

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 10th September, 2004/Bhadra 19, 1926 (Saka)

The following Act of Parliament received the assent of the President on the 10th September, 2004, and is hereby published for general information:—

THE FINANCE (No. 2) ACT, 2004

No. 23 OF 2004

[10th September, 2004.]

An Act to give effect to the financial proposals of the Central Government for the financial year 2004-2005.

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

CHAPTER I

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Finance (No. 2) Act, 2004.

(2) Save as otherwise provided in this Act, sections 2 to 65 shall be deemed to have come into force on the 1st day of April, 2004.

CHAPTER II

RATES OF INCOME-TAX

2. Income-tax.—(1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2004, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) shall be increased by a surcharge for purposes of the Union calculated in each case in the manner provided therein.

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

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

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

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

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

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

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

(3) In cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, the tax chargeable shall be determined as provided in that Chapter or that section, and with reference to the rates imposed by sub-section (1) or the rates as specified in that Chapter or section, as the case may be:

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

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

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such income-tax where the total income exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such income-tax;

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

(4) In cases in which tax has to be charged and paid under section 115-O or sub-section (2) of section 115R of the Income-tax Act, the tax shall be charged and paid at the rate as specified in those sections and shall be increased by a surcharge for purposes of the Union, calculated at the rate of two and one-half per cent. of such tax.

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

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

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

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such tax;

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

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

(8) In cases in which tax has to be collected under section 206C of the Income-tax Act, the collection shall be made at the rates specified in that section and shall be increased by a surcharge for purposes of the Union, calculated,

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of such tax where the amount or the aggregate of such amounts collected, and subject to the collection, exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such tax;

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

(9) Subject to the provisions of sub-section (10), in cases in which income-tax has to be charged under sub-section (4) of section 172 or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the Income-tax Act or deducted from, or paid on, income chargeable under the head "Salaries" under section 192 of the said Act or in which the "advance tax" payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, "advance tax" shall be so charged, deducted or computed at the rate or rates specified in Part III of the First Schedule and such tax as reduced by the rebate of income-tax calculated under Chapter VIII-A of the said Act shall be increased by a surcharge for purposes of the Union, calculated in each case in the manner provided therein:

Provided that in cases to which the provisions of Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act apply, "advance tax" shall

be computed with reference to the rates imposed by this sub-section or the rates as specified in that Chapter or section, as the case may be:

Provided further that the amount of "advance tax" computed in accordance with the provisions of section 111A or section 112 of the Income-tax Act shall be increased by a surcharge for purposes of the Union as provided in Paragraph A, B, C, D or E, as the case may be, of Part III of the First Schedule:

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

(a) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent. of "advance tax" where the total income exceeds eight hundred and fifty thousand rupees;

(b) in the case of every co-operative society, firm, local authority and company, at the rate of two and one-half per cent. of such "advance tax";

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

(10) In cases to which, Paragraph A of Part III of the First Schedule applies, where the assessee has, in the previous year or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any net agricultural income exceeding five thousand rupees, in addition to total income and the total income exceeds fifty thousand rupees, then, in charging income-tax under sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or in computing the "advance tax" payable under Chapter XVII-C of the said Act, at the rate or rates in force,—

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

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

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

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

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

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

(11) The amount of income-tax as specified in sub-sections (4) to (10) and as increased by a surcharge for purposes of the Union calculated in the manner provided therein, shall be further increased by an additional surcharge for purposes of the Union, to be called the "Education Cess on Income-tax", so as to fulfil the commitment of the Government to provide and finance universalised quality basic education, calculated at the rate of two per cent. of such income-tax and surcharge.

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

(a) "domestic company" means an Indian company or any other company which, in respect of its income liable to income-tax under the Income-tax Act for the assessment year commencing on the 1st day of April, 2004, has made the prescribed arrangements for the declaration and payment within India of the dividends (including dividends on preference shares) payable out of such income;

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

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

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

CHAPTER III

DIRECT TAXES

Income-tax

3. Amendment of section 2.—In section 2 of the Income-tax Act, in clause (24), after sub-clause (xii), the following sub-clause shall be inserted with effect from the 1st day of April, 2005, namely:—

“(xiii) any sum referred to in clause (v) of sub-section (2) of section 56;”.

4. Amendment of section 7.—In section 7 of the Income-tax Act, after clause (ii), the following clause shall be inserted at the end, namely:—

“(iii) the contribution made, by the Central Government in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD.”.

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

(a) in clause (4), in sub-clause (ii), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2006, namely:—

“Provided further that nothing contained in this sub-clause shall apply to any income by way of interest paid or credited on or after the 1st day of April, 2005 to the Non-Resident (External) Account of such individual;”;

(b) in clause (6BB), for the words, figures and letters “an agreement entered after the 31st day of March, 1997 but before the 1st day of April, 1999 and approved by the Central Government in this behalf”, the words, figures and letters “an agreement entered into after the 31st day of March, 1997 but before the 1st day of April, 1999, or entered into after the 31st day of March, 2005 and approved by the Central Government in this behalf” shall be substituted with effect from the 1st day of April, 2006;

(c) in clause (15),—

(A) after sub-clause (iiib), the following sub-clause shall be inserted with effect from the 1st day of April, 2005, namely:—

“(iiic) interest payable to the European Investment Bank, on a loan granted by it in pursuance of the framework-agreement for financial co-operation entered into on the 25th day of November, 1993 by the Central Government with that Bank;”;

(B) in sub-clause (iv), in item (fa), after the words “by a scheduled bank”, the words, figures and letters “before the 1st day of April, 2005” shall be inserted with effect from the 1st day of April, 2006;

(d) in clause (15A), before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2006, namely:—

“Provided that nothing contained in this clause shall apply to any such agreement entered into on or after the 1st day of April, 2005.”;

(e) after clause (18), the following clause shall be inserted with effect from the 1st day of April, 2005, namely:—

“(19) family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para-military forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed;”;

(f) in clause (23FB), with effect from the 1st day of October, 2004,—

(i) in *Explanation 1*, for clause (c), the following clause shall be substituted, namely:—

(c) “venture capital undertaking” means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the

Securities and Exchange Board of India Act, 1992 (15 of 1992) and notified as such in the Official Gazette by the Board for the purposes of this clause;”;

(ii) *Explanation 2* shall be omitted;

(g) in clause (23G), before *Explanation 1*, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that the income, by way of dividends, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income-tax payable under section 115JB.”;

(h) after clause (36), the following shall be inserted with effect from the 1st day of April, 2005, namely:—

“(37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head “Capital gains” arising from the transfer of agricultural land, where—

(i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation.—For the purposes of this clause, the expression “compensation or consideration” includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority;

(38) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund where—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter.

Explanation.—For the purposes of this clause, “equity oriented fund” means a fund—

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent. of the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund specified under clause (23D):

Provided that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.’.

6. Amendment of section 12AA.—In section 12AA of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted at the end, with effect from the 1st day of October, 2004, namely:—

“(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.”.

7. Amendment of section 17.—In section 17 of the Income-tax Act, in clause (I), after sub-clause (vii), the following sub-clause shall be inserted, namely:—

“(viii) the contribution made by the Central Government in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;”.

8. Amendment of section 32.—In section 32 of the Income-tax Act, in sub-section (1), in clause (iia), in the first proviso, in clause (B), for the words “twenty-five per cent.”, the words “ten per cent.” shall be substituted with effect from the 1st day of April, 2005.

9. Amendment of section 33AC.—In section 33AC of the Income-tax Act, in sub-section (1), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided also that no deduction shall be allowed under this section for any assessment year commencing on or after the 1st day of April, 2005.”.

10. Amendment of section 35AC.—In section 35AC of the Income-tax Act, for sub-sections (4) and (5), the following sub-sections shall be substituted with effect from the 1st day of October, 2004, namely:—

“(4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently—

(i) that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted; or

(ii) such association or institution, to which approval has been granted, has not furnished to the National Committee, after the end of each financial year, a report in such form and setting forth such particulars and within such time as may be prescribed,

the National Committee may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval:

Provided that a copy of the order withdrawing the approval shall be forwarded by the National Committee to the Assessing Officer having jurisdiction over the concerned association or institution.

(5) Where any project or scheme has been notified as an eligible project or scheme under clause (b) of the *Explanation*, and subsequently—

(i) the National Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which such project or scheme was notified; or

(ii) a report in respect of such eligible project or scheme has not been furnished after the end of each financial year, in such form and setting forth such particulars and within such time as may be prescribed,

such notification may be withdrawn in the same manner in which it was issued:

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or local authority, as the case may be:

Provided further that a copy of the notification by which the notification of the eligible project or scheme is withdrawn shall be forwarded to the Assessing Officer having jurisdiction over the concerned association, institution, public sector company or local authority, as the case may be, carrying on such eligible project or scheme.”.

11. Amendment of section 40.—In section 40 of the Income-tax Act, in clause (a), for sub-clause (i), the following shall be substituted with effect from the 1st day of April, 2005, namely:—

“(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,—

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200:

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

Explanation.—For the purposes of this sub-clause,—

(A) “royalty” shall have the same meaning as in *Explanation 2* to clause (vi) of sub-section (1) of section 9;

(B) “fees for technical services” shall have the same meaning as in *Explanation 2* to clause (vii) of sub-section (1) of section 9;

(ia) any interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200:

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

Explanation.—For the purposes of this sub-clause,—

(i) “commission or brokerage” shall have the same meaning as in clause (i) of the *Explanation* to section 194H;

(ii) “fees for technical services” shall have the same meaning as in *Explanation 2* to clause (vii) of sub-section (1) of section 9;

(iii) “professional services” shall have the same meaning as in clause (a) of the *Explanation* to section 194J;

(iv) “work” shall have the same meaning as in *Explanation III* to section 194C;

(ib) any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004;’.

12. Amendment of section 48.—In section 48 of the Income-tax Act, after the fourth proviso and before the *Explanation*, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

‘Provided also that no deduction shall be allowed in computing the income chargeable under the head “Capital gains” in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.’.

13. Amendment of section 56.—In section 56 of the Income-tax Act, in sub-section (2), after clause (iv), the following clause shall be inserted at the end, with effect from the 1st day of April, 2005, namely:—

(v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, the whole of such sum:

Provided that this clause shall not apply to any sum of money received—

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer.

Explanation.—For the purposes of this clause, “relative” means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) brother or sister of either of the parents of the individual;

(v) any lineal ascendant or descendant of the individual;

(vi) any lineal ascendant or descendant of the spouse of the individual;

(vii) spouse of the person referred to in clauses (ii) to (vi).’.

14. Amendment of section 71.—In section 71 of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2005, namely:—

‘(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head “Profits and gains of business or profession” is a loss and the assessee has income assessable under the head “Salaries”, the assessee shall not be entitled to have such loss set off against such income.’.

15. Insertion of new section 80CCD.—After section 80CCC of the Income-tax Act, the following section shall be inserted, namely:—

‘80CCD. Deduction in respect of contribution to pension scheme of Central Government.—(1) Where an assessee, being an individual employed by the Central Government on or after the 1st day of January, 2004, has in the previous year paid or deposited any amount in his account under a pension scheme notified or as may be notified by the Central Government, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount so paid or deposited as does not exceed ten per cent. of his salary in the previous year.

(2) Where, in the case of an assessee referred to in sub-section (1), the Central Government makes any contribution to his account referred to in that sub-section, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the Central Government as does not exceed ten per cent. of his salary in the previous year.

(3) Where any amount standing to the credit of the assessee in his account referred to in sub-section (1), in respect of which a deduction has been allowed under that sub-section or sub-section (2), together with the amount accrued thereon, if any, is received by the assessee or his nominee, in whole or in part, in any previous year,—

(a) on account of closure or his opting out of the pension scheme referred to in sub-section (1); or

(b) as pension received from the annuity plan purchased or taken on such closure or opting out,

the whole of the amount referred to in clause (a) or clause (b) shall be deemed to be the income of the assessee or his nominee, as the case may be, in the previous year in which such amount is received, and shall accordingly be charged to tax as income of that previous year.

(4) Where any amount paid or deposited by the assessee has been allowed as a deduction under sub-section (1), no rebate with reference to such amount shall be allowed under section 88.

Explanation.—For the purposes of this section, “salary” includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.’

16. Amendment of section 80DD.—In section 80DD of the Income-tax Act, in the *Explanation*, with effect from the 1st day of April, 2005,—

(a) in clause (c), after the figures “1995”, occurring at the end, the words, brackets, letters and figures ‘and includes “autism”, “cerebral palsy” and “multiple disability” referred to in clauses (a), (c) and (h) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999)’ shall be inserted;

(b) in clause (e), after the figures “1995”, occurring at the end, the words, brackets, letters and figures ‘or such other medical authority as may, by notification, be specified by the Central Government for certifying “autism”, “cerebral palsy”, “multiple disabilities”, “person with disability” and “severe disability” referred to in clauses (a), (c), (h), (j) and (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999)’ shall be inserted;

(c) in clause (f), after the figures “1995”, occurring at the end, the words, brackets, letter and figures “or clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999)” shall be inserted;

(d) for clause (g), the following clause shall be substituted, namely:—

‘(g) “person with severe disability” means—

(i) a person with eighty per cent. or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996); or

(ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);’

17. Amendment of section 80-IA.—In section 80-IA of the Income-tax Act, with effect from the 1st day of April, 2005,—

(a) in sub-section (2), after the words “generates power or commences transmission or distribution of power”, the words “or undertakes substantial renovation and modernisation of the existing transmission or distribution lines” shall be inserted;

(b) in sub-section (3),—

(A) in the opening portion, for the words, brackets and figures “undertaking referred to in clause (iv)”, the words, brackets and figures “undertaking referred to in clause (ii) or clause (iv)” shall be substituted;

(B) after clause (ii) and before *Explanation 1*, the following proviso shall be inserted, namely:—

“Provided that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003 (36 of 2003), whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganisation of the Board under Part XIII of that Act.”;

(c) in sub-section (4),—

(A) in clause (ii), for the figures, letters and words “31st day of March, 2004”, the figures, letters and words “31st day of March, 2005” shall be substituted;

(B) in clause (iv), after sub-clause (b), the following shall be inserted, namely:—

‘(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2006.

Explanation.—For the purposes of this sub-clause, “substantial renovation and modernisation” means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent. of the book value of such plant and machinery as on the 1st day of April, 2004.’

18. Amendment of section 80-IB.—In section 80-IB of the Income-tax Act, with effect from the 1st day of April, 2005,—

(a) in sub-section (1), for the brackets, figures, word and letter “(11) and (11A)”, the brackets, figures, letters and word “(11), (11A) and (11B)” shall be substituted;

(b) in sub-section (4), after the third proviso, the following provisos shall be inserted, namely:—

‘Provided also that in the case of an industrial undertaking in the State of Jammu and Kashmir, the provisions of the first proviso shall have effect as if for the figures, letters and words “31st day of March, 2004”, the figures, letters and words “31st day of March, 2005” had been substituted:

Provided also that no deduction under this sub-section shall be allowed to an industrial undertaking in the State of Jammu and Kashmir which is engaged in the manufacture or production of any article or thing specified in Part C of the Thirteenth Schedule.’;

(c) in sub-section (8A), in clause (iii), for the figures, letters and words “1st day of April, 2004”, the figures, letters and words “1st day of April, 2005” shall be substituted;

(d) for sub-section (10), the following shall be substituted, namely:—

“(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent. of the profits derived in the previous year relevant to any assessment year from such housing project if,—

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,—

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.—For the purposes of this clause,—

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing contained in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent. of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.”;

(e) in sub-section (11A), for the words "an undertaking deriving profit from", the words "an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or from" shall be substituted;

(f) after sub-section (11A), the following sub-section shall be inserted, namely:—

“(11B) The amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area shall be hundred per cent. of the profits and gains of such business for a period of five consecutive assessment years, beginning with the initial assessment year, if—

(i) such 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;

(ii) the hospital has at least one hundred beds for patients;

(iii) the construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority; and

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

Explanation.—For the purposes of this sub-section, a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority.”;

(g) in sub-section (14),—

(A) clauses (a) and (aa) shall be re-lettered as clauses (aa) and (ab) respectively, and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:—

“(a) “built-up area” means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common areas shared with other residential units;”;

(B) in clause (c),—

(I) in sub-clause (iv), after the words “undertaking engaged”, the words “in the business of processing, preservation and packaging of fruits or vegetables or” shall be inserted;

(II) after sub-clause (vi), the following sub-clause shall be inserted, namely:—

“(vii) in the case of an undertaking engaged in operating and maintaining a hospital in a rural area, means the assessment year relevant to the previous year in which the undertaking begins to provide medical services;”.

19. Amendment of section 80U.—In section 80U of the Income-tax Act, for the *Explanation*, the following *Explanation* shall be substituted with effect from the 1st day of April, 2005, namely:—

Explanation.—For the purposes of this section,—

(a) “disability” shall have the meaning assigned to it in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and

includes “autism”, “cerebral palsy” and “multiple disabilities” referred to in clauses (a), (c) and (h) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);

(b) “medical authority” means the medical authority as referred to in clause (p) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), or such other medical authority as may, by notification, be specified by the Central Government for certifying “autism”, “cerebral palsy”, “multiple disabilities”, “person with disability” and “severe disability” referred to in clauses (a), (c), (h), (j) and (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);

(c) “person with disability” means a person referred to in clause (t) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), or clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999);

(d) “person with severe disability” means—

(i) a person with eighty per cent. or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996); or

(ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999).’

20. Amendment of section 87.—In section 87 of the Income-tax Act, with effect from the 1st day of April, 2005,

(a) in sub-section (1), for the words, figures and letters “sections 88, 88A, 88B and 88C”, the words, figures and letters “sections 88, 88A, 88B, 88C, 88D and 88E” shall be substituted;

(b) in sub-section (2), after the words, figures and letter “or section 88C”, the words, figures and letters “or section 88D or section 88E” shall be inserted.

21. Amendment of section 88.—In section 88 of the Income-tax Act, in sub-section (2), in clause (xv), in sub-clause (c), after item (6), the following item shall be inserted with effect from the 1st day of April, 2005, namely:—

“(6A) the assessee’s employer where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or”.

22. Insertion of new section 88D.—After section 88C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

“88D. Rebate of income-tax in case of certain individuals.—An assessee, being an individual resident in India,—

(a) whose total income does not exceed one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent. of such income-tax;

(b) whose total income exceeds one hundred thousand rupees and the income-tax payable on such total income (as computed before allowing the deductions under this Chapter) exceeds the amount by which such total income is in excess of one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax on his total income, of an amount equal to the amount by which the income-tax payable on such total income is in excess of the amount by which the total income exceeds one hundred thousand rupees.”.

23. Insertion of new section 88E.—After section 88D of the Income-tax Act, as so inserted, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

“88E. Rebate in respect of securities transaction tax.—(1) Where the total income of an assessee in a previous year includes any income, chargeable under the head “Profits and gains of business or profession”, arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions, computed in the manner provided in sub-section (2), of an

amount equal to the securities transaction tax paid by him in respect of the taxable securities transactions entered into in the course of his business during that previous year:

Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes along with the return of income, evidence of payment of securities transaction tax in the prescribed form:

Provided further that the amount of deduction under this sub-section shall not exceed the amount of income-tax on such income computed in the manner provided in sub-section (2).

(2) For the purposes of sub-section (1), the amount of income-tax on the income arising from the taxable securities transactions, referred to in that sub-section, shall be equal to the amount calculated by applying the average rate of income-tax on such income.

Explanation.—For the purposes of this section, the expressions “taxable securities transaction” and “securities transaction tax” shall have the same meanings respectively assigned to them under Chapter VII of the Finance (No. 2) Act, 2004.’

24. Amendment of section 90.—In section 90 of the Income-tax Act, in the *Explanation*, the words and brackets “,where such foreign company has not made the prescribed arrangement for declaration and payment within India, of the dividends (including dividends on preference shares) payable out of its income in India” shall be omitted and shall be deemed to have been omitted with effect from the 1st day of April, 1962.

25. Amendment of section 94.—In section 94 of the Income-tax Act, with effect from the 1st day of April, 2005,

(a) in sub-section (7), for clause (b), the following clause shall be substituted, namely:—

“(b) such person sells or transfers—

(i) such securities within a period of three months after such date; or

(ii) such unit within a period of nine months after such date;”;

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

“(8) Where—

(a) any person buys or acquires any units within a period of three months prior to the record date;

(b) such person is allotted additional units without any payment on the basis of holding of such units on such date;

(c) such person sells or transfers all or any of the units referred to in clause (a) within a period of nine months after such date, while continuing to hold all or any of the additional units referred to in clause (b),

then, the loss, if any, arising to him on account of such purchase and sale of all or any of such units shall be ignored for the purposes of computing his income chargeable to tax and notwithstanding anything contained in any other provision of this Act, the amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units referred to in clause (b) as are held by him on the date of such sale or transfer.”;

(c) in the *Explanation*, for clause (aa), the following clause shall be substituted, namely:—

“(aa) “record date” means such date as may be fixed by—

(i) a company for the purposes of entitlement of the holder of the securities to receive dividend; or

(ii) a Mutual Fund or the Administrator of the specified undertaking or the specified company as referred to in the *Explanation* to clause (35) of section 10, for the purposes of entitlement of the holder of the units to receive income, or additional unit without any consideration, as the case may be;’.

26. Insertion of new section 111A.—After section 111 of the Income-tax Act, the following section shall be inserted, with effect from the 1st day of April, 2005, namely:—

‘111A. Tax on short-term capital gains in certain cases.—(1) Where the total income of an assessee includes any income chargeable under the head “Capital gains”, 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 and—

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter, the tax payable by the assessee on the total income shall be the aggregate of—

(i) the amount of income-tax calculated on such short-term capital gains at the rate of ten per cent.; and

(ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee:

Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate of ten per cent.

(2) Where the gross total income of an assessee includes any short term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

(3) Where the total income of an assessee includes any short-term capital gains referred to in sub-section (1), the rebate under section 88 shall be allowed from the income-tax on the total income as reduced by such capital gains.

Explanation.— For the purposes of this section, the expression “equity oriented fund” shall have the meaning assigned to it in the *Explanation* to clause (38) of section 10.’

27. Amendment of section 115AD.—In section 115AD of the Income-tax Act, in sub-section (1), in clause (ii), the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that the amount of income-tax calculated on the income by way of short-term capital gains referred to in section 111A shall be at the rate of ten per cent.”

28. Amendment of section 115JB.—In section 115JB of the Income-tax Act, in the *Explanation*, with effect from the 1st day of April, 2005,—

(a) in clause (f), for the word and figures “section 10”, the words, figures, brackets and letter “section 10 [other than the provisions contained in clause (23G) thereof]” shall be substituted;

(b) in clause (ii), for the words and figures “provisions of section 10”, the words, figures, brackets and letter “provisions of section 10 [other than the provisions contained in clause (23G) thereof]” shall be substituted.

29. Amendment of section 115R.—In section 115R of the Income-tax Act, in sub-section (2),—

(a) for the words “at the rate of twelve and one-half per cent.”, the following shall be substituted with effect from the 9th day of July, 2004, namely:—

“at the rate of—

(i) twelve and one-half per cent. on income distributed to any person being an individual or a Hindu undivided family; and

(ii) twenty per cent. on income distributed to any other person.”;

(b) in the proviso, the words, figures and letters “for a period of one year commencing from the 1st day of April, 2003” shall be omitted.

30. Insertion of new Chapter XII-G.—After Chapter XII-F of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of April, 2005, namely:—

‘CHAPTER XII-G

SPECIAL PROVISIONS RELATING TO INCOME OF SHIPPING COMPANIES

A.—Meaning of certain expressions

115V. Definitions.—In this Chapter, unless the context otherwise requires,—

(a) “bareboat charter” means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;

(b) “bareboat charter-cum-demise” means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered;

(c) “Director-General of Shipping” means the Director-General of Shipping appointed by the Central Government under sub-section (1) of section 7 of the Merchant Shipping Act, 1958 (44 of 1958);

(d) “factory ship” includes a vessel providing processing services in respect of processing of the fishing produce;

(e) “fishing vessel” shall have the meaning assigned to it in clause (12) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958);

(f) “pleasure craft” means a ship of a kind whose primary use is for the purposes of sport or recreation;

(g) “qualifying company” means a company referred to in section 115VC;

(h) “qualifying ship” means a ship referred to in section 115VD;

(i) “seagoing ship” means a ship if it is certified as such by the competent authority of any country;

(j) “tonnage income” means the income of a tonnage tax company computed in accordance with the provisions of this Chapter;

(k) “tonnage tax activities” means the activities referred to in sub-sections (2) and (5) of section 115V-I;

(l) “tonnage tax company” means a qualifying company in relation to which tonnage tax option is in force;

(m) “tonnage tax scheme” means a scheme for computation of profits and gains of business of operating qualifying ships under the provisions of this Chapter.

B.—Computation of tonnage income from business of operating qualifying ships

115VA. Computation of profits and gains from the business of operating qualifying ships.—Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of a company, the income from the business of operating qualifying ships, may, at its option, be computed in accordance with the provisions of this Chapter and such income shall be deemed to be the profits and gains of such business chargeable to tax under the head “Profits and gains of business or profession”.

115VB. Operating ships.—For the purposes of this Chapter, a company shall be regarded as operating a ship if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered in by it in an arrangement such as slot charter, space charter or joint charter:

Provided that a company shall not be regarded as the operator of a ship which has been chartered out by it on bareboat charter-cum-demise terms or on bareboat charter terms for a period exceeding three years.

115VC. Qualifying company.—For the purposes of this Chapter, a company is a qualifying company if—

(a) it is an Indian company;

(b) the place of effective management of the company is in India;

(c) it owns at least one qualifying ship; and

(d) the main object of the company is to carry on the business of operating ships.

Explanation.—For the purposes of this section, “place of effective management of the company” means—

(A) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(B) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

115VD. Qualifying ship.—For the purposes of this Chapter, a ship is a qualifying ship if—

(a) it is a sea going ship or vessel of fifteen net tonnage or more;

(b) it is a ship registered under the Merchant Shipping Act, 1958 (44 of 1958), or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958; and

(c) a valid certificate in respect of such ship indicating its net tonnage is in force,

but does not include—

(i) a seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;

(ii) fishing vessels;

(iii) factory ships;

(iv) pleasure crafts;

(v) harbour and river ferries;

(vi) off-shore installations;

(vii) dredgers;

(viii) a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.

115VE. Manner of computation of income under tonnage tax scheme.—(1) A tonnage tax company engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.

(2) The business of operating qualifying ships giving rise to income referred to in sub-section (1) of section 115V-I shall be considered as a separate business (hereafter in this Chapter referred to as the tonnage tax business) distinct from all other activities or business carried on by the company.

(3) The profits referred to in sub-section (1) shall be computed separately from the profits and gains from any other business.

(4) The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.

(5) Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

115VF. Tonnage income.—Subject to the other provisions of this Chapter, the tonnage income shall be computed in accordance with section 115VG and the income so computed shall be deemed to be the profits chargeable under the head “Profits and gains of business or profession” and the relevant shipping income referred to in sub-section (1) of section 115V-I shall not be chargeable to tax.

115VG. Computation of tonnage income.—(1) The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed in accordance with the provisions of sub-sections (2) and (3).

(2) For the purposes of sub-section (1), the tonnage income of each qualifying ship shall be the daily tonnage income of each such ship multiplied by—

(a) the number of days in the previous year; or

(b) the number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year, as the case may be.

(3) For the purposes of sub-section (2), the daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

TABLE		
Qualifying ship having income	Amount of daily tonnage	net tonnage
(1)	(2)	
up to 1,000	Rs. 46 for each 100 tons	

exceeding 1,000 but not more than 10,000	Rs. 460 <i>plus</i> Rs. 35 for each 100 tons exceeding 1,000 tons
exceeding 10,000 but not more than 25,000	Rs. 3,610 <i>plus</i> Rs. 28 for each 100 tons exceeding 10,000 tons
exceeding 25,000	Rs. 7,810 <i>plus</i> Rs.19 for each 100 tons exceeding 25,000 tons.

(4) For the purposes of this Chapter, the tonnage shall mean the tonnage of a ship indicated in the certificate referred to in section 115VX and includes the deemed tonnage computed in the prescribed manner.

Explanation.—For the purposes of this sub-section, “deemed tonnage” shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.

(5) The tonnage shall be rounded off to the nearest multiple of hundred tons and for this purpose any tonnage consisting of kilograms shall be ignored and thereafter if such tonnage is not a multiple of hundred, then, if the last figure in that amount is fifty tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of hundred and if the last figure is less than fifty tons, the tonnage shall be reduced to the next lower tonnage which is a multiple of hundred; and the tonnage so rounded off shall be the tonnage of the ship for the purposes of this section.

(6) Notwithstanding anything contained in any other provision of this Act, no deduction or set off shall be allowed in computing the tonnage income under this Chapter.

115VH. Calculation in case of joint operation, etc.—(1) Where a qualifying ship is operated by two or more companies by way of joint interest in the ship or by way of an agreement for the use of the ship and their respective shares are definite and ascertainable, the tonnage income of each such company shall be an amount equal to a share of income proportionate to its share of that interest.

(2) Subject to the provisions of sub-section (1), where two or more companies are operators of a qualifying ship, the tonnage income of each company shall be computed as if each had been the only operator.

115V-I. Relevant shipping income.—(1) For the purposes of this Chapter, the relevant shipping income of a tonnage tax company means—

(i) its profits from core activities referred to in sub-section (2);

(ii) its profits from incidental activities referred to in sub-section (5):

Provided that where the aggregate of all such incomes specified in clause (ii) exceeds one-fourth per cent. of the turnover from core activities referred to in sub-section (2), such excess shall not form part of the relevant shipping income for the purposes of this Chapter and shall be taxable under the other provisions of this Act.

(2) The core activities of a tonnage tax company shall be—

(i) its activities from operating qualifying ships; and

(ii) other ship-related activities mentioned as under:—

(A) shipping contracts in respect of—

(i) earning from pooling arrangements;

(ii) contracts of affreightment.

Explanation.—For the purposes of this sub-clause,—

(a) “pooling arrangement” means an agreement between two or more persons for providing services through a pool or operating one or more ships and sharing earnings or operating profits on the basis of mutually agreed terms;

(b) “contract of affreightment” means a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period;

(B) specific shipping trades, being—

(i) on-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board;

(ii) slot charters, space charters, joint charters, feeder services, container box leasing of container shipping.

(3) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, exclude any activity referred to in clause (ii) of sub-section (2) or prescribe the limit up to which such activities shall be included in the core activities for the purposes of this section.

(4) Every notification issued under this Chapter shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

(5) The incidental activities shall be the activities which are incidental to the core activities and which may be prescribed for the purpose.

(6) Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.

(7) Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company, or where any goods or services held for the purposes of any other business carried on by such tonnage tax company are transferred to the tonnage tax business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the relevant shipping income in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such income on such reasonable basis as he may deem fit.

Explanation.—For the purposes of this sub-section, “market value”, in relation to any goods or services, means the price that such goods or services would ordinarily fetch on sale in the open market.

(8) Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this Chapter, take the amount of income as may reasonably be deemed to have been derived therefrom.

Explanation.—For the purposes of this Chapter, in case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

115VJ. Treatment of common costs.—(1) Where a tonnage tax company also carries on any business or activity other than the tonnage tax business, common costs attributable to the tonnage tax business shall be determined on a reasonable basis.

(2) Where any asset, other than a qualifying ship, is not exclusively used for the tonnage tax business by the tonnage tax company, depreciation on such asset shall be allocated between its tonnage tax business and other business on a fair proportion to be determined by the Assessing Officer, having regard to the use of such asset for the purpose of the tonnage tax business and for the other business.

115VK. Depreciation.—(1) For the purposes of computing depreciation under clause (iv) of section 115VL, the depreciation for the first previous year of the tonnage tax scheme (hereafter in this section referred to as “the first previous year” shall be computed on the written down value of the qualifying ships as specified under sub-section (2).

(2) The written down value of the block of assets, being ships, as on the first day of the first previous year, shall be divided in the ratio of the book written down value of the qualifying ships (hereafter in this section referred to as the “qualifying assets”) and the book written down value of the non-qualifying ships (hereafter in this section referred to as the other assets).

(3) The block of qualifying assets as determined under sub-section (2) shall constitute a separate block of assets for the purposes of this Chapter.

(4) For the purposes of sub-section (2), the book written down value of the block of qualifying assets and the block of other assets shall be computed in the following manner, namely:—

(a) the book written down value of each qualifying asset and each other asset as on the first day of the previous year and which form part of the block of assets to be divided shall be determined by taking the book written down value of each asset appearing in the books of account as on the last day of the preceding previous year:

Provided that any change in the value of the assets consequent to their revaluation after the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President shall be ignored;

(b) the book written down value of all the qualifying assets and other assets shall be aggregated; and

(c) the ratio of the aggregate book written down value of the qualifying assets to the aggregate book written down value of the other assets shall be determined.

(5) Where an asset forming part of a block of qualifying assets begins to be used for purposes other than the tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of that block and shall be added to the block of other assets.

Explanation.—For the purposes of this sub-section, appropriate portion of the written down value allocable to the asset, which begins to be used for purposes other than the tonnage tax business, shall be an amount which bears the same proportion to the written down value of the block of qualifying assets as on the first day of the previous year as the book written down value of the asset beginning to be used for purposes other than tonnage tax business bears to the book written down value of all the assets forming the block of qualifying asset.

(6) Where an asset forming part of a block of other assets begins to be used for tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of the block of other assets and shall be added to the block of qualifying asset.

Explanation.—For the purposes of this sub-section, appropriate portion of written down value allocable to the asset which begins to be used for the tonnage tax business shall be an amount which bears the same proportion to the written down value of the block of other assets as on the first day of the previous year as the book written down value of the asset beginning to be used for tonnage tax business bears to the total book written down value of all the assets forming the block of other assets.

(7) For the purposes of computing depreciation under clause (iv) of section 115VL in respect of an asset mentioned in sub-sections (5) and (6), depreciation computed for the previous year shall be allocated in the ratio of the number of days for which the asset was used for the tonnage tax business and for purposes other than tonnage tax business.

Explanation 1.—For the removal of doubts, it is hereby declared that for the purposes of this Act, depreciation on the block of qualifying assets and block of other assets so created shall be allowed as if such written down value referred to in sub-section (2) had been brought forward from the preceding previous year.

Explanation 2.—For the purposes of this section, “book written down value” means the written down value as appearing in the books of account.

115VL. General exclusion of deduction and set off, etc.—Notwithstanding anything contained in any other provision of this Act, in computing the tonnage income of a tonnage tax company for any previous year (hereafter in this section referred to as the “relevant previous year”) in which it is chargeable to tax in accordance with this Chapter—

(i) sections 30 to 43B shall apply as if every loss, allowance or deduction referred to therein and relating to or allowable for any of the relevant previous years, had been given full effect to for that previous year itself;

(ii) no loss referred to in sub-sections (1) and (3) of section 70 or sub-sections (1) and (2) of section 71 or sub-section (1) of section 72 or sub-section (1) of section 72A, in so far as such loss relates to the business of operating qualifying ships of the company, shall be carried forward or set off where such loss relates to any of the previous years when the company is under the tonnage tax scheme;

(iii) no deduction shall be allowed under Chapter VI-A in relation to the profits and gains from the business of operating qualifying ships; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the tonnage tax business shall be computed as if the company has claimed and has been actually allowed the deduction in respect of depreciation for the relevant previous years.

115VM. Exclusion of loss.—(1) Section 72 shall apply in respect of any loss that have accrued to a company before its option for tonnage tax scheme and which are attributable to its tonnage tax business, as if

such losses had been set off against the relevant shipping income in any of the previous years when the company is under the tonnage tax scheme.

(2) The losses referred to in sub-section (1) shall not be available for set off against any income other than relevant shipping income in any previous year beginning on or after the company exercises its option under section 115VP.

(3) Any apportionment necessary to determine the losses referred to in sub-section (1) shall be made on a reasonable basis.

115VN. Chargeable gains from transfer of tonnage tax assets.—Any profits or gains arising from the transfer of a capital asset being an asset forming part of the block of qualifying assets shall be chargeable to income-tax in accordance with the provisions of section 45, read with section 50, and the capital gains so arising shall be computed in accordance with the provisions of sections 45 to 51:

Provided that for the purpose of computing such profits or gains, the provisions of section 50 shall have effect as if for the words “written down value of the block of assets”, the words “written down value of the block of qualifying assets” had been substituted.

Explanation.—For the purposes of this Chapter, “written down value of the block of qualifying assets” means the written down value computed in accordance with the provisions of sub-section (2) of section 115VK.

115V-O. Exclusion from provisions of section 115JB.—The book profit or loss derived from the activities of a tonnage tax company, referred to in sub-section (1) of section 115V-I, shall be excluded from the book profit of the company for the purposes of section 115JB.

C.—Procedure for option of tonnage tax scheme

115VP. Method and time of opting for tonnage tax scheme.—(1) A qualifying company may opt for the tonnage tax scheme by making an application to the Joint Commissioner having jurisdiction over the company in the form and manner as may be prescribed, for such scheme.

(2) The application under sub-section (1) may be made by any existing qualifying company at any time after the 30th day of September, 2004 but before the 1st day of January, 2005 (hereafter referred to as the “initial period”):

Provided that—

(i) a company incorporated after the initial period; or

(ii) a qualifying company incorporated before the initial period but which becomes a qualifying company for the first time after the initial period,

may make an application within three months of the date of its incorporation or the date on which it became a qualifying company, as the case may be.

(3) On receipt of an application for option for tonnage tax scheme under sub-section (1), the Joint Commissioner may call for such information or documents from the company as he thinks necessary in order to satisfy himself about the eligibility of the company and after satisfying himself about such eligibility of the company to make such option for tonnage tax scheme, he—

(i) shall pass an order in writing approving the option for tonnage tax scheme; or

(ii) shall, if he is not so satisfied, pass an order in writing refusing to approve the option for tonnage tax scheme,

and a copy of such order shall be sent to the applicant:

Provided that no order under clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(4) Every order granting or refusing the approval of the option for tonnage tax scheme under clause (i) or clause (ii), as the case may be, of sub-section (3) shall be passed before the expiry of one month from the end of the month in which the application was received under sub-section (1).

(5) Where an order granting approval is passed under sub-section (3), the provisions of this Chapter shall apply from the assessment year relevant to the previous year in which the option for tonnage tax scheme is exercised.

115VQ. Period for which tonnage tax option to remain in force.—(1) An option for tonnage tax scheme, after it has been approved under sub-section (3) of section 115VP, shall remain in force for a period of ten years

from the date on which such option has been exercised and shall be taken into account from the assessment year relevant to the previous year in which such option is exercised.

(2) An option for tonnage tax scheme shall cease to have effect from the assessment year relevant to the previous year in which—

(a) the qualifying company ceases to be a qualifying company;

(b) a default is made in complying with the provisions contained in section 115VT or section 115VU or section 115VV;

(c) the tonnage tax company is excluded from the tonnage tax scheme under section 115VZC;

(d) the qualifying company furnishes to the Assessing Officer, a declaration in writing to the effect that the provisions of this Chapter may not be made applicable to it,

and the profits and gains of the company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

115VR. Renewal of tonnage tax scheme.—(1) An option for tonnage tax scheme approved under sub-section (3) of section 115VP may be renewed within one year from the end of the previous year in which the option ceases to have effect.

(2) The provisions of sections 115VP and 115VQ shall apply in relation to a renewal of the option for tonnage tax scheme in the same manner as they apply in relation to the approval of option for tonnage tax scheme.

115VS. Prohibition to opt for tonnage tax scheme in certain cases.—A qualifying company, which, on its own, opts out of the tonnage tax scheme or makes a default in complying with the provisions of section 115VT or section 115VU or section 115VV or whose option has been excluded from tonnage tax scheme in pursuance of an order made under sub-section (1) of section 115VZC, shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.

D.—Conditions for applicability of tonnage tax scheme

115VT. Transfer of profits to Tonnage Tax Reserve Account.—(1) A tonnage tax company shall, subject to and in accordance with the provisions of this section, be required to credit to a reserve account (hereafter in this section referred to as the Tonnage Tax Reserve Account) an amount not less than twenty per cent. of the book profit derived from the activities referred to in clauses (i) and (ii) of sub-section (1) of section 115V-I in each previous year to be utilised in the manner laid down in sub-section (3):

Provided that a tonnage tax company may transfer a sum in excess of twenty per cent. of the book profit and such excess sum transferred shall also be utilised in the manner laid down in sub-section (3).

Explanation.—For the purposes of this section, “book profit” shall have the same meaning as in the *Explanation* to sub-section (2) of section 115JB so far as it relates to the income derived from the activities referred to in clauses (i) and (ii) of sub-section (1) of section 115V-I.

(2) Where the company has book profit from the business of operating qualifying ships and book loss from any other sources, and consequently, the company is not in a position to create the full or any part of the reserves under sub-section (1), the company shall create the reserves to the extent possible in that previous year and the shortfall, if any, shall be added to the amount of the reserves required to be created for the following previous year and such shortfall shall be deemed to be part of the reserve requirement of that following previous year:

Provided that to the extent the shortfall in creation of reserves during a particular previous year is carried forward to the following previous year under this sub-section, the company shall be considered as having created sufficient reserves for the first mentioned previous year:

Provided further that nothing contained in the first proviso shall apply in respect of the second year in case the shortfall in creation of reserves continues for two consecutive previous years.

(3) The amount credited to the Tonnage Tax Reserve Account under sub-section (1) shall be utilised by the company before the expiry of a period of eight years next following the previous year in which the amount was credited—

(a) for acquiring a new ship for the purposes of the business of the company; and

(b) until the acquisition of a new ship, for the purposes of the business of operating qualifying ships other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(4) Where any amount credited to the Tonnage Tax Reserve Account under sub-section (1),—

(a) has been utilised for any purpose other than that referred to in clause (a) or clause (b) of sub-section (3); or

(b) has not been utilised for the purpose specified in clause (a) of sub-section (3); or

(c) has been utilised for the purpose of acquiring a new ship as specified in clause (a) of sub-section (3), but such ship is sold or otherwise transferred, other than in any scheme of demerger by the company to any person at any time before the expiry of three years from the end of the previous year in which it was acquired,

an amount which bears the same proportion to the total relevant shipping income of the year in which such reserve was created, as the amount out of such reserve so utilised or not utilised bears to the total reserve created during that year under sub-section (1) shall be taxable under the other provisions of this Act—

(i) in a case referred to in clause (a), in the year in which the amount was so utilised; or

(ii) in a case referred to in clause (b), in the year immediately following the period of eight years specified in sub-section (3); or

(iii) in a case referred to in clause (c), in the year in which the sale or transfer took place:

Provided that the income so taxable under the other provisions of this Act shall be reduced by the proportionate tonnage income charged to tax in the year of creation of such reserves.

(5) Notwithstanding anything contained in any other provision of this Chapter, where the amount credited to the Tonnage Tax Reserve Account in accordance with sub-section (1) is less than the minimum amount required to be credited under sub-section (1), an amount which bears the same proportion to the total relevant shipping income, as the shortfall in credit to the reserves bears to the minimum reserve required to be credited under sub-section (1) shall not be taxable under the tonnage tax scheme and shall be taxable under the other provisions of this Act.

(6) If the reserve required to be created under sub-section (1) is not created for any two consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the failure to create the reserve under sub-section (1) had occurred.

Explanation.—For the purposes of this section, “new ship” includes a qualifying ship which, before the date of acquisition by the qualifying company was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India.

115VU. Minimum training requirement for tonnage tax company.—(1) A tonnage tax company, after its option has been approved under sub-section (3) of section 115VP, shall comply with the minimum training requirement in respect of trainee officers in accordance with the guidelines framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.

(2) The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines referred to in sub-section (1) for the previous year.

(3) If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the fifth consecutive previous year in which the failure to comply with the minimum training requirement under sub-section (1) had occurred.

115VV. Limit for charter in of tonnage.—(1) In the case of every company which has opted for tonnage tax scheme, not more than forty-nine per cent. of the net tonnage of the qualifying ships operated by it during any previous year shall be chartered in.

(2) The proportion of net tonnage referred to in sub-section (1) in respect of a previous year shall be calculated based on the average of net tonnage during that previous year.

(3) For the purposes of sub-section (2), the average of net tonnage shall be computed in such manner as may be prescribed in consultation with the Director-General of Shipping.

(4) Where the net tonnage of ships chartered in exceeds the limit under sub-section (1) during any previous year, the total income of such company in relation to that previous year shall be computed as if the option for tonnage tax scheme does not have effect for that previous year.

(5) Where the limit under sub-section (1) had exceeded in any two consecutive previous years, the option for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the limit had exceeded.

Explanation.—For the purposes of this section, the term “chartered in” shall exclude a ship chartered in by the company on bareboat charter-cum-demise terms.

115VW. Maintenance and audit of accounts.—An option for tonnage tax scheme by a tonnage tax company shall not have effect in relation to a previous year unless such company—

(i) maintains separate books of account in respect of the business of operating qualifying ships; and

(ii) furnishes, along with the return of income for that previous year, the report of an accountant, in the prescribed form duly signed and verified by such accountant.

Explanation.—For the purposes of this section, “accountant” shall have the same meaning as in the *Explanation* below sub-section (2) of section 288.

115VX. Determination of tonnage.—(1) For the purposes of this Chapter,—

(a) the tonnage of a ship shall be determined in accordance with the valid certificate indicating its tonnage;

(b) “valid certificate” means,—

(i) in case of ships registered in India—

(a) having a length of less than twenty-four metres, a certificate issued under the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958 (44 of 1958);

(b) having a length of twenty-four metres or more, an international tonnage certificate issued under the provisions of the Convention on Tonnage Measurement of Ships, 1969, as specified in the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958 (44 of 1958);

(ii) in case of ships registered outside India, a licence issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 (44 of 1958) specifying the net tonnage on the basis of Tonnage Certificate issued by the Flag State Administration where the ship is registered or any other evidence acceptable to the Director-General of Shipping produced by the ship owner while seeking permission for chartering in the ship.

E.—Amalgamation and demerger of shipping companies

115VY. Amalgamation.—Where there has been an amalgamation of a company with another company or companies, then, subject to the other provisions of this section, the provisions relating to the tonnage tax scheme shall, as far as may be, apply to the amalgamated company if it is a qualifying company:

Provided that where the amalgamated company is not a tonnage tax company, it shall exercise an option for tonnage tax scheme under sub-section (1) of section 115VP within three months from the date of the approval of the scheme of amalgamation:

Provided further that where the amalgamating companies are tonnage tax companies, the provisions of this Chapter shall, as far as may be, apply to the amalgamated company for such period as the option for tonnage tax scheme which has the longest unexpired period continues to be in force:

Provided also that where one of the amalgamating companies is a qualifying company as on the 1st day of October, 2004 and which has not exercised the option for tonnage tax scheme within the initial period, the provisions of this Chapter shall not apply to the amalgamated company and the income of the amalgamated company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

115VZ. Demerger.—Where in a scheme of demerger, the demerged company transfers its business to the resulting company before the expiry of the option for tonnage tax scheme, then, subject to the other provisions of this Chapter, the tonnage tax scheme shall, as far as may be, apply to the resulting company for the unexpired period if it is a qualifying company:

Provided that the option for tonnage tax scheme in respect of the demerged company shall remain in force for the unexpired period of the tonnage tax scheme if it continues to be a qualifying company.

F.—Miscellaneous

115VZA. Effect of temporarily ceasing to operate qualifying ships.—(1) A temporary cessation (as against permanent cessation) of operating any qualifying ship by a company shall not be considered as a cessation of operating of such qualifying ship and the company shall be deemed to be operating such qualifying ship for the purposes of this Chapter.

(2) Where a qualifying company continues to operate a ship, which temporarily ceases to be a qualifying ship, such ship shall not be considered as a qualifying ship for the purposes of this Chapter.

G.—Provisions of this Chapter not to apply in certain cases

115VZB. Avoidance of tax.—(1) Subject to the provisions of this Chapter, the tonnage tax scheme shall not apply where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme.

(2) For the purposes of sub-section (1), a transaction or arrangement shall be considered an abuse if the entering into or the application of such transaction or arrangement results, or would but for this section have resulted, in a tax advantage being obtained for—

(i) a person other than a tonnage tax company; or

(ii) a tonnage tax company in respect of its non-tonnage tax activities.

Explanation.—For the purposes of this section, “tax advantage” include—

(i) the determination of the allowance for any expense or interest, or the determination of any cost or expense allocated or apportioned, or, as the case may be, which has the effect of reducing the income or increasing the loss, as the case may be, from activities other than tonnage tax activities chargeable to tax, computed on the basis of entries made in the books of account in respect of the previous year in which the transaction was entered into; or

(ii) a transaction or arrangement which produces to the tonnage tax company more than ordinary profits which might be expected to arise from tonnage tax activities.

115VZC. Exclusion from tonnage tax scheme.—(1) Where a tonnage tax company is a party to any transaction or arrangement referred to in sub-section (1) of section 115VZB, the Assessing Officer shall, by an order in writing, exclude such company from the tonnage tax scheme:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon such company to show cause, on a date and time to be specified in the notice, why it should not be excluded from the tonnage tax scheme:

Provided further that no order under this sub-section shall be passed without the previous approval of the Chief Commissioner.

(2) The provisions of this section shall not apply where the company shows to the satisfaction of the Assessing Officer that the transaction or arrangement was a *bona fide* commercial transaction and had not been entered into for the purpose of obtaining tax advantage under this Chapter.

(3) Where an order has been passed under sub-section (1) by the Assessing Officer excluding the tonnage tax company from the tonnage tax scheme, the option for tonnage tax scheme shall cease to be in force from the first day of the previous year in which the transaction or arrangement was entered into.?

31. Amendment of section 119.—In section 119 of the Income-tax Act, in sub-section (2), in clause (a), after the bracket and words "(whether by way of relaxation of any of the provisions of sections", the figures and letters "115P, 115S," shall be inserted with effect from the 1st day of October, 2004.

32. Amendment of section 139.—In section 139 of the Income-tax Act, in sub-section (9), in the *Explanation*, in clause (c), in sub-clause (i), for the words “deducted at source and”, the words, figures and letters “deducted at source before the 1st day of April, 2005 and” shall be substituted with effect from the 1st day of April, 2005.

33. Amendment of section 139A.—In section 139A of the Income-tax Act,—

(a) in sub-section (5A), the first proviso shall be omitted with effect from the 1st day of April, 2005;

(b) in sub-sections (5C) and (5D), for the word “buyer”, the words “buyer or licensee or lessee” shall be substituted with effect from the 1st day of October, 2004.

34. Insertion of new section 142A.—After section 142 of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 15th day of November, 1972, namely:—

‘142A. Estimate by Valuation Officer in certain cases.—(1) For the purposes of making an assessment or re-assessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or other valuable article referred to in section 69A or section 69B is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957 (27 of 1957).

(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or re-assessment:

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

Explanation.—In this section, “Valuation Officer” has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957 (27 of 1957).

35. Amendment of section 153.—In section 153 of the Income-tax Act, in *Explanation 1*, with effect from the 1st day of October, 2004,—

(a) in clause (v), for the words “that section,”, the words “that section, or” shall be substituted;

(b) after clause (v) and before the words “shall be excluded”, the following clauses shall be inserted, namely:—

“(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R.”.

36. Amendment of section 153B.—In section 153B of the Income-tax Act, in sub-section (1), in the *Explanation*, with effect from the 1st day of October, 2004,—

(a) in clause (iv), for the words “that section,”, the words “that section, or” shall be substituted;

(b) after clause (iv) and before the words “shall be excluded”, the following clauses shall be inserted, namely:—

“(v) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R.”.

37. Amendment of section 194C.—In section 194C of the Income-tax Act, in sub-section (3), for clause (i), the following clause shall be substituted with effect from the 1st day of October, 2004, namely:—

“(i) the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) or, as the case may be, sub-section (2) shall be liable to deduct income-tax under this section; or”.

38. Insertion of new section 194LA.—After section 194L of the Income-tax Act, the following section shall be inserted with effect from the 1st day of October, 2004, namely:—

‘194LA. Payment of compensation on acquisition of certain immovable property.—Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent. of such sum as income-tax thereon:

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed one hundred thousand rupees.

Explanation.—For the purposes of this section,—

(i) “agricultural land” means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(ii) “immovable property” means any land (other than agricultural land) or any building or part of a building.’

39. Amendment of section 197.—In section 197 of the Income-tax Act, in sub-section (1), for the figures and letters “194C, 194D, 194G, 194H, 194-I, 194J, 194K”, the figures and letters “194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA” shall be substituted with effect from the 1st day of October, 2004.

40. Amendment of section 198.—In section 198 of the Income-tax Act, for the portion beginning with the words and figures “the provisions of sections 192” and ending with the word, figures and letter “section 196D”, the words “the foregoing provisions of this Chapter” shall be substituted with effect from the 1st day of October, 2004.

41. Amendment of section 199.—In section 199 of the Income-tax Act,—

(a) in sub-section (1), for the portion beginning with the words and figures “the provisions of sections 192” and ending with the word, figures and letter “section 196D”, the words “the foregoing provisions of this Chapter” shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted at the end with effect from the 1st day of April, 2005, namely:—

“(3) Where any deduction is made in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2005 and paid to the Central Government, the amount of tax deducted and specified in the statement referred to in section 203AA shall be treated as tax paid on behalf of the persons referred to in sub-section (1) or, as the case may be, sub-section (2) and credit shall be given to him for the amount so deducted in the assessment made under this Act for the assessment year for which such income is assessable without the production of certificate.”.

42. Amendment of section 200.—In section 200 of the Income-tax Act,—

(a) in sub-section (1), for the portion beginning with the words and figures “the provisions of sections 192” and ending with the word, figures and letter “section 196D”, the words “the foregoing provisions of this Chapter” shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2005, namely:—

“(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.”.

43. Amendment of section 202.—In section 202 of the Income-tax Act, for the portion beginning with the word and figures “sections 192” and ending with the word, figures and letter “section 196D”, the words “the foregoing provisions of this Chapter” shall be substituted with effect from the 1st day of October, 2004.

44. Amendment of section 203.—In section 203 of the Income-tax Act,—

(a) in sub-section (1), for the portion beginning with the words and figures “the provisions of sections 192” and ending with the word, figures and letter “section 196D”, the words “the foregoing provisions of this Chapter” shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted at the end with effect from the 1st day of April, 2005, namely:—

“(3) Where the tax has been deducted or paid in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2005, there shall be no requirement to furnish a certificate referred to in sub-section (1) or, as the case may be, sub-section (2).”.

45. Substitution of new section for section 203A.—For section 203A of the Income-tax Act, the following section shall be substituted with effect from the 1st day of October, 2004, namely:—

‘203A. Tax deduction and collection account number.—(1) Every person, deducting tax or collecting tax in accordance with the provisions of this Chapter, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a “tax deduction and collection account number”.

(2) Where a “tax deduction account number” or, as the case may be, a “tax collection account number” or a “tax deduction and collection account number” has been allotted to a person, such person shall quote such number—

(a) in all challans for the payment of any sum in accordance with the provisions of section 200 or sub-section (3) of section 206C;

(b) in all certificates furnished under section 203 or sub-section (5) of section 206C;

(c) in all the returns, delivered in accordance with the provisions of section 206 or sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(d) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.’.

46. Insertion of new section 203AA.—After section 203A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

“203AA. Furnishing of statement of tax deducted.—The prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) of section 200, shall, within the prescribed time after the end of each financial year beginning on or after the 1st day of April, 2005 prepare and deliver to every person from whose income the tax has been deducted or in respect of whose income the tax has been paid a statement in the prescribed form specifying the amount of tax deducted or paid and such other particulars as may be prescribed.”.

47. Amendment of section 204.—In section 204 of the Income-tax Act, for the portion beginning with the word and figures “sections 192” and ending with the words and figures “sections 195 to 203”, the words “the foregoing provisions of this Chapter” shall be substituted with effect from the 1st day of October, 2004.

48. Amendment of section 205.—In section 205 of the Income-tax Act, for the portion beginning with the word and figures “sections 192” and ending with the word, figures and letter “section 196D”, the words “the foregoing provisions of this Chapter” shall be substituted with effect from the 1st day of October, 2004.

49. Amendment of section 206.—In section 206 of the Income-tax Act,—

(a) in sub-section (1), with effect from the 1st day of October, 2004,—

(i) for the words “prescribed income-tax authority”, the words “prescribed income-tax authority or such other authority or agency as may be prescribed” shall be substituted;

(ii) the following proviso shall be inserted, namely:—

“Provided that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section.”;

(b) in sub-section (2), with effect from the 1st day of April, 2005,—

(i) for the words “other than the principal officer in the case of every company”, the words “other than the prescribed person in the case of every office of the Government and the principal officer in the case of every company” shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely:—

“Provided that the prescribed person in the case of every office of Government and the principal officer in the case of every company responsible for deducting tax under the foregoing provisions of this Chapter shall, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.”.

50. Amendment of section 206C.—In section 206C of the Income-tax Act,—

(a) after sub-section (1B), the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:—

“(1C) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (hereafter in this section referred to as “licensee or lessee”) for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

TABLE

Sl. No.	Nature of contract or licence or lease, etc.	Percentage
(1)	(2)	(3)
(i)	Parking lot	Two per cent.
(ii)	Toll plaza	Two per cent.
(iii)	Mining and quarrying	Two per cent.;

(b) in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1C)” shall be inserted with effect from the 1st day of October, 2004;

(c) in sub-section (3),—

(i) after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1C)” shall be inserted with effect from the 1st day of October, 2004;

(ii) the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that the person collecting tax on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver or cause to be delivered to the prescribed income-tax authority, or the person authorised by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed.”;

(d) in sub-section (4), the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that where any amount is collected in accordance with the provisions of this section on or after the 1st day of April, 2005 and paid under sub-section (3) to the credit of the Central Government, the amount of tax collected and specified in the statement referred to in the second proviso to sub-section (5) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected in the assessment made under this Act for the assessment year for which such income is assessable without the production of certificate.”;

(e) in sub-section (5),—

(i) for the word “buyer”, the words “buyer or licensee or lessee” shall be substituted with effect from the 1st day of October, 2004;

(ii) the following provisos shall be inserted with effect from the 1st day of April, 2005, namely:—

“Provided that no certificate may be furnished in a case where tax has been collected in accordance with the foregoing provisions of this section on or after the 1st day of April, 2005:

Provided further that the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) shall, within the prescribed time after the end of each financial year, prepare and deliver to the buyer referred to in sub-section (1) or, as the case may be, to the licensee or lessee referred to in sub-section (1C), a statement in the prescribed form specifying the amount of tax collected and such other particulars as may be prescribed.”;

(f) in sub-section (5A), with effect from the 1st day of October, 2004,—

(i) for the words, figures and letters “prepare half-yearly returns for the period ending on the 30th September and 31st March in each financial year”, the words “prepare within the prescribed time after the end of each financial year” shall be substituted;

(ii) for the words “prescribed income-tax authority”, the words “prescribed income-tax authority or such other authority or agency as may be prescribed” shall be substituted;

(iii) the following proviso shall be inserted, namely:—

“Provided that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section.”;

(g) for sub-sections (5B) and (5C), the following sub-sections shall be substituted with effect from the 1st day of April, 2005, namely:—

“(5B) Without prejudice to the provisions of sub-section (5A), any person collecting tax, other than in a case where the seller is a company, the Central Government or a State Government, may at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media (hereinafter referred to as the computer media) and in the manner as may be specified in that scheme:

Provided that where the person collecting tax is a company or the Central Government or a State Government, such person shall, in accordance with the provisions of this section, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.

(5C) Notwithstanding anything contained in any other law for the time being in force, a return filed on computer media shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings made thereunder, without further proof of production of the original, as evidence of any contents of the original or of any facts stated therein.

(5D) Where the Assessing Officer considers that the return delivered or caused to be delivered under sub-section (5B) is defective, he may intimate the defect to the person collecting tax and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.”;

(h) in sub-section (9), with effect from the 1st day of October, 2004,—

(i) for the word “buyer”, the words “buyer or licensee or lessee” shall be substituted;

(ii) after the word, brackets and figure “sub-section (I)”, at both the places where they occur, the words, brackets, figure and letter “or sub-section (IC)” shall be inserted.

51. Amendment of section 206CA.—In section 206CA of the Income-tax Act, after sub-section (2), the following proviso shall be inserted with effect from the 1st day of October, 2004, namely:—

“Provided that the provisions of this section shall not apply on or after the 1st day of October, 2004.”.

52. Amendment of section 245RR.—In section 245RR of the Income-tax Act, for the words, brackets, figures and letter “under sub-section (I) of section 245R”, the words, brackets, figures and letter “under sub-section (I) of section 245Q” shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 1998.

53. Amendment of section 246A.—In section 246A of the Income-tax Act, in sub-section (I), in clause (a), in the opening portion, for the words “an order against the assessee”, the words, brackets, figures and letters “an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee” shall be substituted with effect from the 1st day of October, 2004.

54. Amendment of section 253.—In section 253 of the Income-tax Act, in sub-section (1), after clause (b), the following clause shall be inserted with effect from the 1st day of October, 2004, namely:—

“(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or.”.

55. Insertion of new section 271FA.—After section 271F of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:—

“271FA. Penalty for failure to furnish annual information return.—If a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.”.

56. Amendment of section 272A.—In section 272A of the Income-tax Act, in sub-section (2), after clause (j), the following clause shall be inserted with effect from the 1st day of April, 2005, namely:—

“(k) to deliver or cause to be delivered a copy of the statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C.”.

57. Amendment of section 272B.—In section 272B of the Income-tax Act, in sub-section (2), after the word, brackets, figure and letter “sub-section (5A)”, the words, brackets, figure and letter “or sub-section (5C)” shall be inserted with effect from the 1st day of April, 2005.

58. Amendment of section 272BBB.—In section 272BBB of the Income-tax Act, in sub-section (1), for the words “fails to comply”, the words, figures and letters “fails to comply before the 1st day of October, 2004” shall be substituted with effect from the 1st day of October, 2004.

59. Amendment of section 273B.—In section 273B of the Income-tax Act, for the word, figures and letter “section 271F,” the words, figures and letters “section 271F, section 271FA,” shall be substituted with effect from the 1st day of April, 2005.

60. Insertion of new section 277A.—After section 277 of the Income-tax Act, the following section shall be inserted with effect from the 1st day of October, 2004, namely:—

“277A. Falsification of books of account or document, etc.—If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Explanation.—For the purposes of establishing the charge under this section, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act.”.

61. Amendment of section 278B.—In section 278B of the Income-tax Act, after sub-section (2) and before the *Explanation*, the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:—

“(3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.”.

62. Amendment of section 279.—In Section 279 of the Income-tax Act, in sub-section (1), for the words and figures “section 277 or section 278”, the words, figures and letter “section 277, section 277A or section 278” shall be substituted with effect from the 1st day of October, 2004.

63. Substitution of new section for section 285BA.—For section 285BA of the Income-tax Act, the following section shall be substituted with effect from the 1st day of April, 2005, namely:—

‘285BA. Obligation to furnish annual information return.—(1) Any person, being—

- (a) an assessee; or
- (b) the prescribed person in the case of an office of Government; or
- (c) a local authority or other public body or association; or
- (d) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908 (16 of 1908); or
- (e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 1988); or
- (f) the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898 (6 of 1898); or
- (g) the Collector referred to in clause (c) of section 3 of the Land Acquisition Act, 1894 (1 of 1894);
or
- (h) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or
- (i) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); or
- (j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996),

who is responsible for registering, or, maintaining books of account or other documents containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction which is registered or recorded by him during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this Act, to the prescribed income-tax authority or such other authority or agency as may be prescribed.

(2) The annual information return referred to in sub-section (1) shall be furnished within the prescribed time after the end of such financial year, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

(3) For the purposes of sub-section (1), “specified financial transaction” means any—

- (a) transaction of purchase, sale or exchange of goods or property or right or interest in a property;
or
- (b) transaction for rendering any service; or
- (c) transaction under a works contract; or
- (d) transaction by way of an investment made or an expenditure incurred; or
- (e) transaction for taking or accepting any loan or deposit,

which may be prescribed:

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transactions:

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

(4) Where the prescribed income-tax authority considers that the annual information return furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of one month or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this

Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to furnish the annual information return.

(5) Where a person who is required to furnish an annual information return under sub-section (1) has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice.’

64. Amendment of the Thirteenth Schedule.—In the Thirteenth Schedule to the Income-tax Act, with effect from the 1st day of April, 2005,—

(a) for the brackets, words, figures and letters “[See section 80-IC(2)]”, the brackets, words, figures and letters “[See sections 80-IB(4) and 80-IC(2)]” shall be substituted;

(b) after Part B, the following Part shall be inserted, namely:—

“PART C

FOR THE STATE OF JAMMU AND KASHMIR

S.No.	Article or thing
1.	Cigarettes/cigars of tobacco, manufactured tobacco and substitutes
2.	Distilled/brewed alcoholic drinks
3.	Aerated branded beverages and their concentrates”.

Wealth-tax

65. Amendment of section 35HA of Act 27 of 1957.—In section 35HA of the Wealth-tax Act, 1957, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:—

“(3) Where an offence under this Act has been committed by a person, being a company and such offence is punishable with imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1) or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act.”.

CHAPTER IV

INDIRECT TAXES

Customs

66. Amendment of section 41.—In section 41 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Customs Act), in sub-section (1), the proviso shall be omitted.

67. Insertion of new section 122A.—After section 122 of the Customs Act, the following section shall be inserted, namely:—

“122A. Adjudication Procedure.—(1) The adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.”.

68. Amendment of section 128.—In section 128 of the Customs Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”.

69. Amendment of section 129A.—In section 129A of the Customs Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:—

“(6) An appeal to the Appellate Tribunal shall be in such form and shall be verified in such manner as may be specified by rules made in this behalf and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any officer of customs in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Customs under this sub-section.”.

70. Amendment of section 129B.—In section 129B of the Customs Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”.

71. Amendment of section 137.—In section 137 of the Customs Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be specified by rules.”.

72. Amendment of section 142.—In section 142 of the Customs Act, in sub-section (1), the following proviso shall be inserted at the end, namely:—

“Provided that where the person (hereinafter referred to as predecessor), by whom any sum payable under this Act including the amount required to be paid to the credit of the Central Government under section 28B is not paid, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by the proper officer, after obtaining written approval from the Commissioner of Customs, for the purposes of recovering the amount so payable by such predecessor at the time of such transfer or otherwise disposal or change.”.

73. Amendment of section 156.—In section 156 of the Customs Act, in sub-section (2), after clause (g), the following clause shall be inserted, namely:—

“(h) the amount to be paid for compounding under sub-section (3) of section 137.”.

74. Validation of certain actions taken by Central Excise Officers.—(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 83/2004-Customs (N.T.), dated the 30th June, 2004, published in the Official Gazette *vide* No.G.S.R. 393(E), dated the 30th June, 2004 (hereinafter referred to as the said notification) shall, for the purposes of hundred per cent. export-oriented undertakings, be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 11th day of May, 1982 and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

(a) any action taken or anything done by a Central Excise Officer appointed by the said notification as an officer of customs to discharge the duties of an officer of customs in respect of hundred per cent. export-oriented undertakings, on and from the 11th day of May, 1982 to 30th day of June, 2004, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the appointment made by the said notification was in force at all material times;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority against the Central Government or the Central Excise Officer appointed as an officer of customs by the said notification for any action taken or anything done in good faith during the discharge of his duties as an officer of customs in respect of hundred per cent. export-oriented undertakings during the period on and from the 11th day of May, 1982 to 30th day of June, 2004, as if the appointment made by the said notification was in force at all material times;

(c) recovery made of any amount of duty or interest or penalty or fine or other charges by or under the order or direction of the Central Excise Officer appointed as an officer of customs by the said notification during the period on and from the 11th day of May, 1982 to 30th day of June, 2004 shall be deemed to be valid, and to have always been, for all purposes, as validly and effectively, made as if the appointment made by the said notification was in force at all material times.

(2) For the purposes of sub-section (1), the Central Board of Excise and Customs shall have and shall be deemed to have always had the power to bring into force the said notification with retrospective effect as if the Central Board of Excise and Customs had the power to bring into force the said notification under section 4 of the Customs Act, 1962 (52 of 1962), retrospectively, at all material times.

(3) For the purposes of this section, the designations of the officers of customs and the Central Excise Officers as existed before the commencement of the Finance Act, 1995 (22 of 1995), shall be deemed to be the corresponding substituted designations as specified in the Tables respectively below section 50 and section 70 of the said Finance Act.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the said notification had not come retrospectively into force.

Explanation 2.—For the purposes of this section, “hundred per cent. export-oriented undertaking” shall have the meaning assigned to it in clause (ii) of *Explanation 2* to the proviso to clause (b) of section 3 of the Central Excise Act, 1944 (1 of 1944).

Customs tariff

75. Amendment of section 3.—In section 3 of the Customs Tariff Act, 1975 (51 of 1975) (hereinafter referred to as the Customs Tariff Act), in sub-section (2), in clause (ii), the following amendments shall be made and shall be deemed to have been made on and from the 9th day of July, 2004, namely:—

(a) in sub-clause (d), the word “and”, occurring at the end, shall be omitted;

(b) after sub-clause (d), the following sub-clause shall be inserted, namely:—

“(dd) the Education Cess on imported goods referred to in section 94 of the Finance (No. 2) Act, 2004; and”.

76. Amendment of section 9A.—In section 9A of the Customs Tariff Act, in sub-section (8), for the words “relating to non-levy, short-levy, refunds and appeals”, the words “relating to, the date for determination of rate of duty, non-levy, short-levy, refunds, interest, appeals, offences and penalties” shall be substituted.

77. Amendment of section 9C.—In section 9C of the Customs Tariff Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, after sub-section (1), the following sub-sections shall be inserted, namely:—

“(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(1B) Every application made before the Appellate Tribunal,—

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees.”.

78. Amendment of First Schedule.—In the First Schedule to the Customs Tariff Act,—

(i) in Chapter 11, in tariff items 1108 12 00, 1108 14 00, 1108 19 10 and 1108 19 90, for the entry in column (4) occurring against each of them, the entry “50%” shall be substituted;

(ii) in Chapter 19, in tariff item 1903 00 00, for the entry in column (4), the entry “50%” shall be substituted;

(iii) in Chapter 29, in tariff item 2922 42 20, for the entry in column (2), the entry “--- Monosodium glutamate” shall be substituted;

(iv) in Chapter 35, in tariff items 3505 10 10 and 3505 10 90, for the entry in column (4) occurring against each of them, the entry “50%” shall be substituted.

Excise

79. Amendment of section 9A.—Section 9A of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as the Central Excise Act) shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.”.

80. Amendment of section 11.—In section 11 of the Central Excise Act, the following proviso shall be inserted at the end, namely:—

“Provided that where the person (hereinafter referred to as predecessor) from whom the duty or any other sums of any kind, as specified in this section, is recoverable or due, transfers or otherwise disposes of his business or trade in whole or in part, or effects any change in the ownership thereof, in consequence of which he is succeeded in such business or trade by any other person, all excisable goods, materials, preparations, plants, machineries, vessels, utensils, implements and articles in the custody or possession of the person so succeeding may also be attached and sold by such officer empowered by the Central Board of Excise and Customs, after obtaining written approval from the Commissioner of Central Excise, for the purposes of recovering such duty or other sums recoverable or due from such predecessor at the time of such transfer or otherwise disposal or change.”.

81. Insertion of new section 33A.—After section 33 of the Central Excise Act, the following section shall be inserted, namely:—

“33A. Adjudication procedure.—(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.

(2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during the proceeding.”.

82. Amendment of section 35.—In section 35 of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Commissioner (Appeals) may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”.

83. Amendment of section 35B.—In section 35B of the Central Excise Act, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:—

“(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of duty and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee,—

(a) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of duty and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no such fee shall be payable in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4).

(7) Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of Central Excise under this sub-section.”.

84. Amendment of section 35C.—In section 35C of the Central Excise Act, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.”.

85. Amendment of section 37.—In section 37 of the Central Excise Act, in sub-section (2),—

(a) after clause (ic), the following clause shall be inserted, namely:—

“(id) provide for the amount to be paid for compounding under sub-section (2) of section 9A;”;

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

“(xviii) provide for credit of service tax leviable under Chapter V of the Finance Act, 1994 (32 of 1994), paid or payable on taxable services used in, or in relation to, the manufacture of excisable goods;”.

86. Amendment of the Third Schedule.—In the Third Schedule to the Central Excise Act, against serial No. 91, in column (3), in the entry, the words “other than monochrome,” shall be omitted.

87. Validation of certain actions taken by officers of customs.—(1) The notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 38/2001-Central Excise (N.T.), dated the 26th June, 2001, published in the Official Gazette *vide* No. G.S.R. 467(E), dated the 26th June, 2001 (hereinafter referred to as the principal notification), as amended by the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 32/2002-Central Excise (N.T.), dated the 17th September, 2002, published in the Official Gazette *vide* No. G.S.R. 655(E), dated the 17th September, 2002 (hereinafter referred to as the first amendment) and the notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 1/2003-Central Excise (N.T.), dated the 13th January, 2003, published in the Official Gazette *vide* No. G.S.R. 27(E), dated the 13th January, 2003 (hereinafter referred to as the second amendment) shall, for the purposes of hundred per cent. export-oriented undertakings, be deemed to be, and to have always been, for all purposes, in force retrospectively on and from the 11th day of May, 1982 and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority—

(a) any action taken or anything done by an officer of customs invested with the powers of a Central Excise Officer to discharge the duties of the Central Excise Officer in respect of hundred per cent. export-oriented undertakings, on and from the 11th day of May, 1982 to 13th day of January, 2003, by the first amendment and the second amendment to the principal notification, shall, for all purposes, be deemed to be, and to have always been, validly taken or done as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(b) no suit or other proceedings shall be instituted, maintained or continued in any court, tribunal or other authority against the Central Government or an officer of customs invested with powers of the Central Excise Officer, by the first amendment and the second amendment to the principal notification, for any action taken or anything done in good faith during the discharge of his duties as the Central Excise Officer in respect of hundred per cent. export-oriented undertakings during the period on and from the 11th day of May, 1982 to 13th

day of January, 2003, as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times;

(c) recovery made of any amount of duty or interest or penalty or fine or other charges by or under the order or direction of an officer of customs invested with powers of the Central Excise Officer by the first amendment and the second amendment to the principal notification during the period on and from the 11th day of May, 1982 to 13th day of January, 2003 shall be deemed to be valid, and to have always been, for all purposes, as validly and effectively made as if the investment of powers made by the first amendment and the second amendment to the principal notification were in force at all material times.

(2) For the purposes of sub-section (1), the Central Board of Excise and Customs shall have and shall be deemed to have always had the powers to bring into force the principal notification, the first amendment and the second amendment with retrospective effect as if the Central Board of Excise and Customs had the powers to bring into force the principal notification, the first amendment and the second amendment under clause (b) of section 2 of the Central Excise Act, 1944 (1 of 1944), retrospectively, at all material times.

(3) For the purposes of this section, the designations of the officers of customs and the Central Excise Officers as existed before the commencement of the Finance Act, 1995 (22 of 1995) shall be deemed to be the corresponding substituted designations as specified in the Tables respectively below section 50 and section 70 of the said Finance Act.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if the principal notification as amended by the first amendment and the second amendment had not come retrospectively into force.

Explanation 2.—For the purposes of this section, “hundred per cent. export-oriented undertaking” shall have the meaning assigned to it in clause (ii) of *Explanation 2* to the proviso to clause (b) of section 3 of the Central Excise Act, 1944 (1 of 1944).

88. Amendment of the CENVAT Credit Rules, 2002.—(1) In the CENVAT Credit Rules, 2002 made by the Central Government in exercise of the powers conferred by section 37 of the Central Excise Act, 1944 (1 of 1944), in rule 3, in sub-rule (6), in clause (b), the *Explanation* shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified in the Second Schedule, on and from the corresponding date mentioned in column (3) of that Schedule and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said *Explanation* shall be deemed to be, and to have always been, for all purposes, as validly and effectively, taken or done as if the said *Explanation* as amended by this sub-section had been in force at all material times.

(2) For the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules with retrospective effect as if the Central Government had the power to make rules under section 37 of the Central Excise Act, 1944 (1 of 1944), retrospectively, at all material times.

(3) The CENVAT credit shall be allowed of such additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) which has been disallowed but which would not have been disallowed if the amendment made by sub-section (1) was in force at all material times.

(4) Recovery shall be made of such CENVAT credit of additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) which has been availed but which would not have been availed if the amendment made by sub-section (1) was in force at all material times and the provisions of CENVAT Credit Rules, 2002 relating to the recovery of CENVAT credit, along with interest, shall apply for the recovery made under this sub-section subject to the modification that the relevant date defined in section 11A of the Central Excise Act, 1944 (1 of 1944), shall, for the purposes of recovery under this sub-section, be deemed to be the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.

Explanation 1.—For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Explanation 2.—For the purposes of this section, the expression “CENVAT credit” has the meaning assigned to it in the CENVAT Credit Rules, 2002.

Central Excise Tariff

89. Amendment of First Schedule to Act 5 of 1986.—In the First Schedule to the Central Excise Tariff Act, 1985,—

(i) in Chapter 50, in sub-heading Nos. 5004.11, 5004.90, 5005.10, 5005.20 and 5005.90, for the entry in column (4) occurring against each of them, the entry “8%” shall be substituted;

(ii) in Section XV, after NOTE 9, the following NOTE shall be inserted, namely:—

“10. In relation to the products of this Section, the process of drawing or redrawing a rod, wire or any other similar article, into wire shall amount to ‘manufacture’.”;

(iii) in Chapter 90, in sub-heading No. 9001.10, for the entry in column (4), the entry “8%” shall be substituted;

(iv) in Chapter 95, in sub-heading No. 9504.10, for the entry in column (4), the entry “8%” shall be substituted.

CHAPTER V

SERVICE TAX

90. Amendment of Act 32 of 1994.—In the Finance Act, 1994,—

(a) in section 65,—

(i) after clause (3), the following clauses shall be inserted, namely:—

‘(3a) “aircraft” has the meaning assigned to it in clause (1) of section 2 of the Aircraft Act, 1934 (22 of 1934);

(3b) “aircraft operator” means any commercial concern which provides the service of transport of goods by aircraft;

(3c) “airport” has the meaning assigned to it in clause (b) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994);

(3d) “airports authority” means the Airports Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994) and also includes any person having the charge of management of an airport or a civil enclave;’;

(ii) for clause (12), the following clause shall be substituted, namely:—

‘(12) “banking and other financial services” means—

(a) the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern, namely:—

(i) financial leasing services including equipment leasing and hire-purchase;

(ii) credit card services;

(iii) merchant banking services;

(iv) securities and foreign exchange (forex) broking;

(v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management;

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;

(vii) provision and transfer of information and data processing; and

(viii) other financial services, namely, lending; issue of pay order, demand draft, cheque, letter of credit and bill of exchange; providing bank guarantee, over draft facility, bill discounting facility, safe deposit locker, safe vaults; operation of bank accounts;

(b) foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a);’;

(iii) for clause (19), the following clauses shall be substituted, namely:—

‘(19) “business auxiliary service” means any service in relation to—

(i) promotion or marketing or sale of goods produced or provided by or belonging to the client; or

- (ii) promotion or marketing of service provided by the client; or
- (iii) any customer care service provided on behalf of the client; or
- (iv) procurement of goods or services, which are inputs for the client; or
- (v) production of goods on behalf of the client; or
- (vi) provision of service on behalf of the client; or

(vii) a service incidental or auxiliary to any activity specified in sub-clauses (i) to (vi), such as billing, issue or collection or recovery of cheques, payments, maintenance of accounts and remittance, inventory management, evaluation or development of prospective customer or vendor, public relation services, management or supervision,

and includes services as a commission agent, but does not include any information technology service and any activity that amounts to “manufacture” within the meaning of clause (f) of section 2 of the Central Excise Act, 1944 (1 of 1944).

Explanation.—For the removal of doubts, it is hereby declared that for the purposes of this clause, “information technology service” means any service in relation to designing, developing or maintaining of computer software, or computerised data processing or system networking, or any other service primarily in relation to operation of computer systems;

(19a) “business exhibition” means an exhibition,—

- (a) to market; or
- (b) to promote; or
- (c) to advertise; or
- (d) to showcase,

any product or service, intended for the growth in business of the producer or provider of such product or service, as the case may be;’;

(iv) after clause (24), the following clause shall be inserted, namely:—

‘(24a) “civil enclave” has the meaning assigned to it in clause (i) of section 2 of the Airports Authority of India Act, 1994 (55 of 1994);’;

(v) clause (28) shall be omitted;

(vi) in clause (29), for the words “in relation to commissioning or installation”, the words “in relation to erection, commissioning or installation” shall be substituted;

(vii) after clause (30), the following clause shall be inserted, namely:—

‘(30a) “construction service” means—

- (a) construction of new building or civil structure or a part thereof; or
- (b) repair, alteration or restoration of, or similar services in relation to, building or civil structure,

which is—

- (i) used, or to be used, primarily for; or
- (ii) occupied, or to be occupied, primarily with; or
- (iii) engaged, or to be engaged, primarily in,

commerce or industry, or work intended for commerce or industry, but does not include road, airport, railway, transport terminal, bridge, tunnel, long distance pipeline and dam;’;

(viii) after clause (39), the following clause shall be inserted, namely:—

‘(39a) “erection, commissioning or installation” means any service provided by a commissioning and installation agency in relation to erection, commissioning or installation of plant, machinery or equipment;’;

(ix) after clause (46), the following clause shall be inserted, namely:—

‘(46a) “forward contract” has the meaning assigned to it in clause (c) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);’;

(x) after clause (50), the following clauses shall be inserted, namely:—

‘(50a) “goods carriage” has the meaning assigned to it in clause (14) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(50b) “goods transport agency” means any commercial concern which provides service in relation to transport of goods by road and issues consignment note, by whatever name called;’;

(xi) after clause (55), the following clauses shall be inserted, namely:—

‘(55a) “intellectual property right” means any right to intangible property, namely, trade marks, designs, patents or any other similar intangible property, under any law for the time being in force, but does not include copyright;

(55b) “intellectual property service” means,—

(a) transferring, whether permanently or otherwise; or

(b) permitting the use or enjoyment of,

any intellectual property right;’;

(xii) after clause (75), the following clauses shall be inserted, namely:—

‘(75a) “opinion poll” means any service designed to secure information on public opinion regarding social, economic, political or other issues;

(75b) “opinion poll agency” means any person engaged in providing any service in relation to opinion poll;’;

(xiii) after clause (76), the following clause shall be inserted, namely:—

‘(76a) “outdoor caterer” means a caterer engaged in providing services in connection with catering at a place other than his own;’;

(xiv) after clause (77), the following clauses shall be inserted, namely:—

‘(77a) “pandal or shamiana” means a place specially prepared or arranged for organising an official, social or business function;

(77b) “pandal or shamiana contractor” means a person engaged in providing any service, either directly or indirectly, in connection with the preparation, arrangement, erection or decoration of a pandal or shamiana, and includes the supply of furniture, fixtures, lights and lighting fittings, floor coverings and other articles for use therein;’;

(xv) after clause (86), the following clauses shall be inserted, namely:—

‘(86a) “programme” means any audio or visual matter, live or recorded, which is intended to be disseminated by transmission of electro-magnetic waves through space or through cables intended to be received by the general public either directly or indirectly through the medium of relay stations;

(86b) “programme producer” means a commercial concern which produces a programme on behalf of another person;’;

(xvi) after clause (89), the following clauses shall be inserted, namely:—

‘(89a) “recognised association” has the meaning assigned to it in clause (j) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);

(89b) “registered association” has the meaning assigned to it in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952);’;

(xvii) for clause (101), the following clause shall be substituted, namely:—

‘(101) “stock-broker” means a person, who has either made an application for registration or is registered as a stock-broker or sub-broker, as the case may be, in accordance with the rules and regulations made under the Securities and Exchange Board of India Act, 1992 (15 of 1992);’;

(xviii) clause (103) shall be omitted;

(xix) after clause (104), the following clause shall be inserted, namely:—

‘(104a) “survey and exploration of mineral” means geological, geophysical or other prospecting, surface or sub-surface surveying or map making service, in relation to location or exploration of deposits of mineral, oil or gas;’;

(xx) in clause (105),—

(a) in sub-clause (a), for the words “to an investor”, the words “to any person” shall be substituted;

(b) in sub-clause (g), after the words “disciplines of engineering”, the words “but not in the discipline of computer hardware engineering or computer software engineering” shall be inserted;

(c) for sub-clause (zm), the following sub-clause shall be substituted, namely:—

“(zm) to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services;”;

(d) sub-clause (zp) shall be omitted;

(e) in sub-clause (zs), for the words “to a customer, by a cable operator”, the words “to any person, by a cable operator, including a multisystem operator,” shall be substituted;

(f) in sub-clause (zx), for the words “in relation to life insurance business”, the words “in relation to the risk cover in life insurance” shall be substituted;

(g) in sub-clause (zsd), for the words “commissioning or installation”, the words “erection, commissioning or installation” shall be substituted;

(h) after sub-clause (zsl), the following sub-clauses shall be inserted, namely:—

“(zsm) to any person, by the airports authority or any person authorised by it, in an airport or a civil enclave;

(zsn) to any person, by an aircraft operator, in relation to transport of goods by aircraft;

(zso) to an exhibitor, by the organiser of a business exhibition, in relation to business exhibition;

(zsp) to a customer, by a goods transport agency, in relation to transport of goods by road in a goods carriage;

(zsq) to any person, by a commercial concern, in relation to construction service;

(zsr) to any person, by the holder of intellectual property right, in relation to intellectual property service;

(zss) to any person, by an opinion poll agency, in relation to opinion poll;

(zst) to a client, by an outdoor caterer;

(zsu) to any person, by a programme producer, in relation to a programme;

(zsv) to a customer, by any person, in relation to survey and exploration of mineral;

(zsw) to a client, by a pandal or shamiana contractor in relation to a pandal or shamiana in any manner and also includes the services, if any, rendered as a caterer;

(zsx) to a customer, by a travel agent, in relation to the booking of passage for travel;

(zsy) to any person, by a member of a recognised association or a registered association, in relation to a forward contract;”;

(xxi) for clause (115), the following clauses shall be substituted, namely:—

‘(115) “tour operator” means any person engaged in the business of planning, scheduling, organising or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act, 1988 (59 of 1988) or the rules made thereunder;

(115a) “travel agent” means any person engaged in providing any service connected with booking of passage for travel, but does not include air travel agent and rail travel agent;’;

(b) for section 66, the following section shall be substituted, namely:—

“66. Charge of service tax.—There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten per cent. of the value of the taxable services referred to in sub-clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz),

(zza), (zzb), (zzc), (zsd), (zse), (zsf), (zsg), (zsh), (zzi), (zsj), (zsk), (zsl), (zsm), (zsn), (zso), (zsp), (zsq), (zsr), (zss), (zst), (zsu), (zsv), (zsw), (zsx) and (zsy) of clause (105) of section 65 and collected in such manner as may be prescribed.”;

(c) in section 67,—

(a) the *Explanation* shall be numbered as *Explanation 1*, and in the *Explanation 1* as so numbered,

(i) in clause (vi), the word “and” occurring at the end shall be omitted;

(ii) for clause (vii), the following clauses shall be substituted, namely:—

“(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loans.”;

(b) after *Explanation 1* as so numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation 2.*—Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be such amount as with the addition of tax payable, is equal to the gross amount charged.”;

(d) sections 71 and 72 shall be omitted;

(e) for section 73, the following section shall be substituted, namely:—

“73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.—(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words “one year”, the words “five years” had been substituted.

Explanation.—Where the service of the notice is stayed by an order of a court, the period of such stay shall be excluded in computing the aforesaid period of one year or five years, as the case may be.

(2) The Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall, after considering the representation, if any, made by the person on whom notice is served under sub-section (1), determine the amount of service tax due from, or erroneously refunded to, such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount so determined.

(3) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise of such payment in writing, who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid:

Provided that the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise may determine the amount of short-payment of service tax or erroneously refunded service tax, if any, which in his opinion has not been paid by such person and, then, the Assistant

Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise shall proceed to recover such amount in the manner specified in this section, and the period of “one year” referred to in sub-section (1) shall be counted from the date of receipt of such information of payment.

Explanation.—For the removal of doubts, it is hereby declared that the interest under section 75 shall be payable on the amount paid by the person under this sub-section and also on the amount of short payment of service tax or erroneously refunded service tax, if any, as may be determined by the Assistant Commissioner of Central Excise or, as the case may be, the Deputy Commissioner of Central Excise, but for this sub-section.

(4) Nothing contained in sub-section (3) shall apply to a case where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax.

(5) The provisions of sub-section (3) shall not apply to any case where the service tax had become payable or ought to have been paid before the 14th day of May, 2003.

(6) For the purposes of this section, “relevant date” means,—

(i) in the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short-paid—

(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;

(ii) in a case where the service tax is provisionally assessed under this Chapter or the rules made thereunder, the date of adjustment of the service tax after the final assessment thereof;

(iii) in a case where any sum, relating to service tax, has erroneously been refunded, the date of such refund.’;

(f) in section 74,—

(i) in sub-section (4), for the words “an assessment or reducing a refund or otherwise increasing the liability of the assessee”, the words “the liability of the assessee or reducing a refund” shall be substituted;

(ii) in sub-section (6), for the word “assessment”, the words “liability of an assessee or increasing the refund” shall be substituted;

(iii) in sub-section (7), for the word “assessment”, the words “liability of the assessee” shall be substituted;

(g) in section 75, for the words “at the rate of fifteen per cent. per annum”, the words “at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette,” shall be substituted;

(h) section 75A shall be omitted;

(i) in section 76, for the words “one hundred rupees”, the words “one hundred rupees for every day during which such failure continues” shall be substituted;

(j) for section 77, the following section shall be substituted, namely:—

“77. Penalty for contravention of any provision for which no penalty is provided.—Whoever contravenes any of the provisions of this Chapter or any rule made thereunder for which no penalty is

separately provided in this Chapter, shall be liable to a penalty which may extend to an amount not exceeding one thousand rupees.”;

(k) in section 78, for the portion beginning with the words “If the Assistant Commissioner” and ending with the words “value of such taxable service:”, the following shall be substituted, namely:—

“Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

the person, liable to pay such service tax or erroneous refund, as determined under sub-section (2) of section 73, shall also be liable to pay a penalty, in addition to such service tax and interest thereon, if any, payable by him, which shall not be less than, but which shall not exceed twice, the amount of service tax so not levied or paid or short-levied or short-paid or erroneously refunded.”;

(l) section 79 shall be omitted;

(m) in section 80, for the words and figures “section 77, section 78 or section 79”, the words and figures “section 77 or section 78” shall be substituted;

(n) section 81 shall be omitted;

(o) in section 85, in sub-section (1), the words and figures “section 71, section 72 or” shall be omitted;

(p) in section 86, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, for sub-section (6), the following sub-sections shall be substituted, namely:—

“(6) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, irrespective of the date of demand of service tax and interest or of levy of penalty in relation to which the appeal is made, be accompanied by a fee of,—

(a) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is five lakh rupees or less, one thousand rupees;

(b) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than five lakh rupees but not exceeding fifty lakh rupees, five thousand rupees;

(c) where the amount of service tax and interest demanded and penalty levied by any Central Excise Officer in the case to which the appeal relates is more than fifty lakh rupees, ten thousand rupees:

Provided that no fee shall be payable in the case of an appeal referred to in sub-section (2) or sub-section (2A) or a memorandum of cross-objections referred to in sub-section (4).

(6A) Every application made before the Appellate Tribunal,—

(a) in an appeal for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by a fee of five hundred rupees:

Provided that no such fee shall be payable in the case of an application filed by the Commissioner of Central Excise or Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, as the case may be, under this sub-section.”.

(q) in section 94, in sub-section (2), for clause (f), the following clauses shall be substituted, namely:—

“(f) provisions for determining export of taxable services;

(g) grant of exemption to, or rebate of service tax paid on, taxable services which are exported out of India;

(h) rebate of service tax paid or payable on the taxable services consumed or duties paid or deemed to have been paid on goods used for providing taxable services which are exported out of India; and

(i) any other matter which by this Chapter is to be, or may be, prescribed.”;

(r) in section 95, after sub-section (IA), the following sub-section shall be inserted, namely:—

“(IB) If any difficulty arises in respect of implementing, or assessing the value of, any taxable service incorporated in this Chapter by the Finance (No. 2) Act, 2004, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President.”.

CHAPTER VI

EDUCATION CESS

91. Education Cess.—(1) Without prejudice to the provisions of sub-section (1I) of section 2, there shall be levied and collected, in accordance with the provisions of this Chapter as surcharge for purposes of the Union, a cess to be called the Education Cess, to fulfil the commitment of the Government to provide and finance universalised quality basic education.

(2) The Central Government may, after due appropriation made by Parliament by law in this behalf, utilise, such sums of money of the Education Cess levied under sub-section (1I) of section 2 and this Chapter for the purposes specified in sub-section (1), as it may consider necessary.

92. Definition.—The words and expressions used in this Chapter and defined in the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962) or Chapter V of the Finance Act, 1994 (32 of 1994), shall have the meanings respectively assigned to them in those Acts or Chapter, as the case may be.

93. Education Cess on excisable goods.—(1) The Education Cess levied under section 91, in the case of goods specified in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), being goods manufactured or produced, shall be a duty of excise (in this section referred to as the Education Cess on excisable goods), at the rate of two per cent., calculated on the aggregate of all duties of excise (including special duty of excise or any other duty of excise but excluding Education Cess on excisable goods) which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), under the provisions of the Central Excise Act, 1944 (1 of 1944) or under any other law for the time being in force.

(2) The Education Cess on excisable goods shall be in addition to any other duties of excise chargeable on such goods, under the Central Excise Act, 1944 (1 of 1944) or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944 (1 of 1944) and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on excisable goods as they apply in relation to the levy and collection of the duties of excise on such goods under the Central Excise Act, 1944 or the rules, as the case may be.

94. Education Cess on imported goods.—(1) The Education Cess levied under section 91, in the case of goods specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), being goods imported into India, shall be a duty of customs (in this section referred to as the Education Cess on imported goods), at the rate of two per cent., calculated on the aggregate of duties of customs which are levied and collected by the Central Government in the Ministry of Finance (Department of Revenue), under section 12 of the Customs Act, 1962 and any sum chargeable on such goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including—

(a) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975 (51 of 1975);

(b) the countervailing duty referred to in section 9 of the Customs Tariff Act, 1975 (51 of 1975);

(c) the anti-dumping duty referred to in section 9A of the Customs Tariff Act, 1975 (51 of 1975); and

(d) the Education Cess on imported goods.

(2) The Education Cess on imported goods shall be in addition to any other duties of customs chargeable on such goods, under the Customs Act, 1962 (52 of 1962) or any other law for the time being in force.

(3) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods under the Customs Act, 1962 or the rules or the regulations, as the case may be.

95. Education Cess on taxable services.—(1) The Education Cess levied under section 91, in the case of all services which are taxable services, shall be a tax (in this section referred to as the Education Cess on taxable services) at the rate of two per cent., calculated on the tax which is levied and collected under section 66 of the Finance Act, 1994 (32 of 1994).

(2) The Education Cess on taxable services shall be in addition to the tax chargeable on such taxable services, under Chapter V of the Finance Act, 1994 (32 of 1994).

(3) The provisions of Chapter V of the Finance Act, 1994 (32 of 1994) and the rules made thereunder, including those relating to refunds and exemptions from tax and imposition of penalty shall, as far as may be, apply in relation to the levy and collection of the Education Cess on taxable services, as they apply in relation to the levy and collection of tax on such taxable services under Chapter V of the Finance Act, 1994 or the rules, as the case may be.

CHAPTER VII

SECURITIES TRANSACTION TAX

96. Extent, commencement and application.—(1) This Chapter extends to the whole of India.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable securities transactions entered into on or after the commencement of this Chapter.

97. Definitions.—In this Chapter, unless the context otherwise requires,—

(1) “Appellate Tribunal” means the Appellate Tribunal constituted under section 252 of the Income-tax Act, 1961 (43 of 1961);

(2) “Assessing Officer” means the Income-tax Officer or Assistant Commissioner of Income-tax or Deputy Commissioner of Income-tax or Joint Commissioner of Income-tax or Additional Commissioner of Income-tax who is authorised by the Board to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Chapter;

(3) “Board” means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(4) “derivative” has the meaning assigned to it in clause (aa) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(5) “equity oriented fund” means a fund—

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent. of the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund:

Provided that the percentage of equity share holding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

(6) “Mutual Fund” means a Mutual Fund specified under clause (23D) of section 10 of the Income-tax Act, 1961 (43 of 1961);

(7) “option in securities” has the meaning assigned to it in clause (d) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(8) “option premium” means the premium payable by the purchaser of an “option in securities” at the time of such purchase;

(9) “prescribed” means prescribed by rules made by the Board under this Chapter;

(10) “recognised stock exchange” shall have the same meaning as in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(11) “securities transaction tax” means tax leviable on the taxable securities transactions under the provisions of this Chapter;

(12) “strike price” means the price at which the “option in securities” may be exercised on the expiry date of such option;

(13) “taxable securities transaction” means a transaction of—

(a) purchase or sale of an equity share in a company or a derivative or a unit of an equity oriented fund, entered into in a recognised stock exchange; or

(b) sale of a unit of an equity oriented fund to the Mutual Fund;

(14) words and expressions used but not defined in this Chapter and defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Income-tax Act, 1961 (43 of 1961) or the rules made thereunder, shall apply, so far as may be, in relation to securities transaction tax.

98. Charge of securities transaction tax.—On and from the commencement of this Chapter, there shall be charged a securities transaction tax in respect of the taxable securities transaction specified in column (2) of the Table below, at the rate specified in the corresponding entry in column (3) of the said Table, on the value of such transaction and such tax shall be payable by the purchaser or the seller, specified in the corresponding entry in column (4) of the said Table:

TABLE

Sl. No.	Taxable securities transaction	Rate	Payable by
(1)	(2)	(3)	(4)
1	Purchase of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such purchase is entered into in a recognised stock exchange; and (b) the contract for the purchase of such share or unit is settled by the actual delivery or transfer of such share or unit.	0.075 per cent.	Purchaser
2	Sale of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled by the actual delivery or transfer of such share or unit.	0.075 per cent.	Seller
3	Sale of an equity share in a company or a unit of an equity oriented fund, where— (a) the transaction of such sale is entered into in a recognised stock exchange; and (b) the contract for the sale of such share or unit is settled otherwise than by the actual delivery or transfer of such share or unit.	0.015 per cent.	Seller
4	Sale of a derivative, where the transaction of such sale is entered into in a recognised stock exchange.	0.01 per cent.	Seller
5	Sale of a unit of an equity oriented fund to the Mutual Fund.	0.15 per cent.	Seller

99. Value of taxable securities transaction.—The value of taxable securities transaction,—

(a) in the case of a taxable securities transaction relating to a derivative, being “option in securities”, shall be the aggregate of the strike price and the option premium of such “option in securities”;

(b) in the case of a taxable securities transaction relating to a derivative, being “futures”, shall be the price at which such “futures” is traded; and

(c) in the case of any other taxable securities transaction, shall be the price at which such securities are purchased or sold:

Provided that the Board may, having regard to the manner in which taxable securities transactions are settled in a recognised stock exchange or such other factors which may be relevant for the purposes of determining the price of such securities, specify, by rules made by it, the method of determining the price of such securities for the purposes of this clause.

100. Collection and recovery of securities transaction tax.—(1) Every recognised stock exchange shall collect the securities transaction tax from every person, being a purchaser or a seller, as the case may be, who enters into a taxable securities transaction in that stock exchange, at the rates specified in section 98.

(2) The prescribed person in the case of every Mutual Fund shall collect the securities transaction tax from every person who sells a unit to that Mutual Fund, at the rate specified in section 98.

(3) The securities transaction tax collected during any calendar month in accordance with the provisions of sub-section (1) or sub-section (2), shall be paid by every recognised stock exchange or by the prescribed person in the case of every Mutual Fund, as the case may be, to the credit of the Central Government by the seventh day of the month immediately following the said calendar month.

(4) Any recognised stock exchange or the prescribed person in the case of any Mutual Fund, who fails to collect the tax in accordance with the provisions of sub-section (1) or sub-section (2), shall, notwithstanding such failure, be liable to pay the tax to the credit of the Central Government in accordance with the provisions of sub-section (3).

101. Recognised stock exchange or Mutual Fund to furnish prescribed return.—(1) Every recognised stock exchange or the prescribed person in the case of every Mutual Fund (hereafter in this Chapter referred to as assessee) shall, within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered to the Assessing Officer or to any other authority or agency authorised by the Board in this behalf, a return in such form and verified in such manner and setting forth such particulars as may be prescribed, in respect of all taxable securities transactions entered into during such financial year in that stock exchange or, as the case may be, in respect of all taxable securities transactions, being sale of units to such Mutual Fund during such financial year.

(2) Where any assessee fails to furnish the return under sub-section (1) within the prescribed time, the Assessing Officer may issue a notice to such assessee and serve it upon him, requiring him to furnish the return in the prescribed form and verified in the prescribed manner setting forth such particulars within such time as may be prescribed.

(3) Any assessee who has not furnished the return within the time allowed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2), discovers any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the assessment is made.

102. Assessment.—(1) For the purposes of making an assessment under this Chapter, the Assessing Officer may serve on any assessee, who has furnished a return under section 101 or upon whom a notice has been served under sub-section (2) of section 101 (whether a return has been furnished or not), a notice requiring him to produce or cause to be produced on a date to be specified therein such accounts or documents or other evidence as the Assessing Officer may require for the purposes of this Chapter and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

(2) The Assessing Officer, after considering such accounts, documents or other evidence, if any, as he has obtained under sub-section (1) and after taking into account any other relevant material which he has gathered, shall, by an order in writing, assess the value of taxable securities transactions during the relevant financial year and determine the amount of securities transaction tax payable or refundable on the basis of such assessment:

Provided that no assessment shall be made under this sub-section after the expiry of two years from the end of the relevant financial year.

(3) Every assessee, in case any amount is refunded to it on assessment under sub-section (2), shall, within such time as may be prescribed, refund such amount to the concerned person from whom such amount was collected.

103. Rectification of mistake.—(1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any order passed by him under the provisions of this Chapter within one year from the end of the financial year in which the order sought to be amended was passed.

(2) Where any matter has been considered and decided in any proceeding by way of appeal relating to an order referred to in sub-section (1), the Assessing Officer passing such order may, notwithstanding anything contained in any law for the time being in force, amend the order under that sub-section in relation to any matter other than the matter which has been so considered and decided.

(3) Subject to the other provisions of this section, the Assessing officer may—

(a) make an amendment under sub-section (1) of his own motion; or

(b) make such amendment if any mistake is brought to his notice by the assessee.

(4) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the Assessing Officer concerned has given notice to the assessee of his intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(5) Where an amendment is made under this section, an order shall be passed in writing by the Assessing Officer.

(6) Subject to the other provisions of this Chapter, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make any refund, which may be due to such assessee.

(7) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

104. Interest on delayed payment of securities transaction tax.—Every assessee who fails to credit the securities transaction tax or any part thereof as required under section 100, to the account of the Central Government within the period specified in that section, shall pay simple interest at the rate of one per cent. of such tax for every month or part of a month by which such crediting of the tax or any part thereof is delayed.

105. Penalty for failure to collect or pay securities transaction tax.—Any assessee who—

(a) fails to collect the whole or any part of the securities transaction tax as required under section 100; or

(b) having collected the securities transaction tax, fails to pay such tax to the credit of the Central Government in accordance with the provisions of sub-section (3) of that section, shall be liable to pay,—

(i) in the case referred to in clause (a), in addition to paying the tax in accordance with the provisions of sub-section (4) of that section, or interest, if any, in accordance with the provisions of section 104, by way of a penalty, a sum equal to the amount of securities transaction tax that he failed to collect; and

(ii) in the case referred to in clause (b), in addition to paying the tax in accordance with the provisions of sub-section (3) of that section and interest in accordance with the provisions of section 104, by way of penalty, a sum of one thousand rupees for every day during which the failure continues, so, however, that the penalty under this clause shall not exceed the amount of securities transaction tax that it failed to pay.

106. Penalty for failure to furnish prescribed return.—If an assessee fails to furnish in due time the return which it is required to furnish under sub-section (1) of section 101 or by notice given under sub-section (2) of that section, it shall be liable to pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues.

107. Penalty for failure to comply with notice.—If the Assessing Officer in the course of any proceedings under this Chapter is satisfied that any person has failed to comply with a notice under sub-section (1) of section 102, he may direct that such person shall pay, by way of penalty, in addition to any securities transaction tax and interest, if any, payable by him, a sum of ten thousand rupees for each such failure.

108. Penalty not to be imposed in certain cases.—Notwithstanding anything contained in the provisions of section 105 or section 106 or section 107, no penalty shall be imposed for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure:

Provided that no order imposing a penalty under this Chapter shall be made unless the assessee has been given a reasonable opportunity of being heard.

109. Application of certain provisions of Act 43 of 1961.—The provisions of the following sections of the Income-tax Act, 1961 (43 of 1961), as in force from time to time, shall apply, so far as may be, in relation to securities transaction tax as they apply in relation to income-tax:—

120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293.

110. Appeals to Commissioner of Income-tax (Appeals).—(1) Any assessee aggrieved by any assessment order passed by the Assessing Officer under section 102 or any order under section 103, or denying his liability to be assessed under this Chapter, or by an order levying penalty under this Chapter, may appeal to the Commissioner of Income-tax (Appeals) within thirty days from the date of receipt of the order of the Assessing Officer.

(2) Every appeal under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of one thousand rupees.

(3) Where an appeal has been filed under the provisions of sub-section (1), the provisions of sections 249 to 251 of the Income-tax Act, 1961 (43 of 1961), shall, as far as may be, apply.

111. Appeals to the Appellate Tribunal.—(1) Any assessee aggrieved by an order passed by a Commissioner of Income-tax (Appeals) under section 110 may appeal to the Appellate Tribunal against such order.

(2) The Commissioner of Income-tax may, if he objects to any order passed by the Commissioner of Income-tax (Appeals) under section 110, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is received by the assessee, or by the Commissioner of Income-tax, as the case may be.

(4) Every appeal under sub-section (1) or sub-section (2) shall be in the prescribed form and shall be verified in the prescribed manner and in the case of an appeal filed under sub-section (1) shall be accompanied by a fee of one thousand rupees.

(5) Where an appeal has been filed before the Appellate Tribunal under sub-section (1) or sub-section (2), the provisions of sections 252 to 255 of the Income-tax Act, 1961 (43 of 1961), shall, as far as may be, apply.

112. False statement in verification, etc.—(1) If a person makes a statement in any verification under this Chapter or any rule made thereunder, or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to three years and with fine.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sub-section (1) shall be deemed to be non-cognizable within the meaning of that Code.

113. Institution of proceedings.—A person shall not be proceeded against for any offence under section 112 except with the previous sanction of the Chief Commissioner of Income-tax.

114. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the time within which the return shall be delivered or caused to be delivered to the Assessing Officer or to any other agency and the form and the manner in which such return shall be furnished under sub-section (1) or sub-section (2) of section 101;

(b) the time within which the return shall be furnished on receipt of notice under sub-section (2) of section 101;

(c) the form in which an appeal under section 110 or section 111 may be filed and the manner in which they may be verified;

(d) any other matter which by this Chapter is to be, or may be, prescribed.

(3) Every rule made under this Chapter and every notification issued under this Chapter shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule should not be made or the notification should not be issued, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

115. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Chapter, the Central Government may, by order published in the Official Gazette, not inconsistent with the provisions of this Chapter, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date on which the provisions of this Chapter come into force.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

CHAPTER VIII

MISCELLANEOUS

116. Amendment of Act 5 of 1873.—In section 3 of the Government Savings Banks Act, 1873, for clause (b), the following clauses shall be substituted, namely:—

‘(b) “Government Savings Bank” means—

(i) a Post Office Savings Bank; or

(ii) a banking company, or any other company or institution, as the Central Government may, by notification in the Official Gazette, specify, for the purposes of this Act;

(bb) “Secretary” means,—

(i) in the case of a Post Office Savings Bank, the Postmaster-General appointed for the area in which the Post Office Savings Bank is situated, or any officer of the Government as the Central Government may, by general or special order, specify in this behalf; and

(ii) in the case of a banking company or other company or institution, an officer of that banking company or other company or institution, as the case may be, or any officer of the Government or any other person as the Central Government may, by general or special order, specify in this behalf;’

117. Amendment of Act 2 of 1899.—In the Indian Stamp Act, 1899,—

(i) in section 2, after clause (25), the following clause shall be inserted, namely:—

‘(26) “Stamp” means any mark, seal or endorsement by any agency or person duly authorised by the State Government, and includes an adhesive or impressed stamp, for the purposes of duty chargeable under this Act.’;

(ii) in section 9, in sub-section (1), in clause (b), after the words “consolidation of duties”, the words “of policies of insurance and” shall be inserted;

(iii) in Schedule I, in Article No. 53, in the first column, for the words “five hundred rupees”, the words “five thousand rupees” shall be substituted.

118. Amendment of section 8.—In section 8 of the Central Sales Tax Act, 1956 (74 of 1956) (hereinafter referred to as the Central Sales Tax Act),—

(a) for sub-section (6), the following sub-section shall be substituted, namely:—

“(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special

economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.”;

(b) in sub-section (8), for the words, brackets and figures “authority referred to in sub-section (6) a declaration in the prescribed manner on the prescribed form obtained from the authority referred to in sub-section (5)”, the following shall be substituted, namely:—

“prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6)”.

119. Amendment of Chapter VI.—In Chapter VI of the Central Sales Tax Act, as directed to be inserted by section 3 of the Central Sales Tax (Amendment) Act, 2001 (41 of 2001), and as it stands amended by the Finance Act, 2003 (32 of 2003), with effect from the commencement of the Central Sales Tax (Amendment) Act, 2001,—

(a) in section 19, in sub-section (1), for the words, figures and letter “section 6A or section 9”, the words, figures and letter “section 6A read with section 9” shall be substituted;

(b) in section 20, in sub-section (1), for the words, figures and letter “section 6A or section 9”, the words, figures and letter “section 6A read with section 9” shall be substituted;

(c) in section 21, in sub-section (3), in the first proviso, for the words “also to the State Government”, the words “also to each State Government” shall be substituted;

(d) in section 22, after sub-section (1), the following sub-section shall be inserted, namely:—

“(1A) The Authority may grant stay of the operation of the order of the assessing authority against which the appeal is filed before it or order the pre-deposit of the tax before entertaining the appeal and while granting such stay or making such order for the pre-deposit of the tax, the Authority shall have regard, if the assessee has already made pre-deposit of the tax under the general sales tax law of the State concerned, to such pre-deposit.”;

(e) in section 25, for the words “every appeal”, the words “any proceeding” shall be substituted;

(f) in section 26, for the words “the assessing authorities”, the words “each State Government concerned, the assessing authorities” shall be substituted.

120. Amendment of section 4 of Act 39 of 2003.—In section 4 of the Fiscal Responsibility and Budget Management Act, 2003, for the figures, letters and word “31st March, 2008”, at both the places where they occur, the figures, letters and word “31st March, 2009” shall be substituted.

121. Repeal of section 2 of Act 13 of 2004.—Section 2 of the Finance Act, 2004 is hereby repealed and shall be deemed never to have been enacted.

THE FIRST SCHEDULE
(See section 2)

PART I

INCOME-TAX

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

- | | |
|--|---|
| (1) where the total income does not exceed Rs. 50,000 | <i>Nil</i> ; |
| (2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000 | 10 per cent. of the amount by which the total income exceeds Rs. 50,000; |
| (3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000 | Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 60,000; |
| (4) where the total income exceeds Rs. 1,50,000 | Rs. 19,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall,—

(i) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding eight hundred and fifty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax;

(ii) in the case of every person, other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in case of persons mentioned in item (i) above having a total income exceeding eight hundred and fifty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed that total amount payable as income-tax on a total income of eight hundred and fifty thousand rupees by more than the amount of income that exceeds eight hundred and fifty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|---|--|
| (1) where the total income does not exceed Rs.10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000 | Rs.1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs.10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph C

In the case of every firm,—

	<i>Rate of income-tax</i>	
On the whole of the total income		35 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph D

In the case of every local authority,—

	<i>Rate of income-tax</i>	
On the whole of the total income		30 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 112, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

- I. In the case of a domestic company 35 per cent. of the total income;
- II. In the case of a company other than a domestic company—

(i) on so much of the total income as consists of,—

(a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government 50 per cent.;

(ii) on the balance, if any, of the total income 40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

PART II

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES

In every case in which under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, tax is to be deducted at the rates in force, deduction shall be made from the income subject to the deduction at the following rates:—

1. In the case of a person other than a company—

(a) where the person is resident in India—

(i) on income by way of interest other than “Interest on securities” 10 per cent.;

(ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;

(iii) on income by way of winnings from horse races 30 per cent.;

(iv) on income by way of insurance commission 10 per cent.;

(v) on income by way of interest payable on— 10 per cent.;

(A) any debentures or securities other than a security of the Central or State Government for money issued by or on behalf of any local authority or a corporation established by a Central, State or Provincial Act;

(B) any debentures issued by a company where such debentures are listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and any rules made thereunder

(vi) on any other income 20 per cent.;

(b) where the person is not resident in India—

(i) in the case of a non-resident Indian—

(A) on any investment income 20 per cent.;

(B) on income by way of long-term capital gains referred to in section 115E 10 per cent.;

(C) on other income by way of long-term capital gains [not being long-term capital gains referred to in clauses (33), (36) and (38) of section 10] 20 per cent.;

(D) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency 20 per cent.;

(E) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;

(F) on income by way of winnings from horse races 30 per cent.;

(G) on the whole of the other income 30 per cent.;

(ii) in the case of any other person— 20 per cent.;

(A) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency

30 per cent.;

(B) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any

2. In the case of a company—

(a) where the company is a domestic company—

(i) on income by way of interest other than “Interest on securities” 20 per cent.;

(ii) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;

(iii) on income by way of winnings from horse races 30 per cent.;

(iv) on any other income 20 per cent.;

(b) where the company is not a domestic company—

(i) on income by way of winnings from lotteries, crossword puzzles, card games and other games of any sort 30 per cent.;

(ii) on income by way of winnings from horse races 30 per cent.;

(iii) on income by way of interest payable by Government or an Indian concern on moneys borrowed or debt incurred by Government or the Indian concern in foreign currency 20 per cent.;

(iv) on income by way of royalty payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1976 where such royalty is in consideration for the transfer of all or any rights (including the granting of a licence) in respect of copyright in any book on a subject referred to in the first proviso to sub-section (1A) of section 115A of the Income-tax Act, to the Indian concern, or in respect of any computer software referred to in the second proviso to sub-section (1A) of section 115A of the Income-tax Act, to a person resident in India —

(A) where the agreement is made before the 1st day of June, 1997 30 per cent.;

(B) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(v) on income by way of royalty [not being royalty of the nature referred to in sub-item (b)(iv)] payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such agreement is with an Indian concern, the agreement is approved by the Central Government or where it relates to a matter included in the industrial policy, for the time being in force, of the Government of India, the agreement is in accordance with that policy—

(A) where the agreement is made after the 31st day of March, 1961 but before the 1st day of April, 1976 50 per cent.;

(B) where the agreement is made after the 31st day of March, 1976 but before the 1st day of June, 1997 30 per cent.;

(C) where the agreement is made on or after the 1st day of June, 1997 20 per cent.;

(vi) on income by way of fees for technical services payable by Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern and where such

Explanation.—For the purpose of item 1(b)(i) of this Part, “investment income” and “non-resident Indian” shall have the meanings assigned to them in Chapter XII-A of the Income-tax Act.

Surcharge on income-tax

The amount of income-tax deducted in accordance with the provisions of—

(A) item 1 of this Part, shall be increased by a surcharge, for purposes of the Union, calculated,—

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

(ii) in the case of every co-operative society, firm and local authority, at the rate of two and one-half per cent. of such tax;

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

(B) item 2 of this Part, shall be increased by a surcharge, for purposes of the Union, calculated at the rate of two and one-half per cent. of such income-tax.

PART III

RATES FOR CHARGING INCOME-TAX IN CERTAIN CASES, DEDUCTING INCOME-TAX FROM INCOME CHARGEABLE UNDER THE HEAD “SALARIES” AND COMPUTING “ADVANCE TAX”

In cases in which income-tax has to be charged under sub-section (4) of section 172 of the Income-tax Act or sub-section (2) of section 174 or section 174A or section 175 or sub-section (2) of section 176 of the said Act or deducted from, or paid on, from income chargeable under the head “Salaries” under section 192 of the said Act or in which the “advance tax” payable under Chapter XVII-C of the said Act has to be computed at the rate or rates in force, such income-tax or, as the case may be, “advance tax” [not being “advance tax” in respect of any income chargeable to tax under Chapter XII or Chapter XII-A or section 115JB or sub-section (1A) of section 161 or section 164 or section 164A or section 167B of the Income-tax Act at the rates as specified in that Chapter or section or surcharge on such “advance tax” in respect of any income chargeable to tax under section 115A or section 115AB or section 115AC or section 115ACA or section 115AD or section 115B or section 115BB or section 115BBA or section 115E or section 115JB] shall be charged, deducted or computed at the following rate or rates:—

Paragraph A

In the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

(1) where the total income does not exceed Rs. 50,000	<i>Nil</i> ;
(2) where the total income exceeds Rs. 50,000 but does not exceed Rs. 60,000	10 per cent. of the amount by which the total income exceeds Rs. 50,000;
(3) where the total income exceeds Rs. 60,000 but does not exceed Rs. 1,50,000	Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 60,000;
(4) where the total income exceeds Rs. 1,50,000	Rs. 19,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 1,50,000.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph or in section 111A or section 112 shall,—

(i) in the case of every individual or Hindu undivided family or association of persons or body of individuals having a total income exceeding eight hundred and fifty thousand rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIIIA, and the income-tax as so reduced, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax;

(ii) in the case of every person, other than those mentioned in item (i), be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax:

Provided that in case of persons mentioned in item (i) above having a total income exceeding eight hundred and fifty thousand rupees, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of eight hundred and fifty thousand rupees by more than the amount of income that exceeds eight hundred and fifty thousand rupees.

Paragraph B

In the case of every co-operative society,—

Rates of income-tax

- | | |
|--|--|
| (1) where the total income does not exceed Rs. 10,000 | 10 per cent. of the total income; |
| (2) where the total income exceeds Rs. 10,000 but does not exceed Rs. 20,000 | Rs. 1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 10,000; |
| (3) where the total income exceeds Rs. 20,000 | Rs. 3,000 <i>plus</i> 30 per cent. of the amount by which the total income exceeds Rs. 20,000. |

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every co-operative society, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph C

In the case of every firm,—

Rate of income-tax

On the whole of the total income 35 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 111A or section 112, shall, in the case of every firm, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph D

In the case of every local authority,—

Rate of income-tax

On the whole of the total income 30 per cent.

Surcharge on income-tax

The amount of income-tax computed at the rate hereinbefore specified, or in section 111A or section 112, shall, in the case of every local authority, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

Paragraph E

In the case of a company,—

Rates of income-tax

- I. In the case of a domestic company 35 per cent. of the total income;
- II. In the case of a company other than a domestic company—
 - (i) on so much of the total income as consists of,—
 - (a) royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April, 1976; or
 - (b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with the

Government or the Indian concern after the 29th day of February, 1964 but before the 1st day of April, 1976,

and where such agreement has, in either case, been approved by the Central Government 50 per cent.;

(ii) on the balance, if any, of the total income 40 per cent.

Surcharge on income-tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph, or in section 111A or section 112, shall, in the case of every company, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income-tax.

PART IV [See section 2(12)(c)]

RULES FOR COMPUTATION OF NET AGRICULTURAL INCOME

Rule 1.—Agricultural income of the nature referred to in sub-clause (a) of clause (1A) of section 2 of the Income-tax Act shall be computed as if it were income chargeable to income-tax under that Act under the head “Income from other sources” and the provisions of sections 57 to 59 of that Act shall, so far as may be, apply accordingly:

Provided that sub-section (2) of section 58 shall apply subject to the modification that the reference to section 40A therein shall be construed as not including a reference to sub-sections (3) and (4) of section 40A.

Rule 2.—Agricultural income of the nature referred to in sub-clause (b) or sub-clause (c) of clause (1A) of section 2 of the Income-tax Act [other than income derived from any building required as a dwelling-house by the receiver of the rent or revenue of the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c)] shall be computed as if it were income chargeable to income-tax under that Act under the head “Profits and gains of business or profession” and the provisions of sections 30, 31, 32, 36, 37, 38, 40, 40A [other than sub-sections (3) and (4) thereof], 41, 43, 43A, 43B and 43C of the Income-tax Act shall, so far as may be, apply accordingly.

Rule 3.—Agricultural income of the nature referred to in sub-clause (c) of clause (1A) of section 2 of the Income-tax Act, being income derived from any building required as a dwelling-house by the receiver of the rent or revenue or the cultivator or the receiver of rent-in-kind referred to in the said sub-clause (c) shall be computed as if it were income chargeable to income-tax under that Act under the head “Income from house property” and the provisions of sections 23 to 27 of that Act shall, so far as may be, apply accordingly.

Rule 4.—Notwithstanding anything contained in any other provisions of these rules, in a case—

(a) where the assessee derives income from sale of tea grown and manufactured by him in India, such income shall be computed in accordance with rule 8 of the Income-tax Rules, 1962, and sixty per cent. of such income shall be regarded as the agricultural income of the assessee;

(b) where the assessee derives income from sale of centrifuged latex or cenex or latex based crepes (such as pale latex crepe) or brown crepes (such as estate brown crepe, re-milled crepe, smoked blanket crepe or flat bark crepe) of technically specified block rubbers manufactured or processed by him from rubber plants grown by him in India, such income shall be computed in accordance with rule 7A of the Income-tax Rules, 1962, and sixty-five per cent. of such income shall be regarded as the agricultural income of the assessee;

(c) where the assessee derives income from sale of coffee grown and manufactured by him in India, such income shall be computed in accordance with rule 7B of the Income-tax Rules, 1962, and sixty per cent. or seventy-five per cent., as the case may be, of such income shall be regarded as the agricultural income of the assessee.

Rule 5.—Where the assessee is a member of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) which in the previous year has either no income chargeable to tax under the Income-tax Act or has total income not exceeding the maximum amount not chargeable to tax in the case of an association of persons or a body of individuals (other than a Hindu undivided family, a company or a firm) but has any agricultural income, then, the agricultural income or loss of the association or body shall be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed shall be regarded as the agricultural income or loss of the assessee.

Rule 6.—Where the result of the computation for the previous year in respect of any source of agricultural income is a loss, such loss shall be set off against the income of the assessee, if any, for that previous year from any other source of agricultural income:

Provided that where the assessee is a member of an association of persons or a body of individuals and the share of the assessee in the agricultural income of the association or body, as the case may be, is a loss, such loss shall not be set off against any income of the assessee from any other source of agricultural income.

Rule 7.—Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

Rule 8.—(1) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2004, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1996 or the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003, is a loss, then, for the purposes of sub-section (2) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1996, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002 or the 1st day of April, 2003,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2003,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2003,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2004.

(2) Where the assessee has, in the previous year relevant to the assessment year commencing on the 1st day of April, 2005, or, if by virtue of any provision of the Income-tax Act, income-tax is to be charged in respect of the income of a period other than the previous year, in such other period, any agricultural income and the net result of the computation of the agricultural income of the assessee for any one or more of the previous years relevant to the assessment years commencing on the 1st day of April, 1997 or the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004, is a loss, then, for the purposes of sub-section (10) of section 2 of this Act,—

(i) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1997, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1998 or the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(ii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1998, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 1999 or the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(iii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 1999, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2000 or the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(iv) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2000, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2001 or the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(v) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2001, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2002 or the 1st day of April, 2003 or the 1st day of April, 2004,

(vi) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2002, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2003 or the 1st day of April, 2004,

(vii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April 2003, to the extent, if any, such loss has not been set off against the agricultural income for the previous year relevant to the assessment year commencing on the 1st day of April, 2004,

(viii) the loss so computed for the previous year relevant to the assessment year commencing on the 1st day of April, 2004,

shall be set off against the agricultural income of the assessee for the previous year relevant to the assessment year commencing on the 1st day of April, 2005.

(3) Where any person deriving any agricultural income from any source has been succeeded in such capacity by another person, otherwise than by inheritance, nothing in sub-rule (1) or sub-rule (2) shall entitle any person, other than the person incurring the loss, to have it set off under sub-rule (1) or, as the case may be, sub-rule (2).

(4) Notwithstanding anything contained in this Rule, no loss which has not been determined by the Assessing Officer under the provisions of these Rules or the Rules contained in Part IV of the First Schedule to the Finance (No. 2) Act, 1996 (33 of 1996), or of the First Schedule to the Finance Act, 1997 (26 of 1997), or of the First Schedule to the Finance (No. 2) Act, 1998 (21 of 1998), or of the First Schedule to the Finance Act, 1999 (27 of 1999), or of the First Schedule to the Finance Act, 2000 (10 of 2000), or of the First Schedule to the Finance Act, 2001 (14 of 2001), or of the First Schedule to the Finance Act, 2002 (20 of 2002), or of the First Schedule to the Finance Act, 2003 (32 of 2003), shall be set off under sub-rule (1) or, as the case may be, sub-rule (2).

Rule 9. – Where the net result of the computation made in accordance with these rules is a loss, the loss so computed shall be ignored and the net agricultural income shall be deemed to be *nil*.

Rule 10. – The provisions of the Income-tax Act relating to procedure for assessment (including the provisions of section 288A relating to rounding off of income) shall, with the necessary modifications, apply in relation to the computation of the net agricultural income of the assessee as they apply in relation to the assessment of the total income.

Rule 11. – *For the purposes of computing the net agricultural income of the assessee, the Assessing Officer shall have the same powers as he has under the Income-tax Act for the purposes of assessment of the total income.*

THE SECOND SCHEDULE

[See section 78(1)]

Provision of the CENVAT Credit Rules, 2002 to be amended	Amendment	Date of effect of amendment
(1)	(2)	(3)

Explanation to
clause (b) of sub-
rule (6) of rule 3.

In the CENVAT Credit Rules, 2002, in rule 3, in sub-rule (6), in clause (b), for the *Explanation*, the following *Explanation* shall be substituted, namely:—

"Explanation.—For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);".

1st March, 2003.