copy to the Assessing Officer. The purpose of the undertaking and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from the non-residents. There has been substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult.

34.2 To monitor and track transactions in a timely manner, it is proposed to introduce e-filing of the information in the certificate and undertaking and accordingly section 195 of the Income-tax Act has been amended providing that any person responsible for paying any interest or any other sum chargeable to tax to a

non-resident shall furnish the information relating to payment of such sum in such form and manner as may be prescribed by the Board.

34.3 **Applicability**: This amendment has been made applicable with effect from 1st April, 2008.

35. Amendments to the provisions of Dematerialisation of TDS and TCS certificates

35.1 A scheme for dematerialisation of Tax Deducted at Source (TDS)/ Tax Collected at Source (TCS) certificates was introduced through the Finance Act, 2004, with effect from 01.04.2005 for any deduction or collection of tax at source made on or after 01.04.2005. The commencement of this scheme was postponed to 01.04.2006 by the Finance Act, 2005 and later to 01.04.2008 by the Finance Act, 2006. Since the national level information technology infrastructure of the Income-tax Department is not yet fully operational, the commencement of the scheme has been extended to 01.04.2010.

35.2 The system of allowing credit to the assessee for TDS/TCS needs a certain degree of flexibility considering the ongoing technological and business process changes. Providing rigorous conditions regarding the method of giving credit for TDS/TCS in the Act itself, makes the system difficult to restructure and implement according to the changing technological environment.

35.3 In view of this, section 199 and sub-section (4) of section 206C have been amended providing that the manner in which credit of TDS/TCS is to be given will be governed by Rules to be framed under section 199 & sub-section (4) of 206C i.e. the Board may make such rules as may be necessary for the purpose of giving credit in respect of TDS/TCS or tax paid by employer on perquisite under sub-section (1A) of section 192.

35.4 **Applicability**: This amendment has been made applicable with effect from 1st April, 2008.

36 Consequences of non-deduction of tax at source

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

(i) person referred to in section 200;
(ii) the principal officer and the company of which he is the principal officer in the cases referred to in section 194 [relating to deduction of tax at source on dividends].

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

36.3 In view of the above, the sub-section (1) of section 201 has been amended to clarify that where a person, including the principal officer of a company who is required to deduct any sum in accordance with the provisions of Income-tax Act does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under the Income-tax Act, he shall be deemed to be an assessee in default under section 201.

36.4 **Applicability**: The amendment to substitute sub-section (1) of section 201 has been made applicable with retrospective effect from 1st June, 2002.

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

36.6 **Applicability**: The amendment to substitute Explanation to section 191 has been made applicable with retrospective effect from 1st June, 2003.

37. Rationalisation of revised Settlement Scheme

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

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

- The application for the immunity must be made by the assessee {person whose case has been abated under section 245(HA)} to the Commissioner of Income-tax.

- If penalty was levied before or during the pendency of settlement proceedings, then the assessee can approach the commissioner for immunity at any time.

- If no penalty was levied till the time of abatement of proceedings before Settlement Commission, then the assessee must make an application for immunity before the imposition of penalty by the Income tax authority.

- Immunity can be granted by the Commissioner on his satisfaction.

- The satisfaction is required to be that the assessee has cooperated in the proceedings after abatement and has made a full and true disclosure of his income and the manner in which such income has been derived.

- Immunity can be subject to such conditions as the Commissioner may think to impose.
- The immunity granted shall stand withdrawn, if such assessee fails to comply with any condition subject to which the immunity was granted.

- The immunity granted may be withdrawn by the Commissioner, if he is satisfied that the assessee had, in the course of proceedings, after abatement, concealed any particulars from the Income-tax authority or had given false evidence.

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

- The application for the immunity must be made by the assessee {person whose case has been abated under section 245(HA)} to the Commissioner of Income-tax before institution of the prosecution proceedings after abatement.

- If prosecution proceedings were instituted before or during the pendency of settlement proceedings, then the assessee can approach the commissioner for immunity any time. However if the assessee has received any notice etc. from the Income tax authority for institution of prosecution, then he must apply to the commissioner for immunity, before actual institution of prosecution.

- Immunity can be granted by the Commissioner on his satisfaction.

- The satisfaction is required to be that the assessee has cooperated in the proceedings after abatement and has made a full and true disclosure of his income and the manner in which such income has been derived.

- Where application for settlement under section 245C had been made before the 1st day of June, 2007, the Commissioner can also grant immunity from prosecution for any offence under this Act or under the Indian Penal Code or under any other Central Act.

- Immunity can be subject to such conditions as the Commissioner may think to impose.

- The immunity granted shall stand withdrawn, if such assessee fails to comply with any condition subject to which the immunity was granted.

- The immunity granted may be withdrawn by the Commissioner, if he is satisfied that the assessee had, in the course of proceedings, after abatement, concealed any particulars from the Income-tax authority or had given false evidence.

37.4 **Applicability**: These amendments relating to power of the Commissioner to grant immunity from penalty and prosecution have been made applicable from 1st April, 2008.

37.5 Further, section 153 of the Income tax Act has been amended so as to allow a minimum time period of one year to the Income tax authority before whom the case was pending when the application was filed with the Settlement Commission.

37.6 Applicability: This amendment has been made applicable retrospectively with effect from 1st of June 2007. It shall be deemed that this revised time limit will apply to all cases where settlement proceedings have abated from 1st of June 2007 and thereafter.

37.7 Similar amendments have also been carried out in the Wealth-tax Act.

37.8 Further the Finance Act, 2007 has provided for abatement of cases from Settlement Commission if the Commission fails to pass the order of settlement before a specified date. The abatement has started from 1st Day of April, 2008. Some of the cases are expected to abate to CIT(A). Therefore, in order to empower CIT(A) to use the information relating to disclosure made by the assessee before the Settlement Commission while deciding the appeal, the provisions of section 251 of the Income-tax Act has been amended so as to provide that where a case abates to the CIT(A), he may, after taking into consideration any additional income disclosed by the assessee before the Commission, any material filed by the assessee with the Commission and any other material brought on his record, confirm, reduce, enhance or annul orders of assessment.

37.9 Similar amendment has been carried out in the Wealth-tax Act, 1957.

37.10 Applicability: This amendment has been made applicable with effect from 1st day of April, 2008.

38. Clarification regarding stay of demand by Income-tax Appellate Tribunal

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

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

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

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

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

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

38.7 Applicability: This amendment has been made applicable with effect from 1st October, 2008.

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

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

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

39.3 The underlying objective of Board's instruction is to reduce litigation in small cases. With a view to protecting the Revenue's right to file or not to file an appeal, a new section 268A of the Income-tax Act has been inserted so as to provide that –

- The Board may issue orders, instructions or directions to other income tax authorities, fixing such monetary limits as it may deem fit. Such fixing of monetary limit is to be for the purpose of regulating filing of appeal or application for reference by any income tax authority under the provisions of this Chapter.

- Where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to abovementioned order/instruction/direction of the Board, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of –

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

  (b) any other assessee for the same or any other assessment year.

- Where no appeal or application for reference has been filed by an income tax authority pursuant to the above mentioned orders/instructions/directions of the Board, it shall not be lawful for an assessee to contend that the income tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

- The Appellate Tribunal or Court shall have regard to the above mentioned orders/ instructions/directions of the Board and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.

- Every order/instruction/direction which has been issued by the Board fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) of this new section and all the provisions of this section shall apply to such order/instruction/direction.

39.4 Applicability: This amendment has been made applicable with retrospective effect from 1st April, 1999.

40. Clarification regarding satisfaction for initiation of penalty under sub-section (1) of section 271

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

40.2 In the context of levy of penalty under section 271 of the Income-tax Act, there has been an ongoing dispute between the Income-tax department and taxpayers on whether an assessing officer is required to record his satisfaction before initiating penalty proceedings. The Income-tax department has held the view that no separate satisfaction is required to be recorded before initiating penalty proceedings. In the case of Commissioner of Income-tax Vs. S.V. Angidi Chettiar (44 ITR 739; 1962), the Supreme Court has, while dealing with penalty under section 28 of the Indian Income-tax Act, 1922, held that *"satisfaction before conclusion of proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction"*. The same matter came up once again before the Calcutta High Court in the case of Becker Gray And Company (1930) Limited Vs. Income-tax Officer, Central Circle-I, Calcutta and Others (112 ITR 503; 1977). Relying on the Supreme Court decision in the above case, the Calcutta High Court held that *"It is true that the Income-tax Officer should be prima facie satisfied before the penalty notice is issued, but it does not mean that he is required to record such satisfaction in writing in every case."* Following these decisions, wherever additions are made, assessing officers have, without separately recording any satisfaction, been issuing directions for initiating penalty proceedings.

40.3 However, interpreting the aforesaid Supreme Court decision, the Delhi High Court has, in the case of CIV Vs. Ram Commercial Enterprises Limited (246 ITR

568; 2000) held that *"It is the assessing authority which has to form its own opinion and record its satisfaction before initiating penalty proceedings."*

40.4 Subsequently, the Allahabad High Court went into this issue in the case of Shyam Biri Works Pvt. Ltd. Vs. CIT (259 ITR 625; 2002). After considering the above Calcutta High Court decision and the Delhi High Court decision, it has held that *"With profound respect to the Delhi High Court decision, we are unable to agree…. We are, therefore, of the opinion that although the Assessing Officer must have satisfaction as required under section 273 of the Act, it is not necessary for him to record that satisfaction in writing before initiating penalty proceedings under section 273 of the Act."*.

40.5 In view of conflicting judicial opinion on this issue, it was necessary to make legislative intervention and settle the matter. Therefore, a new sub-section (1B) in section 271 of the Income-tax Act has been inserted. This sub-section unambiguously provide that where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment, and such order contains a direction for initiating of penalty proceedings under sub-section (1) of section 271, such an order of assessment or reassessment shall be deemed to constitute satisfaction of the assessing officer for initiating penalty proceedings under sub-section (1) of that section.

40.6 The proposed amendment has been given retrospective effect in order to protect the revenue's contention on this issue in pending cases. However, this retrospective effect will not prejudice taxpayers' right to agitate the levy of penalty on merits. Further, while no separate satisfaction is required to be recorded before initiating penalty proceedings, it is still incumbent upon the assessing officer to record his satisfaction before levying the penalty. Accordingly, there is neither violation of the principle of natural justice nor any prejudice caused to the taxpayer as a result of the retrospective amendment.

40.7 Similar amendment has also been carried out in the Wealth-tax Act.

40.8 **Applicability**: These amendments have been made applicable with retrospective effect from 1st April, 1989.

41. Authentication of documents/notices/letters

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

41.2 Centralized processing of returns and centralized issuance of notices using information technology is critical to quality taxpayers' service. In order to

successfully implement these schemes, it is necessary to dispense with the signature of the officer and to use a common seal. The introduction of such common seal in respect of issue of notices, intimations, etc., would be significant step in minimizing taxpayers interface with the Department. Further, it will considerably reduce the discretion of the individual officers and will result in better accountability and compliance.

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

41.4 **Applicability**: This amendment has been made applicable with effect from the 1st June, 2008.

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

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

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

42.3 In order to address these issues and to reduce litigation, a new section 292BB in the Income-tax Act has been inserted and the provision of sub-section (2) of section 143 has been amended.

42.4 New Section 292BB provides that where an assessee has appeared in any proceeding or cooperated in any inquiry related to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act has been duly served upon him in time in accordance with the relevant provision of the Act. Further, such

assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was, -

(a) not served upon him; or

(b) not served upon him in time; or

(c) served upon him in an improper manner.

42.5 However, the provision of this section shall not apply where the assessee has raised such objection before the completion of the assessment or reassessment. Similar amendment has also been carried out in the Wealth-tax Act.

42.6 Further, clause (ii) of sub-section (2) of section 143 of Income-tax Act has been amended to provide that the notice under sub-section (2) of section 143 shall be served on the assessee within a period of six months from the end of the financial year in which the return is furnished.

42.7 **Applicability**: This amendment has been made applicable with effect from 1st April, 2008. This means that the provision of new section 292BB shall apply in all proceedings which are pending on 1st April, 2008.

42.8 Similarly the amended provision of sub-section (2) of section 143 shall apply to all such returns (irrespective of the assessment year to which the returns pertain) where notice under sub-section (2) of section 143 can still be issued on 1st April 2008 under the pre-amended provision.

42.9 For example, assessee "A" files his tax return on 31st March 2007, assessee "B" files his tax return on 15th April 2007 and assessee "C" files his tax return on 16th October 2007. As on 1st April, 2008 notice under the pre-amended provision of sub-section (2) of section 143 could not have been issued in case of "A" and could have been issued in cases of "B" and "C". Hence, the new provision shall apply for returns filed by "B" and "C" but not for return filed by "A". In cases of returns filed by "B" and "C", the notice under sub-section (2) of section 143 can be served on the assessee on or before 31st September 2008. Any notice served on assessee in these two cases, after this date, will not be valid.

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

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

43.2 Section 292C of the Income-tax Act has been amended so as to extend this presumption to –

(i) books of account, other documents, etc., found in the possession or control of any person in the course of a survey operation; (This amendment has been made applicable with retrospective effect from 1st June, 2002.)

(ii) Books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 132A. (This amendment has been made applicable with retrospective effect from 1st October, 1975.)

43.3 Applicability: As indicated against each amendment.

43.4 Similar amendment has also been carried out under section 42D of the Wealth-tax Act to extend this presumption to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 37B of the Wealth-tax Act.

43.5 Applicability: This amendment has been made applicable with retrospective effect from 1st October, 1975.

44. Rationalization of provision of Securities Transaction Tax

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

44.2 Section 98 and 99 of Chapter VII of the Finance Act, 2004 has now been amended so as to provide that -

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

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

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

44.3 Applicability: This amendment has been made applicable with effect from 1st June, 2008.

44.4 Earlier, the amount of STT paid was allowed as rebate under section 88E of the Income-tax Act. This rebate was allowed when the income from taxable securities transactions was included under the head ‘profits and gains of business or profession’.

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

44.6 Applicability: This amendment has been made applicable with effect from 1st April, 2008.

44.7 Further consequential amendment has been made in section 40 by omitting sub-clause (ib) of clause (a), which provides that any sum paid on account of STT under chapter VII of Finance (No. 2) Act, 2004 shall not be allowed as deduction.

44.8 Applicability: This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

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

44.10 Applicability: This amendment has been made applicable with effect from 1st April, 2009 and accordingly applies in relation to assessment year 2009-10 and subsequent assessment years.

45. Commodities Transaction Tax

45.1 Chapter VII of the Finance Act, 2008 has introduced a new tax called Commodities Transaction Tax (CTT) to be levied on taxable commodities transactions entered in a recognized association.

45.2 'Taxable commodities transaction' has been defined to mean a transaction of purchase or sale in a recognized association of –

(i) option in goods; or

(ii) option in commodity derivative; or

(iii) any other commodity derivative.

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

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

	derivative		

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

45.5 **Applicability**: This tax will be levied from the date on which Chapter VII of the Finance Bill, 2008 comes into force by way of notification in the official Gazette by the Central Government.

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

45.7 **Applicability**: This amendment in section 36 of the Income-tax Act has been made applicable with effect from the 1st day of April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

46. Discontinuation of Banking Cash Transaction Tax

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

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

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

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

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

46.4 **Applicability**: This amendment has been made applicable with effect from 1st April, 2009.

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

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

47.2 Rule 3 of Part A of the Fourth Schedule provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf.

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

47.4 With a view to provide further time to Employees' Provident Fund Organization (EPFO) to decide on the pending applications seeking exemption under section 17 of the EPF&MP Act, The proviso to sub-rule (1) of rule 3 of Part A has been amended so as to extend the time limit by one more year i.e., from 31st day of March, 2008 to 31st day of March, 2009.

47.5 **Applicability**: This amendment has been made applicable with effect from 1st April 2008.

(V.Vizay Babu)
Under Secretary to the Government of India
[F.No. 142/09/2009-TPL]

Copy to :

1. PS to FM/OSD to FM/ OSD to MoS(R)
2. PS to Secretary(Revenue)/ OSD to Advisor to FM.
3. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
4. All Chief Commissioners/Directors General of Income-tax – with a request to circulate amongst all officers in their regions/charges.
5. DGIT(Systems)/DGIT(Vigilance)/DGIT(Admn.)/DG(NADT)/DGIT(L&R)
6. Media Co-ordinator and Official spokesperson of CBDT with a request to post it on the Departmental website.
7. DIT(IT)/DIT(RSP&PR)/DIT(Audit)/DIT(Vig.)/DIT(Systems)/DIT(O&MS)/ DIT(Spl.Inv.).
8. The Comptroller and Auditor General of India (30 copies).
9. Joint Secretary and Legal Advisor, Ministry of law and Justice, New Delhi.
10. The Institute of Chartered Accountants of India, IP Estate, New Delhi.
11. All Chambers of Commerce as per usual mailing list.

(V.Vizay Babu)
Under Secretary to the Government of India

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