EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE ACT, 2007

FINANCE ACT, 2007

CIRCULAR NO. 3/ 2008, DATED 12-3-2008

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FIINANCE ACT, 2007

Finance Act, 2007 - Explanatory Notes on provisions relating to Direct Taxes

CIRCULAR NO. 03 /2008, DATED 12th March, 2008

1. Introduction

1.1 The Finance Act, 2007 (hereafter referred to as the Act) as passed by the Parliament, received the assent of the President on the 11th day of May, 2007 and has been enacted as Act No. 22 of 2007. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. Changes made by the Finance Act, 2007

2.1 The Finance Act, 2007 (hereinafter referred to as the 'Act'), has,—

i. specified the rates of income-tax for the assessment year 2007-08 and the rates of income-tax on the basis of which tax has to be deducted and advance tax has to be paid during financial Year 2007-08;

ii. amended sections 2, 7, 9,10, 10AA,12A, 12AA, 13, 17, 35, 36, 40A, 47, 49, 54EC, 56, 72A, 80A, 80AC, 80C, 80CCD, 80D, 80E, 80-IA, 80-IB, 80-IC, 92CA, 115JB, 115-O, 115R, 115WB, 115WC, 115WJ, 120, 132B, 139, 142, 143, 153, 153B, 172, 193, 194A, 194C, 194H, 194-I, 194J, 197A, 201, 206A, 206C, 245A, 245C, 245D, 245DD, 245E, 245F, 245H, 246A, 249, 253, 254, 271, 295, 296 of the Income-tax Act, 1961;

iii. substituted Section 245K, 248 of the Income Tax Act, 1961;

iv. inserted new sections 44DB, 72AB, 80-ID, 80-IE, 115WKA, 139C, 139D, 153D, 245HA, 271AAA, 292C in the Income-tax Act, 1961;

v. amended Chapter XII-E of the Income Tax Act, 1961;

vi. amended rule 60 and 68A of the second Schedule to the Income-tax Act, 1961;

vii. amended rule 3 and 4 of the Part A of the fourth Schedule to the Income-tax Act, 1961;

viii. amended section 2, 22A, 22C, 22D, 22DD, 22E, 22F, 22H, of the Wealth-tax Act, 1957.

ix. substituted section 22K of the Wealth-tax Act, 1957.

x. inserted new section 22HA, 22HAA, 42D of the Wealth-tax Act, 1957.

xi. amended section 93, 94 of Finance (No.2) Act, 2004.

xii. amended section 94 of Chapter VII of the Finance Act, 2005.

3. Rate structure

3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2007-08

3.1-1 In respect of income of all categories of taxpayers liable to tax for the assessment year 2007-08, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2006 for the purposes of computation of advance tax, deduction of tax at source from Salaries and charging of tax payable in certain cases during the financial year 2006-07.

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

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

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

<table>
<tr><th rowspan="2">Income chargeable to tax</th><th colspan="3">Rate of income-tax</th></tr>
<tr><th>Individual (other than individual resident woman and resident senior citizen), HUF, association of persons, body of individuals and artificial juridical person</th><th>Individual woman resident in India and below the age of sixty-five years</th><th>Individual senior citizen, resident in India, who is of the age of 65 years or more</th></tr>
<tr><td>Upto Rs. 1,00,000</td><td>Nil</td><td>Nil</td><td rowspan="4">Nil</td></tr>
<tr><td>Rs. 1,00,001-1,35,000</td><td rowspan="2">10%</td><td rowspan="2">Nil</td></tr>
<tr><td>Rs. 1,35,001 - Rs. 1,50,000</td><td>10%</td></tr>
<tr><td>Rs. 1,50,001 - Rs. 1,85,000</td><td rowspan="2">20%</td><td rowspan="2">20%</td></tr>
<tr><td>Rs. 1,85,001 - Rs. 2,50,000</td><td>20%</td></tr>
<tr><td>Exceeding Rs. 2,50,000</td><td>30%</td><td>30%</td><td>30%</td></tr>
</table>

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

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

3.1-6 Education Cess- An additional surcharge called the "Education Cess on income-tax" shall be levied at the rate of two per cent. on the amount of tax computed, inclusive of surcharge, in all cases. For instance, if the income-tax computed is Rs. 1,00,000/- and the surcharge is Rs. 10,000/-, then the education cess of two per cent. is to be computed on Rs. 1,10,000/- which works out to Rs. 2,200/-. No marginal relief shall be available in respect of Education Cess.

3.1-7 Co-operative Society- In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act as under-

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

No surcharge shall be levied. Education Cess shall be levied at the rate of two per cent. on the amount of tax computed.

3.1-8. Firm - In the case of every firm, the rate of income-tax has been specified at thirty per cent. in Paragraph C of Part I of the First Schedule to the Act. Surcharge at the rate of ten per cent. shall be levied. Education Cess shall be levied at the rate of two per cent. on the amount of tax computed, inclusive of surcharge.

3.1-9. Local authority - In the case of every local authority, the rate of income-tax has been specified at thirty per cent. in Paragraph D of Part I of the First Schedule to the Act. No surcharge shall be levied. Education Cess shall be levied at the rate of two per cent. on the amount of tax computed.

3.1-10. Company - In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act. In case of a domestic company, the rate of income-tax is thirty per cent. of the total income. The amount of income-tax computed shall be enhanced by a surcharge of ten per cent. Education Cess shall be levied at the rate of two per cent. on the amount of tax, inclusive of surcharge.

In the case of a company other than a domestic company, royalties received from Government or an Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 is chargeable to tax at the rate of fifty per cent. Similarly, fees for rendering technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, is taxable at the rate of fifty per cent. On the balance of the total income of such company, if any, the tax rate is forty per cent. The tax computed shall be enhanced by a surcharge of two and one-half per cent. Education Cess shall be levied at the rate of two per cent. on the amount of tax, inclusive of surcharge.

3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2007-2008

3.2-1 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, the rates for deduction of income-tax at source during the financial year 2007-08 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2007-08 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2006.

3.2-2 Surcharge - The tax deducted at source in each case shall be increased by a surcharge for purposes of the Union as follows:

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

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

3.2-3 In the case of every firm and company, the tax deducted at source in each case shall be increased by a surcharge only where the income or the aggregate of such incomes paid or likely to be paid and subject to deduction exceeds one crore rupees. Such surcharge shall be computed as follows-

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

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

3.2-4 No surcharge shall be levied on the amount of income-tax deducted in the case of a co-operative society and local authority.

3.2-5 Education Cess - An additional surcharge called the "Education Cess on income-tax" shall be levied at the rate of two per cent. on the amount of tax deducted, inclusive of surcharge, if any, in all cases. For instance, if such tax is Rs. 1,00,000/- and the surcharge is Rs. 10,000/-, then the education cess of two per cent. is to be computed on Rs. 1,10,000/- which works out to be Rs. 2,200/-.

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

3.3 Rates for computation of advance tax, deduction of income-tax at source from Salaries, and charging of income-tax in certain cases during the financial year 2007-08.

3.3-1 The rates for deducting income-tax at source from Salaries and computing advance tax during the financial year 2006-07 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2007-08 on current incomes in cases where accelerated assessments have to be made, *e.g.,* provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:

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

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). In the case of individuals, the basic exemption limit has been enhanced from Rs. 1,00,000/- to Rs. 1,10,000/-. The exemption limit for every woman resident in India and below the age of 65 years of age has been enhanced from Rs. 1,35,000/- to Rs. 1,45,000/-. Further, the exemption limit for every individual resident in India and of the age of 65 years or more at any time during the previous year has been raised from Rs. 1,85,000/- to Rs. 1,95,000/-.

The rates of tax during the financial year 2007-08 in the case of persons mentioned above are as follows:

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

Rs. 1,50,001 - Rs. 1,95,000	20%	20%	
Rs. 1,95,001 - Rs. 2,50,000			20%
Exceeding Rs. 2,50,000	30%	30%	30%

3.3-3 Surcharge- In the case of every individual, Hindu undivided family, association of persons or body of individuals, surcharge shall be levied only where the total income exceeds ten lakh rupees. For this purpose, the income-tax on such income shall be reduced by the amount of rebate of income-tax computed under Chapter VIII-A. The income-tax so reduced shall thereafter be enhanced by a surcharge for the purposes of the Union at the rate of ten per cent. of such income-tax. Marginal relief shall be provided to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over Rs. 10,00,000/- is limited to the amount by which the income is more than Rs. 10,00,000/- as illustrated in para 3.1-4.

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

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

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

In addition, the amount of tax computed and surcharge shall also be increased by an additional surcharge called "Secondary and Higher Education Cess on income-tax" at the rate of one per cent. of such income-tax and surcharge as illustrated in para 3.2-5. No marginal relief shall be available in respect of Education Cess.

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

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

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

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

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

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

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

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

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

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

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

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

[Section 2 & First Schedule]

4. Clarificatory amendment to the definition of 'Assessing Officer' and definition of certain other Income-tax Authorities:

1. As per the provisions of clause (7A) to section 2, the expression "Assessing Officer" has been defined to include Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act. The Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of section 120 can also exercise or perform all or any of the powers and functions conferred on or assigned to an Assessing Officer under this Act. The Income-tax authorities- "Additional Commissioner" and "Additional Director" were not specifically mentioned in the said definition because "Additional Commissioner" and "Additional Director" were included in the definition of Joint Commissioner and Joint Director respectively under clauses(28C) and (28D) of the section(2) respectively. However, in order to further clarify the intension of the legislature with regard to the meaning of the term "Assessing Officer", the following amendments have been carried out through the Finance Act, 2007:-

(i) Clause (7A) of Section 2 has been amended so as to include Additional Commissioner in the said clause. This amendment will take retrospective effect and will be effective from 1st June, 1994.
(ii) Clause (7A) of Section 2 has been amended so as to include Additional Director in the said clause. This amendment will take retrospective effect and will be effective from 1st October, 1996.
(iii) Clause (IC) has been inserted in section 2 so as to provide that "Additional Commissioner" means a person appointed to be an Additional Commissioner of Income-tax under sub-section (1) of section 117. This amendment will take retrospective effect and will be effective from 1st June, 1994.
(iv) Clause (ID) has been inserted in section 2 so as to provide that "Additional Director" means a person appointed 'to be an Additional Director of Income tax under sub-section (1) of section 117. This amendment will take retrospective effect and will be effective from the Ist day of October, 1996.
(v) Clause (9B) has been inserted in section 2 so as to provide that "Assistant Director" means a person appointed to be an Assistant Director of Income-tax under sub-section (1) of section 117. This amendment will take retrospective effect and will be effective from 1st April, 1988.
(vi) Similar amendments have also been carried out in the Wealth-tax Act so as to provide that Assessing Officer shall include Additional Commissioner and Additional Director.

(vii) Clause (b) of sub-section (4) of section 120 has been amended so as to provide that the powers and functions conferred on or assigned to the Assessing Officer may also be exercised or performed by an Additional Commissioner. This amendment will retrospective effect and will be effective from 1st June, 1994.

(viii) Clause (b) of sub-section (4) of section 120 has further been amended to provide that the powers and functions conferred on or assigned to the Assessing Officer may also be exercised or performed by the Additional Director. This amendment will have retrospective effect and will be effective from lst October, 1996.

[Section 3, 42 & 83]

5. Widening the scope of capital assets.

1. Under the provisions of clause (14) of section (2), a capital asset has been defined to mean, property of any kind held by an assessee, whether or not connected with his business or profession. Personal effects held for personal use by the assessee or any member of his family dependent on him are excluded from the ambit of definition of capital asset. Presently, the only asset which is in the nature of personal effects, but is included in the definition of capital assets is jewellery.

2. **With a view to widen the scope of 'capital assets', the said clause has been amended, so as to further include assets like archaeological collections, drawings, paintings, sculptures, or any work of art in the definition of Capital assets. These capital assets will attract capital gains tax from Assessment Year 2008-09 onwards.**

[Section 3]

6. New definition of India.

1. The definition of 'India' is provided in section 2(25A) of the Income-tax Act, 1961. Under this definition, India is deemed to include the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry as respects any period for the purposes of section 6 and as respects any period included in the previous year, for the purposes of making any assessment for the assessment year commencing in the 1.4.1963, or for any subsequent assessment year. Clause (ka) of section 2 of the Wealth tax Act, 1957 provides a similar definition of India for the purposes of wealth tax.

2. **The Double Taxation Avoidance Agreements (DTAAs) entered into by India provide a wider definition of 'India' vis-à-vis the Income-tax Act, 1961. Hence, with a view to provide a comprehensive definition of India, the existing definition has been substituted by a new definition, whereby "India" means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 and the air space above its territory and territorial waters. A similar comprehensive definition of India has been provided for the purposes of the Wealth-tax Act by amending clause (ka) of section 2 of that Act.**

3. ***Applicability* – These amendments will take effect retrospectively from the 25th day of August, 1976.**

[Sections 3 & 83]

7. Income deemed to accrue or arise in India.

1. Section 9 relates to incomes deemed to accrue or arise in India. Under the source rule of taxation, income is taxed in the country where it is earned. Vide Finance Act, 1976, the source rule was introduced in section 9 through insertion of clauses (v), (vi) and (vii) in respect of income from interest, royalty and fees for technical services respectively. It was provided, inter alia, that where any sum by way of interest, royalty or fees for technical services is payable to a non-resident by a resident, such income would be deemed to accrue or arise in India, except where the interest or royalty or fees for technical services are relatable to a business or profession carried on by the resident payer outside India or for the purposes of making or earning any income from any source outside India.

2. Thus, a legal fiction was created whereby interest, royalty and fees for technical services were brought to tax on the basis of the source rule of taxation. Hence, irrespective of the situs of the services, the tax jurisdiction will be determined by the situs of the payer and the situs of the utilization of services. In terms of the said provisions, income does not have to actually accrue or arise in India to be deemed to accrue or arise in India. The source rule is also recognized in India's Double Taxation Avoidance Agreements. Further, section 5, which defines scope of total income, is subject to other provisions of the Act, including section 9, and the income deemed to accrue or arise in terms of section 9 gets covered under section 5.

3. Recent judicial opinion has held that despite the deeming fiction in the said section, for any such deemed income to be taxable in India, there must be sufficient territorial nexus between such income and the territory of India. It has been held that where any sum is payable to a non-resident by a resident, the deeming sweep of the said section cannot bring to tax, any income of a non-resident received outside India from an Indian concern for services rendered outside India. In regard to fees for technical services, it has been specifically held that for the fees to be taxable in India, the services have not only to be utilized in a business in India, but also have to be rendered in India.

4. In view of the above judicial opinion, a need was felt to reiterate the legislative intent behind the introduction of the said clauses. Accordingly, an ***Explanation* has been inserted in section 9 to clarify that where income is deemed to accrue or arise in India under clauses (v), (vi), or (vii) of sub-section(1) of section 9, such income shall be included in the total income of the non-resident, regardless of whether the non-resident has a residence or place of business or business connection in India. In such cases, therefore, there will be no need to establish any territorial nexus between the income deemed to accrue or arise to the non-resident under the said clauses and the territory of India.**

5. ***Applicability*- This amendment will take effect retrospectively from the 1st day of June, 1976.**

[Section 5]

8. Exemption for compensation on account of any disaster.

1. India has been visited by a spate of natural and man-made disasters in recent times. Following such disasters, compensation has been granted by the Central and State Governments and local authorities to the victims and their families.

2. An ambiguity prevailed under the existing law regarding the taxability of such compensation sums in the hands of the recipients. In order to remove such ambiguity and to categorically exempt any such compensation from income-tax, a new clause (10BC) has been inserted in section 10. This clause provides that any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster shall be exempt. This however excludes any amount received or receivable by the individual or legal heir which has been allowed a deduction under the Income-tax Act on account of any loss or damage caused by such disaster.

3. For this purpose, the expression 'disaster' shall have the same meaning as is assigned to it under clause (d) of section 2 of the Disaster Management Act, 2005 (53 of 2005). Under the said clause (d), "disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

4. ***Applicability* – This amendment will take effect retrospectively from the 1st day of April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent assessment years.**

[Section 6]

9. Exemption for interest on notified bonds issued by State Pooled Finance Entities.

1. Under the existing provisions of sub-clause (vii) of clause (15) of section 10, interest on bonds issued by a local authority and specified by the Central Government by notification in the Official Gazette, is exempt from income-tax.

2. State Pooled Finance Entities have been set up to issue debt securities on behalf of urban local bodies in terms of the Guidelines for the Pooled Finance Development Scheme notified by the Ministry of Urban Development.

3. The interest on such bonds does not enjoy exemption under the Income Tax Act. In order to enable such urban local bodies to raise funds for capital investment in urban infrastructure through the Pooled Finance Mechanism, sub-clause (vii) of clause (15) of section 10 has been amended to provide that interest on bonds issued by a State Pooled Finance Entity and specified by the Central Government by notification in the Official Gazette, shall also be exempt from income-tax. By way of an ***Explanation* to the said sub-clause, State Pooled Finance Entity has been defined to mean such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development.**

4. ***Applicability*- This amendment will take effect from the 1st day of April, 2008 and will accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 6]

10. Exemption for income of ASOSAI-SECRETARIAT.

1. Under clause (23BBD) of section 10, any income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions registered as "ASOSAI-SECRETARIAT" under the Societies Registration Act, 1860 is exempt for seven previous years relevant to the assessment years beginning on the 1 **st day of April, 2001 and ending on the 31st day of March 2008.**

2. The term of India as the Chair of this prestigious body has been extended by three years. In view of the same, the said clause has been amended so as to extend such exemption for a further period of three assessment years. Accordingly, such exemption will now be available for a period of ten previous years relevant to the assessment years beginning on the **1st day of April, 2001 and ending on the 31st day of March 2011.**

3. ***Applicability*- This amendment will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment years 2008-2009, 2009-2010, 2010-2011.**

[Section 6]

11. Exemption for income of Central Electricity Regulatory Commission

1. A new clause (23BBG) has been inserted in section 10 to provide that any income of Central Electricity Regulatory Commission constituted under sub-section (1) of section 76 of the Electricity Act, 2003 shall be exempt.

2. ***Applicability*- This amendment will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 6]

12. Substitution of the power of notification of certain charitable and religious entities by power of approval by the prescribed authority.

1. Under sub-clauses (iv) and (v) of clause (23C) of section 10, the income of the funds, trusts and institutions referred to therein is exempt from tax if they are notified by the Central Government. Sub-clause (iv) relates to any fund or institution established for charitable purposes having importance throughout India or throughout any State or States. Sub-clause (v) relates to any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes.

2. As the existing procedure of centralised notification by the Central Government for the purpose of claiming exemption was found to be time-consuming and cumbersome, a need was felt to streamline such procedure. Accordingly, the said sub-clauses have been amended to substitute such procedure of notification by the Central Government by a new procedure of approval by the prescribed authority. The prescribed authority will be the Chief Commissioner of Income-tax or Director General of Income-tax designated for this purpose by Central Board of Direct Taxes. With this decentralization of the powers of the Central Government to the field authorities, no notification for exemption under the said sub-clauses will be issued by the Central Government on or after 1.6.2007.

3. Consequential amendments have been made in the second proviso, ninth proviso and thirteenth proviso to clause (23C) of section 10 and in sub-clause (ii) of the first proviso to sub-section (3) of section 143. Through these amendments, a reference to approval by the prescribed authority has been included in addition to notification issued under the said sub-clauses. To give effect to the aforesaid amendment, a new proviso has also been inserted after the fifteenth proviso which provides that all pending applications in respect of which no notification has been issued under the said sub-clauses (iv) or (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day. Vide notification S.O. 850(E) dated 30**th May, 2007, the relevant Rule 2C of Income Tax Rules, 1962 was amended to reflect the above change in procedure. Further, vide Notification S.O. 851(E) dated 30th May, 2007, certain Chief Commissioners and Directors General were authorized by the Central Board of Direct Taxes to act as 'prescribed authority' for the purposes of sub-clause (iv) and sub-clause (v) of clause (23C) of section 10 w.e.f. 1.6.2007.**

4. Consequential amendment has also been made in section 296 to provide that every notification issued before the **1st day of June, 2007 under sub-clause (iv) of clause (23C) of section 10 shall be placed before each House of Parliament within the specified period.**

5. ***Applicability*- These amendments will take effect from the 1st day of June, 2007.**

[Section 6, 47 & 80]

13. Exemption for certain incomes of Investor Protection Fund set up by commodity exchanges.

1. Under clause (23EA) of section 10, any income, by way of contributions received from recognized stock exchanges and the members thereof, of notified Investor Protection Funds, set up by recognized stock exchanges in India, either jointly or separately, is exempt from income-tax.

2. Under the Income-tax Act, Investor Protection Funds of commodity exchanges do not enjoy such exemption even though they are similarly placed. A need was therefore felt to provide exemption to Investor Protection funds set up by commodity exchanges on the lines of the exemption presently available to Investor Protection Funds set up by recognised stock exchanges. Accordingly, a new clause (23EC) has been inserted in section 10 to provide exemption for any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund, set up by commodity exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf. This amendment will enable Investor Protection Funds of commodity exchanges to have adequate funds for undertaking activities relating to the welfare of investors.

3. Further, as stipulated in clause (23EA), it has also been provided in new clause (23EC) that where any amount standing to the credit of the said Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a commodity exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which the amount is so shared and shall accordingly be chargeable to income-tax. "Commodity exchange" has been defined in the ***Explanation* thereto to mean a "registered association" as defined in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952.**

4. ***Applicability*- This amendment will take effect from the 1st day of April, 2008, and will, accordingly apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 6]

14. Exemption for certain income of a venture capital company or venture capital fund.

1. Clause (23FB) of section 10 provides exemption in respect of any income of a venture capital company or venture capital fund set up to raise funds for investment in a venture capital undertaking. Such "venture capital undertaking" has been defined in clause (c) of ***Explanation 1* to clause (23FB) to mean 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 and notified as such in the Official Gazette by the Board for the purposes of the clause.**

2. With a view to make the tax benefit more focused and to channelise existing as well as future investments in key, risk-prone thrust areas, clause (23FB) has been amended whereby such exemption will now be available only in respect of income of a venture capital company or venture capital fund from investment in a venture capital undertaking. For this purpose, the said clause (c) of ***Explanation 1* has also been amended to define "venture capital undertaking" as such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the-**
   - i. business of –
     - A. nanotechnology;
     - B. information technology relating to hardware and software development;
     - C. seed research and development;
     - D. bio-technology;
     - E. research and development of new chemical entities in the pharmaceutical sector;
     - F. production of bio-fuels;
     - G. building and operating composite hotel-cum-convention centre with seating capacity of more than three thousand; or
     - H. developing or operating and maintaining or developing, operating and maintaining any infrastructure facility as defined in the *Explanation* to clause (i) of sub-section (4) of section 80-IA; or

ii. dairy or poultry industry.

3. *Applicability*- This amendment will take effect from the 1st day of April, 2008 and will accordingly apply in relation to the assessment year 2008-2009 and subsequent assessment years.

[Section 6]

15. Tax benefit only for new unit in Special Economic Zone (SEZ).

1. Section 10AA of the Income-tax Act provides that in computing the total income of an entrepreneur, from his unit in the Special Economic Zone(SEZ), the following deduction shall be allowed:-

i. hundred per cent. of profits and gains derived from the export made in eligible business for a period of five consecutive assessment years beginning from the year in which such business commences;
ii. fifty per cent. of such profits and gains for further five assessment years; and
iii. an amount not exceeding fifty per cent of the profit debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account to be created and utilized for the purposes of the business in the specified manner, for the next five consecutive assessment years.

2. Under the existing provisions contained in sub-section (4) of the said section, it is provided that section 10AA is applicable to any undertaking being the unit, which has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st **day of April, 2006 in any SEZ.**

3. Considering the fact that the special economic zones are intended to promote new industry and new investment and not to facilitate migration of existing industries to avail of tax concessions sub-section (4) of section 10AA has been substituted so as to provide that section 10AA is applicable to any undertaking, being the unit, which fulfills all the following conditions, namely:-

i. it has begun or begins to manufacture or produce articles or things or provide services during the previous year relevant to the assessment year commencing on or after the 1st day of April, 2006 in any SEZ;
ii. it is not formed by the splitting up, or the reconstruction, of a business already in existence; and
iii. it is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

4. The conditions at (ii) shall not apply in respect of any undertaking, being the unit, which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertakings as is referred to in section 33B, in the circumstances and within the period specified in that section.

5. *Explanation **1*** **and** ***Explanation 2*** **to sub-section (3) of section 80-IA shall apply for the purposes of determining satisfaction of conditions at (iii).**

6. *Applicability*- This amendment will take effect retrospectively from the 10th day of February, 2006.

[Section 7]

16. Removal of the requirement for charitable or religious trusts or institutions to file for registration within one year of creation or establishment.

1. Sections 11 and 12 grant exemption in respect of income of charitable or religious trusts or institutions. In order to claim such exemption, inter alia, the trust or institution is required to make an application for registration under clause (a) of section 12A in the prescribed form and in the prescribed manner to the Commissioner within one year from the date of its creation or establishment and such trust or institution has to be registered under section 12AA.

2. Where such application is made after one year, the Commissioner has the powers to condone such delay, if he is satisfied that the trust or institution was prevented from making the application within the specified time limit for sufficient reasons. If the Commissioner is so satisfied, the exemption under sections 11 and 12 shall apply to such trust or institution from the date of creation of the trust or establishment of the institution. However, where the Commissioner is not so satisfied, the exemption shall become applicable only from the 1st **day of the financial year in which the application is made.**

3. A need has been felt to streamline the procedure relating to the registration of charitable or religious trusts or institutions. In line with such intention, the abovementioned clause (a) has been sunset by restricting its applicability to applications made before 1.6.2007. A new clause (aa) has been inserted in section 12A to provide that the provisions of section 11 and 12 shall not apply in relation to the income of the trust or institution unless the person in receipt of the income has made an application for the registration of the trust or institution on or after the 1st day of June, 2007 in the prescribed form and in the prescribed manner to the Commissioner and such trust or institution is registered under section 12AA.

4. In addition, section 12A has been re-numbered as sub-section (1) of section 12A and new sub-section (2) has been inserted in section 12A to provide that where an application has been made on or after the 1st **day of June, 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution for the assessment year immediately following the financial year in which such application is made.**

5. With the above amendments, a trust or institution will no longer be compelled to file an application for registration within one year from the date of its creation or establishment. Thus, where an application is filed on or after the 1st **day of June, 2007, the exemption under sections 11 and 12 shall be available on a prospective basis. Accordingly, the discretion presently vested with the Commissioner to determine the period from which the exemption shall be applicable and the consequent power of condonation of delay for prior years stand removed.**

6. Consequential amendments have been made in sub-sections (1) and (2) of section 12AA so as to include a reference to an application for registration of a trust or institution made under newly inserted clause (aa) of section 12A.

7. *Applicability*- These amendments will take effect from the 1st day of June, 2007.

[Sections 8 & 9]

17. Allowing share investment in certain cases as a permissible investment mode for a trust or institution.

1. Section 11(5) of the Act specifies various permissible forms and modes of investing or depositing the funds of a trust or institution for the purposes of availing exemption. Residual clause (xii) of section 11(5) allows any other form or mode as maybe prescribed in Rule 17C of the Income Tax Rules, 1962. Under clauses (iv) and (v) of Rule 17C, investment in the equity share capital of certain companies by certain entities has been permitted.

2. However, under sub-clause (iii) of clause (d) of sub-section (1) of section 13, exemption under the provisions of section 11 or section 12 is not allowable in respect of the income of a trust or institution, if any shares are held by it for any period during the previous year after 30.11.1983. The only exception which has been provided is for shares held in a public sector company by the trust or institution.

3. This had resulted in an anomalous situation whereby share investment is allowed as a permitted form or mode of investment under section 11(5)(xii) read with rule 17C, whereas such share investment stands prohibited under section 13(1)(d)(iii).

4. With a view to harmonise the provisions of section 13(1)(d)(iii) with those of section 11(5)(xii), sub-clause (iii) of clause (d) of sub-section (1) of section 13 has been substituted with a new sub-clause. This new sub-clause provides that the provisions of section 11 and section 12 shall not apply in respect of any income of a charitable or religious trust or institution, if for any period during the previous year, any shares in a company are held by the trust or institution after the 30th **day of November, 1983, other than –**

A. shares in a public sector company;
B. shares which are prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11,

5. ***Applicability-*** **This amendment will take effect retrospectively from the 1st day of April, 1999 and will accordingly apply in relation to the assessment year 1999-2000 and subsequent assessment years.**

[Section 10]

18. Clarification regarding concession in the matter of rent.

1. Section 15 of the Income-tax Act provides that any salary due or paid or allowed or any arrears of salary paid or allowed to the employee in the previous year by an employer or a former employer is chargeable to tax under the head 'salaries'. The term 'salary' has been defined in section 17 of the Income-tax Act and it includes perquisites or profits in lieu of or in addition to any salary or wages. The term 'perquisite' as defined in **sub-section (2) of section 17 of the Income-tax Act, 1961,inter-alia, includes -**
   i. the value of rent-free accommodation provided to the assessee by his employer;
   ii. the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer.

2. Rule 3 of the Income-tax Rules, 1962, has been formulated in exercise of the powers conferred by section 295 of the IT Act. It provides, inter-alia, for the method for determination of value of residential accommodation provided by the employer to the employee. Rule 3 initially had provided for valuation of perquisite, in the nature of residential accommodation, by discretionary method which was certain percentage of salary or fair market rent whichever is less. This method was found to be cumbersome as the estimation of fair rent had been the subject matter of litigation at various levels. Accordingly, the procedure for determining the perquisite value was simplified by adopting presumptive method in 2001 which provided that the perquisite value of residential accommodation shall be determined in the following manner:-
   i. For Central Govt. and State govt. employees the perquisite value would be equal to license fee payable by the employee;
   ii. In case of other employees, the perquisite value would be equal to 10 per cent of the salary, if the accommodation is located in a city having population exceeding four lakhs and 7.5 % for other cities, based on the census of 1991.

3. The perquisite value so determined was to be reduced by the amount, if any, recovered from or paid by the employee. Rule 3 was further amended in 2005 so as to increase the rate of 10% to 20% and 7.5% to 15%. Further, the base for population was changed to 2001 census.

4. The constitutional validity of rule 3 relating to the perquisite value of residential accommodation as amended by SO. No. 940 (E) dated 25.9.2001 was challenged before various High Courts and before the Supreme Court.

5. The Hon'ble High Court of Jharkhand has, in the case of the Tata Workers Union and another Vs Union of India (256 ITR 725), upheld the validity of rule 3 as amended by notification S.O. No. 940(E) by holding that ***'the impugned notification does not suffer from any arbitrariness because in our considered opinion, for rationalising and simplifying the procedure, the Board brought about the impugned notification otherwise on account of cumbersome procedure as per the old rule various difficulties were being faced.'***

6. The Hon'ble Supreme Court, in the case of Arun Kumar Vs. UOI (2006-119-SC) (Appeal (Civil) 3270 of 2003) held that

   'though Rule 3 of the Rules cannot be held arbitrary, discriminatory or ultra vires Article 14 of the Constitution nor inconsistent with the parent Act [Section 17(2)(ii)], it is in the nature of 'machinery-provision' and applies only to the cases of 'concession' in the matter of rent respecting any accommodation provided by an employer to his employees. Whether or not Parliament could have in the exercise of legislative power created a 'deeming fiction' as to concession in the matter of rent in certain circumstances (for which we express no final opinion), no such deeming provision is found in the Act. It is, therefore, open to the assessee to contend that there is no 'concession' in the matter of accommodation provided by the employer to the employees and the case is not covered by section 17(2)(ii) of the Act'.

7. Thus, Hon'ble Supreme Court has, while upholding the validity of Rule-3, held that the fact of a concession would have to be proved in each case before the rate of 15 per cent or 20 percent is applied to that case. The Supreme Court decision was not adverse to the Government and, in fact, indicated that the way out would be to insert a deeming provision. If the judgement were to be applied in each case, it would have resulted in considerable inconvenience to the assessee and long drawn out proceedings as the fact of concession in the matter of rent would have had to be examined in each and every case on discretionary basis.

8. Hence, the Finance Act 2007 inserted a deeming provision defining what constitute concession in the matter of rent with retrospective effect from 1.4.2002, i.e. assessment year 2002-03 and subsequent years. Further, the presumptive rates for valuation of concessional rent accommodation were reduced with retrospective effect from 1.4.2006, i.e. assessment year 2006-07 and subsequent years to provide relief to salaried employees.

9. It has now been provided that concession in the matter of rent with respect to an accommodation owned and provided by the employer shall be deemed to have been provided if the rent recovered from the employee is less than the value determined as under:-

   - For unfurnished accommodations located in cities having population of more than 25 Lakh and provided by an employer other than the Central Government or State Government – valuation will be 15% of salary;
   - For unfurnished accommodations located in cities having population of more than 10 Lakh but not more than 25 Lakh and is provided by an employer other than the Central Government or State Government – valuation will be 10% of salary;
   - For unfurnished accommodations located in other area and is provided by an employer other than the Central Government or State Government – valuation will be 7.5% of salary;
   - For unfurnished accommodation provided by Central Government or State Government – the valuation will be the licence fee
   - In case of unfurnished lease property, the valuation will be 15% of the salary or lease rental which ever is lower
   - In case furniture is provided, the actual hire charge (in case the furniture is hired from third party) or 10% of cost of furniture (if the furniture is owned by the employer) is to be added
   - In case any part of rent is being recovered from or paid by the employee, the valuation arrived above shall be reduced by that amount.
   - The population shall be as per 2001 census.

10. Rule 3 has also been amended accordingly and notified vide S.O. 1896(E), dated 7th **November, 2007. The reason for legislature to prefer presumptive method in 2001 in comparison to a discretionary method was to eliminate discretionary powers of the A.O. The pre-2001 system of determining the fair market rent in each case would have led to prolonged legal battle causing enormous inconvenience to taxpayers. The insertion of explanation with retrospective effect seeks to clarify such intention. The lowering of valuation rate with retrospective effect is aimed to provide relief to taxpayers.**

11. It is also realized that, due to retrospective effect of this amendment, taxpayers may be entitled to refunds, as in their case tax on perquisite in the form of rent free or concessional rent accommodation would have been deducted at a higher rate than what has been enacted now for assessment years 2006-2007 and 2007-2008. For these years, the taxpayers, who had already lodged their tax returns for these years, can claim refund by filing a rectification application under section 154 of the Income-tax Act. The application should enclose a certificate from the employer certifying the year-wise value of perquisite determined, relating to rent free or concessional rent accommodation provided to that employee, and the tax deducted there upon and paid to Central Government. The assessing officers are directed to admit such applications and process them u/s 154 of the Income-tax Act.

12. While amending Rule 3, sub-rules 2, 6, 7 (ii), (iii), (iv), (v) and (vi) have also been reintroduced. These sub-rules were omitted by the Finance Act, 2005 while introducing the provisions of Fringe Benefit Tax in order to avoid double taxation of those benefits which were sought to be taxed as fringe benefit. However, Chapter XII-H of the Income-tax Act relating to Fringe Benefit Tax, as provided in the Finance Act, 2005, is not applicable to all employers. For example individual, HUF, exempted trust, government, etc. are a few examples of employers who are not subjected to FBT. Accordingly, these sub-rules have been reintroduced to provide valuation rules for valuation of perquisites enjoyed by an employee employed with an employer, who is not subjected to fringe benefit tax. Sub-rule 7(ix) has been inserted to provide for valuation of any other benefit or amenity, etc in residual cases relating to any employer. These sub-rules shall take effect from the 1st **day of April, 2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent years.**

[Section 11]

19. Weighted deduction under clause (1) of sub-section (2AB) of section 35 to be allowed for five more years.

1. The existing provisions of clause (1) of sub-section (2AB) of section 35, allowed in the case of a company, engaged in the business of biotechnology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipment, computers, telecommunication equipment, chemicals or any other article or thing notified by the Board, a deduction of a sum equal to one and one-half times of the expenditure incurred on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility as approved by the prescribed authority.

2. The existing provisions were not applicable in respect of any expenditure incurred by a company after 31st **March, 2007 and no weighted deduction against expenditure incurred after that date was admissible.**

3. Considering the general realisation that research and development still needs some fiscal support for a few more years, the Finance Act, 2007 has amended clause (5) of the said sub-section, thereby allowing weighted deduction referred to in clause (1) for a further period of five years, that is, in respect of the expenditure incurred up to 31st **March, 2012.**

4. ***Applicability*** **– This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 onwards upto assessment year 2012-13.**

[Section 12]

20. Deduction in respect of any provision for bad and doubtful debts to be allowed in the case of co-operative banks under section 36(1)(viia).

1. Under the existing provisions of clause (viia) of sub-section (1) of section 36, deduction of an amount not exceeding seven and one-half per cent. of the total income (computed before making any deduction under the said clause and Chapter VIA) and an amount not exceeding ten per cent. of the aggregate average advances made by the rural branches of a scheduled bank or a non-scheduled bank computed in the prescribed manner was allowed as deduction in the computation of income of such banks. "Scheduled bank", as defined in the Explanation to clause (viia) of sub-section (1) of the section 36, did not include a co-operative bank.

2. The deduction earlier allowable under section 80P in the case of a co-operative society engaged in carrying on the business of banking (co-operative banks) has been withdrawn from assessment year 2007-2008 barring in the case of a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

3. Since profits of co-operative banks have become taxable after withdrawal of 80P deduction, the Finance Act, 2007 has amended sub-clause (a) clause (viia) of sub-section (1) of section 36 to allow deduction in respect of any provision for bad and doubtful debts to a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

4. The definition of scheduled bank in clause (ii) of Explanation to said clause (viia) has also been amended to include scheduled co-operative banks within the definition.

5. Under the existing provisions contained in the ***Explanation*** **to item (fa) of sub-clause (iv) of clause (15) of section 10, the expression "scheduled bank" was defined to have the meaning assigned to it in clause (ii) of the *Explanation* to clause (viia) of sub-section (1) of section 36 which does not, inter alia, include co-operative banks. However, the definition of "scheduled bank" has been amended to include scheduled co-operative banks. The referral definition of "scheduled bank" occurring in the Explanation to the aforesaid item (fa) did not allow exemption of interest payable to a non-resident or a not ordinarily resident by a co-operative bank. In order to continue with this position, the definition of "scheduled bank" in its pre-amended form in clause (ii) of Explanation to clause (viia) of sub-section (1) of section 36 has being substituted for the existing Explanation in the aforesaid item (fa) so that the scope of the exemption allowed under the aforesaid item (fa) is not changed.**

6. The amendment to the definition of "scheduled banks" as it appears in clause (viia) of sub-section (1) of section 36 will also have the effect of making the provisions of section 43D applicable to scheduled co-operative banks.

7. ***Applicability*** **- These amendments will take effect, retrospectively, from the 1st day of April, 2007 and will, accordingly apply in relation to the assessment year 2007-2008 and subsequent assessment years.**

[Section 6 & 13]

21. Rationalisation of provisions relating to deduction in respect of creation and maintenance of special reserve under section 36(1)(viii).

1. The existing provisions of clause (viii) of sub-section (1) of section 36 of the Income-tax Act, 1961 provided for a deduction in respect of any special reserve created and maintained by,-

(i) a financial corporation engaged in providing long-term finance for industrial or agricultural development or development of infrastructure facility in India; or
(ii) a public company formed and registered in India with the main object of carrying on the business of providing long-tem finance for construction or purchase of houses in India for residential purposes.

Maximum deduction allowable under the aforesaid clause was forty per cent. of the profits derived from the business of providing long-term finance.

2. The provisions regarding this special deduction also existed in the Income-tax Act, 1922 and were retained in the Income-tax Act, 1961. The objective of this deduction originally was to stimulate industrial development of the country. The scope of the provisions of the said clause was later on widened by the Finance (No.2) Bill, 1971 to include in its ambit the approved financial corporations engaged in providing long-term finance for agricultural development in India. The objective underlying the provisions of the said clause, as explained in the Memorandum explaining the provisions of the aforesaid Bill, has been to enable financial corporations to build up their internal resources at an accelerated pace and become independent of subventions from Government for financing their activities.

3. Since the introduction of this special deduction and subsequent widening of its scope, high tax incidence on companies has come down substantially. The benefit of this deduction was also intended to enable corporations to augment their initial low equity base on account of limited accessibility to capital market. In the wake of liberalisation, from the beginning of the nineties, there has been considerable expansion and deepening of the capital market. Accessibility to capital market has markedly improved.

4. The Finance Act, 2007, therefore, has limited the deduction to twenty per cent. of the profits derived from the business of providing long-term finance. Considering the provision for outer limit to the deduction, which is twice the amount of the paid-up share capital and of the general reserves, the reduction in the level of deduction to twenty per cent will have the effect of elongating the time period during which the deduction can be claimed by the beneficiary "specified entities". Effectively therefore the specified entities are not adversely affected in the long term.

5. The provision has also been restructured to provide for different categories of entities (which now also includes co-operative banks) and their respective activities for eligibility of the deduction under the said clause. For claiming deduction under the said clause, (i) a financial corporation specified in section 4A of the Companies Act or a financial corporation which is a public sector company or a banking company or a co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) has to be engaged in the business of providing long-term finance in India for industrial or agricultural development or development of infrastructure facility, (ii) a housing finance company has to be engaged in the business of providing long-term finance for the construction or purchase of houses in India for residential purposes and (iii) any other financial corporation including a public company, has to be engaged in the business of providing long-term finance for development of infrastructure facility in India. It may be clarified that a financial corporation specified in section 4A of the Companies Act shall include such corporations specified under sub-section (1) and under sub-section (2) of section 4A of the Companies Act.

6. The amendment made by the Finance Act, 2007 also provides definitions of the expressions "banking company", "co-operative bank", "primary agricultural credit society", "primary co-operative agricultural and rural development bank", "housing finance company", "public company", "infrastructure facility" and "long-term finance".

7. ***Applicability*** **– This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 13]

22. Withdrawal of deduction under section 36(1)(x) in respect of contribution by public financial institutions towards Exchange Risk Administration Fund [ERAF].

1. Under the existing provisions of clause (x) of sub-section (1) of section 36, any sum paid by a public financial institution by way of contribution towards any Exchange Risk Administration Fund (ERAF) set up by public financial institutions, either jointly or separately, was allowed as deduction in the computation of income of the payer institution.

2. ERAFs were set up under a scheme known as Exchange Risk Administration Scheme (ERAS). The benefit of coverage of exchange risk under the Scheme was available to borrowers of foreign currency loans provided by institutions out of their external commercial borrowings.

3. An exemption under clause (23E) of section 10 in respect of any income of a notified ERAF set up by public financial institutions was earlier provided by the Finance Act, 1989. By virtue of clause (14A) of section 10, income in the nature of Exchange Risk Premium received by public financial institutions from the borrower and thereafter credited to the ERAF was also exempted from tax. The exemption to ERAFs under section 10(23E) was withdrawn by the Finance Act, 2002 from assessment year 2003-04 on the ground that the operations of these funds were on a commercial line whereby they were collecting an exchange risk premium from borrowers of foreign currency to meet the actual losses on account of exchange fluctuation. ERAFs had been in existence for a considerable time since 1989 and it was felt that tax exemption to them had outlived the utility. Exemption under clause (14A) of section 10 was also withdrawn simultaneously.

4. The foreign exchange scenario in India has undergone a sea change since the launching of ERAS. There are several options available in the market for borrowers to hedge their foreign exchange risk. Responding to changed market dynamics ERAFs have been discontinued by the Industrial and Development Bank of India (IDBI), Power Finance Corporation (PFC) and Indian Renewable Energy Development Agency (IREDA). The clause (x) of sub-section (1) of section 36 had, therefore, outlived its utility.

5. The Finance Act, 2007, accordingly, has omitted clause (x) from the said sub-section.

6. ***Applicability*** **- This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 13]

23. Central Government vested with power to notify a statutory corporation or a body corporate for the purposes of deduction under section 36(1)(xii).

1. Under the existing provisions of clause (xii) of sub-section (1) of section 36, any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act, for the objects and purposes authorised by the said Acts, was allowed as deduction in the computation of its income.

2. The objects and purposes as listed in the said Acts may authorise any kind of expenditure, the allowability of which could not have been questioned in terms of the existing provisions. Therefore, the Finance Act, 2007 has substituted the said clause (xii) to provide that the deduction shall be allowed if such corporation or body corporate is notified by the Central Government in the Official Gazette under the said clause, having regard to the objects and purposes of the corresponding Central, State or Provincial Act.

3. ***Applicability*** **- This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 13]

24. Providing for deduction of sum paid by a public Financial Institution to a notified credit guarantee trust for small industries.

1. The Finance Act, 2007 inserted a new clause (xiv) in sub-section (1) of section 36 of the Income-tax Act, 1961 to provide for deduction of any sum paid by a public financial institution by way of contribution to such credit guarantee fund trust for small industries as the Central Government may, by notification in the official gazette, specify in this behalf.

2. ***Applicability*** **- This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

3. Pursuant to the said amendment, Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), set up by Government of India and Small Industries Development Bank of India (SIDBI), has been notified under clause (xiv) of sub-section (1) of section 36 of the Income-tax Act, 1961 vide Notification No. S.O. 1569(E) Dated 18th **September, 2007.**

[Section 13]

25. Strengthening the provisions of section 40A(3).

1. The existing provisions of sub-section (3) of section 40A provided for disallowance of twenty per cent of the expenditure incurred, payment in respect of which is made in a sum exceeding twenty thousand rupees, otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft.

2. The said sub-section was inserted by the Finance Act, 1968 providing for disallowance of hundred per cent of the expenditure, if payment was made in contravention of its provisions. Subsequently, the Finance Act, 1995 amended this sub-section with effect from 1st **April, 1996 to restrict the disallowance to twenty per cent of the expenditure, payment against which is made in violation of its provisions.**

3. The provisions of the said sub-section were to act as an anti-evasion measure. It has come to notice that substitution of the disallowance of hundred per cent. by twenty per cent. has diluted the deterrence potential of the provisions. Therefore, to re-strengthen the deterrence potential, the Finance Act, 2007 has substituted sub-section (3) of section 40A to provide for hundred per cent disallowance of payments which are made in violation of its provisions.

4. There were occasions when deduction of expenditure was claimed in one year and the payment against such expenditure was made in any subsequent year in violation of the provisions of the said sub-section. In such cases, the existing first proviso to the said sub-section provided for re-computation of the total income of the previous year in which the liability to pay against the expenditure was incurred. Such re-computation was allowed to be made under the provisions in section 154 and the limitation of four years in respect of such re-computation was reckoned from the end of the assessment year next following the previous year in which the payment in contravention of provisions of sub-section (3) of section 40A was made. In many cases, violation was noticed after expiry of four years when no remedy was available. Rectification of past assessments involved inconvenience to the assessee and increased paper work for the Department. The Finance Act, 2007, therefore, has substituted the existing method of disallowance in an earlier year with a simplified method of contemporaneous disallowance by deeming the payments made in contravention of law in any subsequent year as profits and gains of business or profession of such year in which payment is made in violation of law. This method of deeming the income in the year of payment, will cast an obligation on the assessee to declare this deemed income in terms of the existing requirement under law to affirm that the amount of total income and other particulars in his return of income are truly stated.

5. The Finance Act, 2007 has further provided that no disallowance shall be made or no payment shall be deemed to be the profits or gains of business or profession if any payment exceeding twenty thousand rupees is made otherwise than by specified instruments, in such cases and under such circumstances as may be prescribed, having regard to - (i) the nature and extent of banking facilities available, (ii) business expediency considerations and (iii) other relevant factors.

6. In pursuance of the above amendment, the Board have issued Notification No. S.O. 1044(E) dated 27th **June, 2007 substituting Rule 6DD of the Income-tax Rules, 1962 containing exceptions to the provisions of sub-section (3) of section 40A. The exceptions now provided in the newly notified Rule 6DD include payments by the use of electronic clearing system through a bank account, a credit card and a debit card. The exceptions also include now payments upto Rs. 50,000/- on account of terminal benefits without reference to any salary ceiling. Considering the spread of banking services across the Country, exception earlier provided to payments made to various state level industrial development corporations and National Industrial Development Corporation has been withdrawn in the new Rule. The new Rule shall come into force with effect from the assessment year 2008-2009.**

7. ***Applicability*** **- This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 14]

26. Provisions relating to business reorganisation of cooperative banks.

1. A new section 72AB has been inserted providing for carry forward and set-off of accumulated loss and unabsorbed depreciation allowance in business re-organisation of cooperative banks. The provisions are applicable to an assessee, being a successor co-operative bank, in a case where amalgamation has taken place during the relevant previous year. The said successor cooperative bank will be entitled to set off the accumulated loss and the unabsorbed depreciation, if any, of the predecessor co-operative bank as if such amalgamation had not taken place. All the other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation will also apply accordingly.

2. In respect of cooperative banks, business reorganization has been defined to mean the reorganization of business involving the amalgamation or demerger of a co-operative bank.

3. Further, "amalgamation" in respect of cooperative bank has been defined to mean the merger of an amalgamating co-operative bank or banks with an amalgamated co-operative bank, in such manner that -

(i) all the assets and liabilities of the amalgamating co-operative bank or banks immediately before the merger (other than the assets transferred, by sale or distribution on winding up, to the amalgamated co-operative bank) become the assets and liabilities of the amalgamated co-operative bank;

(ii) the members holding seventy-five per cent or more voting rights in the amalgamating co-operative bank become members of the amalgamated co-operative bank; and

(iii) the shareholders holding seventy-five per cent or more in value of the shares in the amalgamating co-operative bank (other than the shares held by the amalgamated co-operative bank or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative bank.

4. "Demerger" in respect of cooperative bank has been defined to mean the transfer by a demerged co-operative bank of one or more of its undertakings to any resulting co-operative bank, in such manner that

(i) all the assets and liabilities of the undertaking or undertakings immediately before the transfer become the assets and liabilities of the resulting co-operative bank;

(ii) the assets and the liabilities are transferred to the resulting co-operative bank at values (other than change in the value of assets consequent to their revaluation) appearing in its books of account immediately before the transfer;

(iii) the resulting co-operative bank issues, in consideration of the transfer, its membership to the members of the demerged co-operative bank on a proportionate basis;

(iv) the shareholders holding seventy-five per cent or more in value of the shares in the demerged co-operative bank (other than shares already held by the resulting bank or its nominee or its subsidiary immediately before the transfer), become shareholders of the resulting co-operative bank, otherwise than as a result of the acquisition of the assets of the demerged co-operative bank or any undertaking thereof by the resulting co-operative bank;

5. A set of conditions have been provided both in the case of successor and predecessor cooperative banks, which have to be fulfilled for availing the provisions as enumerated in this section.

A. The following conditions have been prescribed for the predecessor co-operative bank:-

(i) the said cooperative bank has been engaged in the business of banking for three or more years; and

(ii) the said cooperative bank has held at least three-fourths of the book value of fixed assets as on the date of the business reorganisation, continuously for two years prior to the date of business reorganization.

B. The following conditions have been prescribed for the successor co-operative bank:-

(i) the said cooperative bank holds at least three-fourths of the book value of fixed assets of the predecessor co-operative bank acquired through business reorganisation, continuously for a minimum period of five years immediately succeeding the date of business reorganisation;

(ii) the said cooperative bank continues the business of the predecessor co-operative bank for a minimum period of five years from the date of business reorganisation; and

(iii) the said cooperative bank fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor co-operative bank or to ensure that the business reorganization is for genuine business purpose. Besides, the Central Government may, for the purposes of this section, by notification in the Official Gazette, specify such other conditions as it considers necessary, other than those prescribed to ensure that the business reorganisation is for genuine business purposes.

6. The amount of accumulated loss and unabsorbed depreciation, which can be allowed to set-off against the income of resulting co-operative bank has been provided as under:

(i) the accumulated loss or unabsorbed depreciation of the demerged co-operative bank if the whole of the amount of such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting co-operative bank; or

(ii) the amount which bears the same proportion to the accumulated loss or unabsorbed depreciation of the demerged co-operative bank as the assets of the undertaking transferred to the resulting co-operative bank bears to the assets of the demerged co-operative bank if such accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting co-operative bank.

7. Further, 'accumulated loss' and 'unabsorbed depreciation' have been defined as under :-

(a) accumulated loss means so much of loss of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, under the head Profits and gains of business or profession (not being a loss sustained in a speculation business) which such amalgamating co-operative bank or the demerged co-operative bank, would have been entitled to carry forward and set-off under the provisions of as if the business reorganisation had not taken place;

(b) unabsorbed depreciation means so much of the allowance for depreciation of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, which remains to be allowed and which would have been allowed to such bank as if the business reorganisation had not taken place;

8. With a view to lend clarity to the number of years to be reckoned for the purposes of set off and carry forward of loss and allowance for depreciation, it has been provided that –

(i) the period commencing from the beginning of the previous year and ending on the date immediately preceding the date of business reorganisation, and

(ii) the period commencing from the date of such business reorganisation and ending with the previous year

shall be deemed to be two different previous years for the purposes of set off and carry forward of loss and allowance for depreciation.

9. It has also been provided that in a case where the conditions specified in sub-section (2) or notified under sub-section (4) of this section are not complied with, the set off of accumulated loss or unabsorbed depreciation allowed in any previous year to the successor co-operative bank shall be deemed to be the income of the successor co-operative bank chargeable to tax for the year in which the conditions are not complied with.

10. Further, a new section 44 DB has been inserted so as to provide for computing deductions in the case of business re-organisation of cooperative banks. Thus, proportionate deduction in the proportion of number and days prior and after the date of amalgamation for depreciation, amortization of certain preliminary expenses, expenditure relating to amalgamation and demerger and amortization of expenditure incurred under voluntary retirement scheme (VRS) is allowable to the predecessor and successor co-operative bank in a scheme of 'amalgamation' or 'demerger'.

11. The expressions amalgamated co-operative bank, amalgamating co-operative bank, amalgamation, business reorganisation, co-operative bank, demerged co-operative bank, demerger, predecessor co-operative bank, successor co-operative bank and resulting co-operative bank have been defined similarly in sections 44DB and 72AB.

12. ***Applicability*- This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Sections 15 & 21]

27. Giving retrospective effect to exception from taxation for certain incomes and to include certain other incomes in the definition of income.

1. Vide Finance (No.2) Act, 2004, clause (v) was inserted in sub-section (2) of section 56 w.e.f. 1.4.2005. This clause presently provides that 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, but before the 1st day of April, 2006, the whole of such sum shall be chargeable to income-tax under the head 'income from other sources'. Under the Proviso thereto, certain exceptions have been provided in respect of any sum of money received from certain specified persons and under certain specified circumstances.**

2. Vide Taxation Laws (Amendment) Act, 2006, clauses (e), (f) and (g) were inserted in the said Proviso w.e.f. 13.7.2006 so as to provide further exceptions in respect of any sum of money received from any local authority or an entity referred to in clause (23C) of section 10 or any trust or institution registered under section 12AA.

3. The aforesaid clause (v) of section 56(2) came into force from 1.4.2005. The same effectivity date has now been given to the abovementioned clauses (e), (f) and (g) of the said Proviso. This amendment will apply in relation to the assessment years 2005-2006 and 2006-2007.

4. Further, vide Taxation Laws (Amendment) Act, 2006, a new clause (vi) was inserted in sub-section (2) of section 56, which, inter alia, provided that the whole of the aggregate value of any sum of money exceeding fifty thousand rupees, received without consideration by an individual or Hindu undivided family in any previous year from any person or persons on or after the 1st **day of April, 2006, shall be chargeable to income-tax under the head "income from other sources".**

5. Section 2(24), which relates to the definition of income, does not contain a reference to the sum of money referred to in the said clause (vi). With a view to provide a reference to said clause (vi) in the definition of income, a new sub-clause (xiv) has been inserted in section 2(24) to provide that 'income' includes any sum referred to in clause (vi) of sub-section (2) of section 56.

6. As clause (vi) of sub-section (2) of section 56 came into effect from 1.4.2007, the abovementioned sub-clause (xiv) has also been inserted with effect from the same date i.e w.e.f. 1.4.2007. This amendment will take effect retrospectively from the 1st **day of April, 2007 and will accordingly apply in relation to the assessment year 2007-2008 and subsequent years.**

[Sections 3 & 19]

28. Providing condition for investment in "long-term specified bonds" under section 54EC.

1. Section 54EC provides tax exemption on capital gains arising from the transfer of a long-term capital asset to the extent such capital gains are invested in "long-term specified assets" within a period of six months from the date of such transfer. The Finance Act, 2006 amended the definition of long-term specified assets so as to mean any bond redeemable after three years and issued on or after the 1st day of April, 2006 by National Highways Authority of India (NHAI) and Rural Electrification Corporation Limited (REC). Such bonds had to be notified by the Central Government in the Official Gazette.

2. The quantum of investible bonds issued by NHAI and REC being limited, it was felt necessary to ensure that the benefit was available to all the investors. For this purpose, it was necessary to ensure that the limited number of bonds available for subscription is also available for small investors. Therefore, with a view to ensure equitable distribution of benefits amongst prospective investors, the government decided to impose a ceiling on the quantum of investment that could be made in such bonds. Accordingly, the said section has been amended so as to provide for a ceiling on investment by an assessee in such long-term specified assets. Investments in such specified assets to avail exemption under section 54EC, on or after 1st **day of April, 2007 will not exceed fifty lakh rupees in a financial year.**

3. ***Applicability*- This amendment will take effect retrospectively from the 1st day of April, 2007 and will apply in relation to the assessment year 2007-08 and subsequent assessment years.**

4. The said section has further been amended by substituting the existing clause (b) of explanation to the said section, so as to provide that the Central Government, while notifying such bonds in the Official Gazette may lay down in the said notification such conditions, including the condition for providing a limit on the amount of investment by an assessee in such bonds, as it thinks fit.

5. **Applicability: This amendment will take effect retrospectively from the 1st of April, 2006.**

6. Further, a proviso has been inserted in the said clause (b), so substituted, so as to provide that where any bond has been issued before the 1st day of April, 2007, under a notification subject to the conditions specified therein by the Central Government in the Official Gazette under the provisions of said clause (b), as they stood immediately before their amendment by the Finance Act,2007, such bond will be deemed to be a bond notified under the provisions of new clause (b). Accordingly the notification S.O.2146(E)dated 22nd December, 2006, with the conditions specified therein, will be deemed to have been issued under the proviso to the said clause (b), so substituted.

7. The said proviso has been inserted with effect from the 1st day of April, 2006.

[Section 18]

29. Provisions of Section 72A extended to Public Sector Company or Public Sector Companies engaged in the business of operation of aircraft .

1. Under the existing provisions of section 72A, the accumulated losses and unabsorbed depreciation of the amalgamating companies or company shall be set-off against the profit of the amalgamated company. Presently, the benefit is available in case of amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company. Such benefits are also available in the case of amalgamation of a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949with a specified bank.

2. The said section has been amended so as to extend the benefits of carry-forward and set-off of accumulated losses and unabsorbed depreciation available under section 72A to amalgamation of one or more Public Sector Company or **Public Sector companies engaged in the business of operation of aircraft with one or more public sector company or Public Sector companies engaged in similar business.**

3. ***Applicability* - This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 20]

30. Enlargement of scope of section 80C.

1. A new clause (xxii) has been inserted in sub-section (2) of section 80C, thereby enlarging its scope by making the subscription to any notified bonds of National Bank for Agriculture and Rural Development (NABARD) eligible for deduction within the overall ceiling of Rs. 1,00,000/-.

2. ***Applicability*- This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 24]

31. Extension of tax benefit under section 80CCD to employees of "other employers".

1. Under section 80CCD, in the case of an individual employed by Central Government on or after 1st **January, 2004, contribution during the previous year by the employee to his account (maximum 10% of salary) or by the employer to employee's account (maximum 10% of salary), under a Central Government notified pension fund, is allowed as deduction. By Finance Act, 2007, this section has been amended to extend the benefit to individuals employed by any other employers on or after 1 st January, 2004, as well. Consequential amendments have been carried out in section 7 and section 17 to provide that the contribution by any other employer in the previous year, to the account of an employee under a pension scheme, referred to in section 80CCD, shall be deemed to be the income received in India (section 7) and shall be taxed under the head "salary" (section 17).**

2. ***Applicability*- This amendment will take effect retrospectively from 1-4-2004 and will accordingly apply in relation to assessment year 2004-05 and subsequent assessment years.**

[Section 4,11 & 25]

32. Rationalization of provisions related to deduction of health insurance premium.

1. Section 80D of the Income-tax provides that in computing the total income of an assessee, being an individual or a Hindu undivided family, the sum paid ***by cheque*** **to effect or to keep in force an insurance on the health of the assessee or on the health of any member of the family shall be allowed as a deduction. The maximum amount allowed as deduction is ten thousand rupees. In the case of senior citizens, the maximum amount of deduction allowed is fifteen thousand rupees.**

2. Similarly, clause (ib) of sub-section (1) of section 36 provides for a deduction of the amount of any premium paid by cheque by the assessee, as an employer, to effect or to keep in force an insurance on the health of his employees under a scheme framed by the General Insurance Corporation formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 and approved by the Central Government or by any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.

3. With a view to allow deduction for ***payments made through electronic mode, credit card, etc.*, the provisions of section 80D and clause (ib) of sub-section (1) of section 36 have been amended so as to provide that the payment of premium made by any mode *other than cash*, shall be eligible for deduction under these sections.**

4. The maximum amount of deduction allowable under section 80D has also been increased from rupees fifteen thousand to rupees twenty thousand, in case of senior citizens, and from rupees ten thousand to rupees fifteen thousand, in all other cases.

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

[Section 13 & 26]

33. Deduction for amount of interest paid on a loan taken for higher education of a 'relative'.

1. Under section 80E of the Income-tax Act, a deduction is allowed to an individual, of any amount paid in the previous year, out of his income chargeable to tax, by way of interest on loan taken by him from any financial institution or approved charitable institution for the purpose of pursuing his higher education. This tax benefit was introduced with a view to develop merit goods in the form of high quality human resources in the country and to encourage talented individuals to take up higher studies despite resource constraints. Till assessment year 2007-08, the benefit was available only to an individual for his own education. By Finance Act, 2007, section 80E has been amended to extend the deduction available under this section to any individual for the payment made by way of interest on loan taken by him for higher education of his relative (i.e. spouse and children) as well.

2. An amendment has also been carried out in clause (a) of sub-section (3) of section 80E in the definition of "approved charitable institution". The requirement of approval by the prescribed authority under clause (23C) of section 10 has been replaced with the notification by the Central Government. This is a consequential amendment due to change in procedure from approval to notification under clause (23C) of section 10.

3. ***Applicability*- These amendments will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years**

[Section 27]

34. Clarification regarding developer with reference to infrastructure facility, industrial park, etc. for the purposes of section 80-IA.

1. Section 80-IA provides for a ten-year tax benefit to an enterprise or an undertaking engaged in development or operation and maintenance or development, operation and maintenance of infrastructure facilities, providing telecommunication service, generation or generation and distribution of power or development of an Industrial Parks or a Special Economic Zones.

2. The tax benefit was introduced for the reason that industrial modernization requires a massive expansion of, and qualitative improvement in, infrastructure (viz., expressways, highways, airports, ports and rapid urban rail transport systems) which was lacking in our country. The purpose of the tax benefit has all along been for encouraging private sector participation by way of investment in development of the infrastructure sector and not for the persons who merely execute the civil construction work or any other works contract. The incentive has all along been intended to benefit developers who undertake entrepreneurial and investment risk and not contractors who only undertake business risk.

3. Accordingly, it has been clarified by inserting an explanation that the provisions of section 80-IA shall not apply to a person who executes a works contract entered into with the undertaking or enterprise referred to in the said section. Thus, in a case where a person makes the investment and himself executes the development work i.e., carries out the civil construction work, he will be eligible for tax benefit under section 80-IA. In contrast to this, a person, who enters into a contract with another person (including Government or an undertaking or enterprise referred to in section 80-IA) for executing works contract, will not be eligible for the tax benefit under section 80-IA.

4. ***Applicability*- This amendment will take effect retrospectively from the 1st day of April, 2000 and will, accordingly, apply in relation to the assessment year 2000-2001 and subsequent assessment years.**

[Section 28]

35. Tax benefit under section 80-IA not available to undertaking/enterprise of Indian companies undergoing amalgamation or demerger after 31.3.2007.

1. Sub-section (12) of section 80-IA provides that where any undertaking of an Indian company which is entitled to the deduction under the said section is transferred before the expiry of the period specified therein, to another Indian company in a scheme of amalgamation or demerger, the provisions of the said section 80-IA shall apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place. The main intention in providing benefit under section 80-IA had been to provide incentive to those who had taken initial investment and entrepreneur risk. Hence, it was felt that there was no justification for passing on the benefit to someone who had not taken these risks and had only acquired the eligible undertaking much later when the risks had reduced. Hence, a new sub-section (12A) has been inserted in section 80-IA so as to provide that the provisions of sub-section (12) shall not apply to any undertaking or enterprise which is transferred in a scheme of amalgamation or demerger after 31.3.2007. Thus, if an undertaking or an enterprise is transferred in a scheme of amalgamation or demerger after 31.3.2007, the benefit of deduction under section 80-IA will not be available to the amalgamated or demerged undertaking or enterprise. The content of this circular will supercede whatever contrary has been stated, on this issue, in any other circular, issued by the Central Board of Direct Taxes earlier.

2. ***Applicability* - This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 28]

36. Expansion of the scope of "infrastructure facility" for the purposes of tax benefit under section 80-IA

1. Explanation to clause (i) of sub-section (4) of section 80-IA defines the expression "infrastructure facility" to mean a road including toll road, a bridge, a rail system, a highway project including housing or other activities being an integral part of the highway project, a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system, a port, airport, inland waterway or inland port.

2. Considering the fact that navigational channels in the sea is a high risk project (involving huge capital investment) and also has long gestation period, scope of the expression "infrastructure facility" has been expanded so as to include a navigational channel in the sea within its ambit for the purposes of ten year tax benefit under section 80-IA.

3. ***Applicability*- This amendment will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 28]

37. Extension of time limit for generation or transmission or distribution of power by an undertaking of an Indian company set up for reconstruction or revival of a power generating plant.

1. Under the existing provisions contained in clause (v) of sub-section (4) of section 80-IA, an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant is eligible for ten year tax benefit if it fulfills the following conditions:-

   a. such company is formed before 30.11.2005 with majority equity participation by public sector companies for enforcing the security interest of the lenders to the company owning the power generating plant;
   b. such Indian company is notified by the Central Government before 31.12.2005; and
   c. the undertaking begins to generate or transmit or distribute power before 31st March, 2007.

2. With a view to provide adequate time for revival of the power generating plant, the time limit for generating or transmitting or distributing power has been extended by one year i.e. the undertaking should begins to generate or transmit or distribute power before 31st **March 2008.**

3. ***Applicability*- This amendment will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 28]

38. Deduction in the case of an undertaking laying and operating cross-country natural gas distribution network.

1. Sub-section (4) and (5) of section 80-IA specify the activities eligible for deduction under the said section. Considering the fact that tax subsidy for gas pipelines will enable substitution of the existing subsidy on LPG, a new clause (vi) in the said sub-section (4) of section 80-IA has been inserted so as to provide that any undertaking carrying on the business of laying and operating cross-country natural gas distribution network, including gas pipelines and storage facilities being an integral part of the network, shall be eligible for deduction under the said section if;-

- it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
- it has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in the Official Gazette;
- one-third of its total pipeline capacity is available for use on common carrier basis by any person other than the assessee or an associated person;
- it starts functioning on or after 1st April, 2007; and
- it fulfills such other condition as may be prescribed.

2. The expression "associated person" for the purposes of clause (vi) has also been defined to mean a person-

- who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee;
- who holds, directly or indirectly, shares carrying not less than twenty-six percent of the voting power in the assessee;
- who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or
- who guarantees not less than ten per cent of the total borrowings of the assessee.

3. It has also been provided that the deduction shall be allowed for ten consecutive assessment years out of fifteen years beginning from the year in which an undertaking lays and begins to operate the cross-country natural gas distribution network.

4. It has also been provided that any undertaking formed by way of reconstruction or splitting up or by transfer to a new business of old plant and machinery (subject to certain exceptions) shall not be eligible for the above deduction under section 80-IA.

5. Consequential amendments have been carried out in sub-section (2) and (3) of section 80-IA.

6. ***Applicability*- These amendments will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 28]

39. Extension of time limit for setting up industrial undertakings in the State of Jammu and Kashmir for the purpose of tax benefit under section 80-IB(4).

1. Under the existing provisions contained in sub-section (4) of section 80-IB, industrial undertakings engaged in manufacture or production of articles or things or operation of a cold storage plant and set up during the period beginning on 1st **April, 1993 and ending on 31st March, 2007 in the State of Jammu and Kashmir, are eligible for a hundred per cent. deduction of profits for a period of five assessment years, followed by twenty-five per cent. (thirty per cent. in the case of a company) for the next five assessment years. The deduction is subject to a negative list of articles or things specified in Part-C of the Thirteenth Schedule to the Income-tax Act, which should not be manufactured or produced by such industrial undertakings.**

2. With a view to promote the industrial development of the State of Jammu and Kashmir, the terminal date for setting up of industrial undertakings and commencement of eligible business in the State has been extended by five more years, i.e., from 31.3.2007 to 31.3.2012.

3. ***Applicability*- This amendment will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 29]

40. Tax holiday for hotels and convention centres in specified area.

1. With a view to provide adequate number of hotel rooms to met the requirement for accommodating the visitors to the Commonwealth Games which is to be hosted by the country in 2010 and also to boost the number of convention centres, a new section 80-ID has been inserted to provide for deduction in respect of profits and gains from the business of hotels and convention centres in specified area.

2. It has been provided that where the gross total income of an assessee includes any profits and gains derived by an undertaking from the business of hotel or from the business of building, owning and operating a convention centre, hundred percent deduction of the profits and gains derived from such business shall be allowed for five consecutive assessment years beginning from the initial assessment year. Initial assessment year has been defined as

- Assessment year relevant to the previous year in which the business of the hotel starts functioning (in case of hotel); and
- Assessment year relevant to the previous year in which the convention centre starts operating on a commercial basis (in case of the convention centre).

3. This new section applies to any undertaking

- engaged in the business of hotel located in the specified area, if such hotel is constructed and has started or starts functioning at any time during the period beginning on 1st April, 2007 and ending on 31st March, 2010; or
- engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during the period beginning on 1st April, 2007 and ending on 31st March, 2010.

4. The following conditions have also been prescribed in the newly inserted section:-

- the eligible business should not be formed by splitting or reconstruction of business already in existence;
- the eligible business should not be formed by transfer to a new business of a building previously used as a hotel or a convention center, as the case may be;
- the eligible business should not be formed by transfer to a new business machinery or plant previously used for any purpose. The provisions of explanation 1 and 2 to sub-section (3) of section 80-IA shall also apply to this condition;
- the assessee should furnish along with the return of income, the report an audit in such form and containing such particulars as may be prescribed, and duly signed and verified by an accountant certifying that the deduction has been correctly claimed;
- in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10AA, in relation to the profits and gains of the undertaking;
- provisions contained in sub-section (5) and sub-sections (8) to (11) of section 80-IA shall, so far as may be, apply to the eligible business under this section; and
- for the purpose of this section, hotel shall mean a hotel of two-star, three-star and four-star category as classified by the Central Government and specified area shall mean the National Capital Territory of Delhi and districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad.

5. The Central Board of Direct Taxes have notified Rule 18DE and Form 10CCBBA vide notification no. S.O. 1989(E), dated 27th **November, 2007, prescribing area, size, numbers and other conditions for convention centres and the form for the purposes of audit report for both hotels and convention centres.**

6. ***Applicability*- These amendments, will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 31]

41. Extension of benefit of tax holiday in respect of undertaking located in North-Eastern States (including Sikkim).

1. Under section 80-IC benefit of tax holiday is available to an undertaking located in any of the North Eastern states on fulfillment of statutory conditions. However, no benefit is available, under section 80-IC, if the undertaking begins to manufacture or produce an article or things or undertakes substantial expansion after the 31st **March, 2007. However, in the case of Sikkim, the terminal date was 31st March 2012 under this section. This terminal date has also been amended to 31st March 2007, by the Finance Act 2007.**

2. A new section 80-IE has been inserted to provide tax benefits and it applies to any undertaking which is located in any of the North-Eastern States (including the state of Sikkim) and has, during the period beginning on 1st **April, 2007 and ending on 31st March 2017, begun or begins**

- to manufacture or produce any eligible article or thing;
- to undertake substantial expansion to manufacture or produce any eligible article or thing; or
- to carry on any eligible business

3. Eligible article or things has been defined as the article or thing other than the following:

- Goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) which pertains to tobacco and manufactured tobacco substitutes;
- Pan masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)
- Plastic carry bags of less than 20 microns as specified by the Ministry of Environment and Forests vide Notification No. S.O. 705(E), dated the 2nd September, 1999 and S.O. 698(E), dated the 17th June, 2003; and
- Goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), produced by petroleum oil or gas refineries.

4. Eligible business has been defined as the business of,-

- Hotel(not below two star category)
- Adventure and leisure sports including ropeways;
- Providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds;
- Running an old-age home;
- Operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training;
- Running information technology related training centre;
- Manufacturing of information technology hardware; and
- Bio-technology.

5. The deduction under this section is available for ten consecutive assessment years commencing from initial assessment year, i.e., assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or has completed substantial expansion or begins eligible business.

6. The following conditions have also been prescribed in the newly inserted section:-

- The undertaking should not be formed by splitting or reconstruction of business already in existence. This condition shall not apply inrespect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as referred to in section 33B, in the circumstances and within the period specified in the said section.
- It should not be formed by transfer to a new business machinery or plant previously used. The provisions of explanation 1 and 2 to sub-section (3) of section 80-IA shall also apply to this condition.
- An assessee entitled to the deduction, in respect of the profits and gains of the undertaking under section 80-IE, would not be entitled to claim a deduction under any other section of Chapter VIA or section 10A or section 10AA or section 10B or section 10BA in relation to the said profits and gains.
- In computing the total period for deduction under section 80-IE, the period for which the deduction was allowed under second proviso to section 80-IB(4) or section 80-IC or section 10C shall be included. In other words, in case of any undertaking established prior to the dates specified in section 80-IE, and eligible for deduction under section 80-IB or 10C or 80-IC, the aggregate period for claiming the deduction under section 80-IE shall not exceed 10 years;
- The provisions contained in sub-section (5) and sub-sections (7) to (12) of section 80-IA shall also apply to eligible undertaking under this section.

7. ***Applicability*****- These amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 30 & 32]

42. Consequential amendments in section 80A and 80AC.

1. Consequential to insertion of new section 80-ID and 80-IE, amendments have also been carried out in sub-section (2) of section 80A and section 80AC to make them applicable for assessees claiming deductions under sections 80-ID and 80-IE.

2. These amendments will take effect from 1st **April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years.**

3. A retrospective amendment has also been carried out in sub-section (3) of section 80A to make it applicable to assessees claiming deduction under section 80-IC.

4. This amendment will take effect retrospectively from the 1st **day of April 2004, and will, accordingly apply in relation to assessment year 2004-05 and subsequent assessment years.**

[Section 22 & 23]

43. Extension of Time limitation for making assessment where a reference is made to the Transfer Pricing Officer

1. The existing provisions of the Act does not provide any additional time to the Assessing Officer for completing assessment or reassessment in cases where a reference is made by him under sub-section 92CA to the Transfer Pricing Officer for determination of the Arm's length price of an international transaction. Since, the time limit for selection of cases for scrutiny is one year from the end of the month in which the return was filed; references to Transfer Pricing Officers are made mostly after one year of filing of the return. Thus, Transfer Pricing Officers are not getting adequate time to make a meaningful audit of transfer price in cases referred to them.

2. With a view that the Transfer Pricing Officers get sufficient time to make the audit of transfer price and also to provide Assessing Officers sufficient time to make assessment in cases involving international transactions, the time limits specified in sections 153 and 153B for making the assessment or reassessment, in cases where a reference has been made to the Transfer Pricing Officer, has been revised. The revised time limits in such cases shall be the time limits specified under the aforesaid sections, as increased by twelve months. Further, it has also been provided that the Transfer Pricing Officer shall determine the Arm's length price at least two months before the expiry of statutory time limit for making the assessment or reassessment**. Thus, a time-limit has been provided in the statute, making it obligatory for the TPO to complete audit of transfer price within the stipulated time.**

3. The provisions of sub-section (4) of section 92CA, provides that on receipt of the order under sub-section(3) of the said section, the Assessing Officer shall proceed to compute the total income of the assessee under sub-section (4) of section 92C having regard to the Arm's length price determined under sub-section (3) by the Transfer Pricing Officer.

4. Sub-section (4) of section 92CA has been amended so as to provide that, on receipt of the order under sub-section(3) of section 92CA, the Assessing Officer shall proceed to compute the total income of the assessee under sub-section(4) of section 92C in conformity with the Arm's length price determined under sub-section (3) of section 92CA by the Transfer Pricing Officer. Thus, with the amendment in the provisions, the arm's length price determined by the Transfer Pricing Officer(TPO) would be binding on the Assessing Officer.

5. ***Applicability*- These amendments shall apply in cases where reference to Transfer Pricing Officer was made on or after 1st June, 2007 and shall also be applicable in cases where a reference to the Transfer Pricing Officer was made prior to 1.6.2007 but the Transfer Pricing Officer did not pass order under sub- section (3) of section 92CA before the said date.**

[Section 33, 48 & 49]

44. Widening the scope of Minimum Alternate Tax to include income exempt under section 10A and 10B of the Income-tax Act.

1. The provision of Minimum Alternate Tax (MAT) is governed by section 115JB and section 115JAA of the Income-tax Act. These sections provide for levy and computation of MAT and for calculation, carry forward and set off of tax credit on account of MAT.

2. MAT is applicable on income of companies, except on income which is from any business or service, carried on or rendered, by an entrepreneur or a developer in a unit or SEZ. Till enactment of Finance Act, 2007, the method of calculation of MAT under this section also provided for exclusion of income which were either exempt or allowed as deduction under section 10 [except section 10(38)], section 10A, section 10B, section 11 or section 12 of the Income-tax Act. Such exclusion of income from purview of MAT is contrary to the basic principle for introduction of MAT, which provides that every corporate taxpayer participating in the economy must contribute to the exchequer a minimum amount of tax on its book profit. Accordingly, clause (f) and clause (ii) of the explanation occurring after sub-section (2) of section 115JB, have been amended by the Finance Act, 2007 to omit reference to section 10A and 10B.

3. Hence, from assessment year 2008-09 and onwards, while calculating MAT under section 115JB, the book profit shall not be increased by the amount or amounts of expenditure relatable to any income to which section 10A or section 10B applies. Similarly, the amount of income to which any of the provisions of section 10A or section 10B apply, shall not be reduced from the book profit for the purposes of calculation of income-tax payable under section 115JB. In other words, the income to which section 10A or section 10B applies will also be subjected to the provisions of MAT.

4. ***Applicability*- This amendment will take effect from 1-4-2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent assessment years.**

[Section 34]

45. Increase in the rates of Tax on distributed profits in certain cases.

1. Under sub-section (1) of section 115-O contained in Chapter XII-D, ***inter alia,* any amount declared, distributed or paid by a domestic company by way of dividends on or after the 1st day of April, 2003, whether out of current or accumulated profits, shall be charged to additional income-tax or "tax on distributed profits" at the rate of twelve and one-half per cent.**

2. The said rate of tax on distributed profits has been increased from twelve and one-half per cent. to fifteen per cent.

3. This amendment will take effect from 1st **April, 2007.**

4. Under sub-section (2) of section 115R contained in Chapter XII-E, ***inter alia,* any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual fund shall be liable to pay additional income-tax on such distributed income 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.

5. The said sub-section (2) has been amended to provide that any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual fund shall be liable to pay additional income-tax on such distributed income at the rate of-

   i. twenty-five per cent. on income distributed by a money market mutual fund or a liquid fund;
   ii. twelve and one-half per cent. on income distributed to any person, being an individual or a Hindu undivided family by a fund other than a money market mutual fund or a liquid fund ; and
   iii. twenty per cent. on income distributed to any other person by a fund other than a money market mutual fund or a liquid fund.

6. Thus, through the above amendment, a new rate of tax has been specified in respect of income distributed by a money market mutual fund or a liquid fund. The existing rates of tax on income distributed by a fund other than a money market mutual fund or a liquid fund shall remain the same.

7. For this purpose, "money market mutual fund" and "liquid fund" have been defined in the ***Explanation* after section 115T. "Money market mutual fund" has been defined therein to mean a money market mutual fund as defined in sub-clause (p) of clause (2) of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996. Similarly, "liquid fund" has been defined therein to mean a scheme or plan of a mutual fund which is classified by SEBI as a liquid fund in accordance with the guidelines issued by it in this behalf under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder.**

8. ***Applicability*- These amendments will take effect from 1st April, 2007.**

[Section 35,36 & 37]

46. Rationalization of Fringe Benefit Tax.

1. In terms of the provisions of Chapter XII-H of the Income-tax Act, an employer, being a company, is liable to pay Fringe Benefit Tax (FBT) in respect of the fringe benefits provided or deemed to have been provided by it to its employees, directly or indirectly, during the previous year.

2. With a view to bring grant of stock options by employers to employees within the purview of FBT, Finance Act, 2007 has inserted a new clause (d) in sub-section (1) of section 115WB. A new clause (ba) in sub-section (1) of the said section 115WC has been inserted to provide for computation of fringe benefit in such cases. The salient features of this provision are:-

   i. FBT shall apply in all cases where any specified security or sweat equity shares has been allotted or transferred by the employer to his employees;

   ii. FBT shall be payable in the previous year in which such allotment or transfer has taken place;

   iii. the provisions of this new clause shall apply irrespective of the allotment or transfer being direct or indirect;

   iv. the provisions of this new clause shall apply irrespective of the allotment or transfer being free of cost or at concessional rate;

v. the provisions of this new clause shall apply irrespective of the allotment or transfer being to current or former employee or employees;

vi. the provisions of this new clause shall apply in cases where the allotment or transfer is on or after 1st day of April, 2007.

vii. the value of fringe benefit in such cases shall be determined in accordance with the formula –

A – B

Where, A = the Fair Market Value (FMV) of the specified security or sweat equity shares on the date of vesting of the option; and

B = the amount, if any, actually paid by, or recovered from the employee;

3. The expressions "specified security" and "sweat equity shares" have also been defined. The value of fringe benefit is subjected to FBT at the prevailing rate, which is currently 30% plus surcharge plus education cess.

4. The expression "fair market value" has been defined to mean the value determined in accordance with the method as may be prescribed by the Board. "Option" has been defined to mean a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price.

5. The Central Board of Direct Taxes (CBDT) vide notification S.O. No. 1805(E) dated 23rd **October, 2007 has inserted Rule 40C in the income-tax Rules; which has prescribed the method for determination of fair market value of specified security or sweat equity share, being a share in the company. Salient features of this rule are:**

i. In a case where, on the date of the vesting of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange;

ii. If on the date of vesting of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share;

iii. If on the date of vesting of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be,-

a. the closing price of the share on any recognised stock exchange on a date closest to the date of vesting of the option and immediately preceding such date; or

b. the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of vesting of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

iv. In a case where, on the date of vesting of the option, the share in the company is not listed on a recognized stock exchange, the fair market value shall be such value of the share in the company, as determined by a Category 1 Merchant Banker registered with the Security and Exchange Board of India, on the specified date.

v. The specified date has been defined as to mean,-

i. the date of vesting of the option; or
ii. any date earlier than the date of the vesting of the option, not being a date which is more than 180 days earlier than the date of the vesting

6. Further, the Central Board of Direct Taxes has inserted a new rule 40D in the Income-tax Rules, vide notification S.O. No. 113(E), dated 18-012008, prescribing the method for determination of fair market value of specified security, not being an equity share in the company. Through the same notification, rule 40C has been amended to omit the definition of "equity share".

7. Consequent to insertion of clause (ba) in sub-section (1) of section 115WC providing for the valuation of fringe benefits referred to in clause (d) of sub-section (1) of section 115WB, a new sub-section (2AB) has been inserted in section 49.

8. This new sub-section provide that the cost of acquisition of specified security or sweat equity shares shall be the fair market value which has been taken into account while computing the value of fringe benefit under the new clause (ba) of sub-section (1) of section 115WC.

9. A new sub-clause (hb) has also been inserted in clause (i) of Explanation 1 to clause (42A) of section 2. This new sub-clause provide that the period of holding in case of such specified security or sweat equity shares, in the hand of the employee, shall be reckoned from the date of allotment or transfer of such security or shares.

10. A new section 115WKA has also been inserted enabling the employer to recover the fringe benefit tax from the employee in respect of specified security or sweat equity shares, if such security or shares are transferred or allotted to the employee on or after 1st **April, 2007.**

11. It has been prescribed that the employer can vary the agreement or scheme under which such specified security or sweat equity shares has been allotted or transferred. The agreement or scheme can be varied with a purpose to recover from the employee the fringe benefit tax to the extent to which such employer is liable to pay the fringe benefit tax in relation to the allotment or transfer of such specified security or sweat equity shares to such employee.

12. The above amendments are explained with the help of an illustration.

Illustration: A company 'X' grants option to its employee 'R' on 1st April, 2004 to apply for 100 shares of the company at a pre-determined price of Rs. 50/- per share with date of vesting of the option being 1st April, 2006 and exercise period being 1st April, 2006 to 31st March, 2010.

Employee 'R' exercises his option on 31st March, 2007 and shares are allotted/transferred to him on 3rd April, 2007. On 25th October, 2007 these shares are sold for Rs. 200/- each. On the date of vesting of the option , fair market value of the share was Rs. 80/- per share. The tax implication of above situation will be as under:-

Since shares are allotted or transferred on or after 1st April, 2007, provision of fringe benefit tax are attracted. Fringe benefit with respect to employee 'R' is (Rs. 80 – Rs. 50) X 100 = Rs. 3,000/-.

Company 'X' will pay fringe benefit tax on Rs. 3,000/-.
Cost of acquisition in the hand of employee 'R' = Rs. 80/- per share
Capital gain = (Rs.200 – Rs. 80) X 100 = Rs. 12,000/-
Period of holding = 3rd April, 2007 to 25th October, 2007 i.e., less than 12 months. Hence, the amount of RS. 12,000/- will be charged to short term capital gain.

13. Various issues arising out of the above amendment have been explained by issuance of Circular No.9/2007 dated 20-12-2007.

14. Sub-section (2) of the section 115WB deems certain expenses or payments as fringe benefit. Proviso to clause (D) of sub-section (2) of section 115WB excludes certain expenditure on advertisement from sales promotion including publicity. Clause (v) of the proviso excludes certain expenditure on certain items of advertisement. Clause (vii) of the proviso excludes the expenditure on distribution of free samples of medicines or of medical equipment to doctors.

15. To expand the domain of such exceptions to provide relief to employers, clause (v) of the above proviso has been amended and clause (vii) of the above proviso has been substituted so as to provide that the expenditure on display of products and on distribution of samples of any item either free of cost or at concessional rate to any person including doctors, shall not be included in 'sales promotion including publicity' for valuation of fringe benefits.

16. ***Applicability*- These amendments will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 3, 17, 38, 39 & 41]

47. Alignment of due date of payment of advance tax on fringe benefits with that of advance tax on income.

1. Section 115WJ provides that every assessee who is liable to pay advance tax on his current fringe benefits shall pay the same on his own accord.

2. Sub-section (2) of section 115WJ provided that the advance tax payable in the financial year on the value of the fringe benefits referred to in section 115WC, shall be payable on or before the 15 th day of the month following each quarter. However, the advance tax payable for the quarter ending on the 31st March of the financial year shall be payable on or before the 15th day of March of the said financial year.

3. Sub-section (3) of section 115WJ provided that where an assessee has failed to pay the advance tax for any quarter or where the advance tax paid by him is less than thirty per cent. of the value of fringe benefits paid or payable in that quarter, he shall be liable to pay simple interest at the rate of one per cent. on the amount by which the advance tax paid falls short of, thirty per cent. of the value of fringe benefits for any quarter, for every month or part of the month for which the shortfall continues.

4. Sub-section (2) of the said section has been substituted so as to provide that the amount of advance tax on the current fringe benefits shall be payable by all the companies, who are liable to pay the same, in four installments during each financial year. The companies shall pay not less than fifteen per cent of such advance tax on or before 15th June; forty-five per cent as reduced by the amount paid in earlier instalment on or before 15th September; seventy-five per cent as reduced by the amount paid in earlier instalment (s) on or before 15th December; and the whole amount as reduced by any amount paid in earlier instalment(s) on or before 15th March of the financial year.

5. It has also been provided that the assessees (other than companies), who are liable to pay the advance tax on current fringe benefits shall pay the same in three installments during each financial year. Such assessees shall pay not less than thirty per cent of such advance tax on or before 15th September; sixty per cent as reduced by the amount paid in earlier instalment on or before 15th December; and the whole amount as reduced by any amount paid in earlier instalment(s) on or before 15th March of the financial year.

6. New sub-sections (3) and (4) of section 115WJ provide that where an assessee has failed to pay the advance tax payable by him on or before the due date for any instalment or where the advance tax paid by him is less than the amount payable by the due date, he shall be liable to pay simple interest at the rate of one per cent. per month for three months on the amount of shortfall with respect of each installment. For example if a company only pays 10 percent of advance tax payable by 15th June, 45 percent by 15th September, 65 percent by 15th December and 95 percent by 15th March then such company shall be liable to pay interest at

- 1 percent per month for three months on shortfall of 5 percent of total advance tax on first installment, plus
- 1 percent per month for three months on shortfall of 10 percent of total advance tax on third installment due, plus
- 1 percent on shortfall of 5 percent on total advance tax on fourth installment.

7. A new sub-section (5) has also been inserted to provide that where the assessee has not paid any advance tax or has paid less than 90% of the tax assessed under section 115WE or section 115WF or section 115WJ, the assessee shall be liable to pay simple interest at the rate of one percent per month for every month or part of a month comprised in the period from 1st April next following such financial year till the date of assessment of tax under section 11WE or section 115WF or section 115WG. This interest is in addition to the interest leviable under sub-section (3) or sub-section (4).

8. Vide notification S.O. No.1805(E) dated the 23rd of October 2007, the Central Board of Direct Taxes has inserted Rule 40C in the Income Tax Rule 1962 for valuation of shares in a company for Fringe benefit on ESOPs. This rule shall take effect from 1st April, 2008 and accordingly; apply in relation to the assessment year 2008-2009 and subsequent years.

9. Since the rule relating to valuation were notified on 23rd October 2007, the CBDT had earlier extended the date of payment of first and second instalment of Fringe Benefit Tax, (which was to be paid on or before June 15, 2007, and September 15, 2007) in respect of transfer or allotment of specified security or sweat equity shares to its employees, to the 15th of December, 2007 (the date of payment of third instalment).

10. It is also seen that there could be cases where employees after being allotted or transferred such specified security or sweat equity share on or after 1st day of April 2007, had subsequently transferred these shares resulting in capital gain. For such assessee, the determination of cost of acquisition of these shares, for the purpose of calculation of capital gain, also depended on valuation norms which were notified only on 23 Oct 2007. Hence, it is clarified that in such cases also, the date of payment of first instalment of capital gain tax (i.e. 15th September, 2007) in respect of transfer of such specified security or sweat equity shares, is deemed to be extended to 15th December, 2007 (the date of payment of second instalment).

11. ***Applicability*- These amendments will take effect from 1st day of June, 2007.**

[Section 40]

48. Rules for facilitating annexure-less returns.

1. The provisions contained in explanation to sub-section (9) of section 139, provides that a return of income shall be regarded as defective unless, the conditions specified in clauses (a) to (f) of the explanation to the said sub-section are fulfilled.

2. The Finance Act, 2006, amended the said section by inserting a proviso to the said sub-section (9), conferring on the central Board of Direct Taxes, to dispense with any of the conditions specified in clauses (a) to (f) of the explanation. However, apart from the conditions specified in clauses (a) to (f) of the explanation to the said sub-section, documents, statements, receipts, certificate, audited reports or any other documents are also required to be annexed for claiming benefits or deductions under the Income-tax Act as specified under other sections.

3. A new section 139C has been inserted so as to provide that the Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificate, audited reports or any other documents, which are otherwise required to be furnished along with the return under any other provisions of this Act. However, on demand the said documents, statements, receipts, certificate, audited reports or any other documents are to be produced before the Assessing Officer.

4. A new section 139D has also been inserted so as to provide that the Board may make rules providing for the class or classes of persons who shall be required to furnish the return of income in electronic form; the form and the manner in which the return of income in electronic form may be furnished; the documents, statements, receipts. certificates or audited reports which may not be furnished along with the return of income in electronic form but have to be produced before the Assessing Officer on demand; the computer resource or the electronic record to which the return of income in electronic form may be transmitted.

5. Consequentially, new clauses (eeba) and (eebb) in sub-section (2) of section 295 have been inserted which provides for rule making powers of the Board.

6. As the provisions contained in the proviso to sub-section (9) of section 139 has been incorporated in the new sections 139Cand 139D, the proviso to the explanation to sub-section (9) of section 139 has been omitted.

7. ***Applicability*- These amendments will take effect retrospectively from the 1st day of June, 2006.**

49. Rationalisation of provision relating to special audit under section 142 (2A).

1. The existing provisions of sub-section(2A) of section 142, provides that at any stage of the proceedings before him, if the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interests of the revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief Commissioner or Commissioner, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below sub-section (2) of section 288. The accountant is to be nominated by the Chief Commissioner or Commissioner in this behalf and he is to furnish a report of such audit in the prescribed form duly signed and verified by him and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require. Subsection (2D) of section 142 provides that the expenses of, incidental to, any audit under subsection (2A) (including the remuneration of the accountant) shall be determined by the Chief Commissioner or Commissioner (which determination shall be final) and paid by the assessee and in default of such payment, shall be recoverable from the assessee in the manner provided in Chapter XVII-D for the recovery of arrears of tax.

2. The provisions of sub-section (2A) of section 142 of Income tax Act were reviewed by the Hon'ble Supreme Court in the case of Rajesh Kumar and Others Vs. Deputy Commissioner of Income-tax Others [287 ITR 91 (2006)]. The Hon'ble Supreme Court observed that the direction under sub- section (2A) of section 142 of Income tax Act for special audit of the accounts of the assessee is not administrative in nature and is a quasi-judicial order. Therefore, while arriving upon a decision to order special audit under the said provisions, the principles of natural justice are required to be applied, inter-alia, to minimize arbitrariness. The Hon'ble Apex Court further observed that the expression "having regard to the nature and complexity of accounts" is significant, and if the assessee is put to a notice, he could show that the nature of the accounts is not such as would require appointment of a special auditor, and assessee could further show that what the Assessing Officer considers complex is, in fact not so. For these reasons, the Hon'ble Apex Court held that it is necessary to give an opportunity to the assessee before arriving upon a decision for ordering a special audit under sub-section (2A) of section 142. This issue again came up for consideration by the Hon'ble Supreme Court in the case of M/S Sahara India. The Hon'ble Court observed that the decision in the case of Rajesh Kumar and others does not appear to be the correct position of law and accordingly referred the matter to a larger bench. The Court also directed that the order directing the Special Audit shall be operative and assessment proceedings, if any, shall continue subject to the outcome of the petition in this case. The decision of the Larger Bench is awaited.

3. There is no legislative intent to allow the assessee an opportunity of being heard before ordering a special audit under sub-section (2 A) of section 142 of the Income tax Act. Accordingly the Income Tax Department has over the years ordered a large number of special audits without giving any opportunity to the tax payer of being heard. While it is not feasible to give effect to the ratio of the decision of the Hon'ble Supreme Court in the case of Rajesh Kumar and others in view of the large number of cases where such audit has been ordered in the past, respectfully following the decision of the Honbl'e Supreme Court in the said case, a proviso has been inserted in sub-section (2A) of section 142 providing that the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard. This will apply prospectively.

4. A proviso has also been inserted to the sub-section (2D) so as to provide that where any direction is issued under sub-section (2A) by the Assessing Officer to an assessee to get the accounts audited, the expenses of, and incidental to, such audit(including the remuneration of the Accountant) shall be determined by the Chief Commissioner or Commissioner in accordance with such guidelines as may be prescribed and the expenses so determined shall be paid by the Central Government.

5. ***Applicability*- These amendments will take effect from the 1st day of June, 2007.**

[Section 46]

50. Assessment of search cases—Orders of assessment and reassessment to be approved by the Joint Commissioner.

1. The existing provisions of making assessment and reassessment in cases where search has been conducted under section 132 or requisition is made under section 132A, does not provide for any approval for such assessment.

2. A new section 153D has been inserted to provide that no order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner except with the previous approval of the Joint Commissioner. Such provision has been made applicable to orders of assessment or reassessment passed under clause (b) of section 153A in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A. The provision has also been made applicable to orders of assessment passed under clause (b) of section 153B in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisitioned is made under section 132A.

3. ***Applicability*- These amendments will take effect from the 1st day of June, 2007.**

[Section 50]

51. Providing time limit for completion of assessments for returns filed under section 172

1. The provisions of section 172 relate to shipping business of non-residents which, inter alia, require preparation and furnishing of the return before departure of the ship, or within a maximum period of thirty days from the date of departure of the ship subject to certain conditions. The existing provisions of the said section, however, did not provide for a time limit for completion of assessment in respect of a return furnished under sub-section (3) thereof.

2. The Finance Act, 2007, therefore, has inserted a new sub-section (4A) providing that no order assessing the income and determining the sum of tax payable thereon shall be made under the said section after the expiry of nine months from the end of the financial year in which the return under sub-section (3) is furnished.

3. The Finance Act, 2007 has further inserted a proviso to the newly inserted sub-section (4A) **so as to provide that where a return under sub-section (3) is furnished before the 1st day of April, 2007, the order assessing the income and determining the sum of tax payable thereon may be made at any time up to the 31st day of December, 2008. This will give a longer time limit of 21 months to complete all pending assessments under section 172.**

4. ***Applicability* - These amendments will take effect retrospectively from the 1st day of April, 2007.**

[Section 51]

52. Amendment of section 193 of the Income-tax Act, 1961 to provide for TDS on 8% Savings (Taxable) Bonds, 2003.

1. The existing provisions of section 193 excluded, inter alia, any interest payable on any security of the Central Government or a State Government from the requirement of deduction of tax at source. Consequently, tax was not being deducted on interest payable on 8% Savings (Taxable) Bonds, 2003.

2. The 8% Savings (Taxable) Bonds, 2003 are Central Government securities. The notification issued by the Department of Economic Affairs dated 21st **March, 2003 also clarifies that the interest paid on 8% Savings (Taxable) Bonds, 2003 is taxable under the Income-tax Act. Non-deduction of tax on these bonds has been resulting in evasion of taxes.**

3. The Finance Act, 2007 has, therefore, amended the said section to provide that the person responsible for paying to a resident any interest on 8% Savings (Taxable) Bonds, 2003 shall deduct income-tax if interest payable on such Bonds exceeds ten thousand rupees during a financial year.

4. ***Applicability*- This amendment will take effect from the 1st day of June, 2007.**

[section 52]

53. Increasing the threshold limit in respect of interest payable by a banking Company or a co-operative society or on any deposit with a notified post-office scheme under Section 194A.

1. The existing clause (i) of sub-section (3) of section 194A provided that deduction of income-tax at source shall not be made in a case where the amount of income by way of interest other than "Interest on securities" did not exceed five thousand rupees.

2. The Finance Act, 2007 has amended said sub-section (3) to provide that the limit for deduction of tax at source under the aforesaid section shall be ten thousand rupees,-

i. Where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);

ii. Where the payer is a co-operative society engaged in carrying on the business of banking;

iii. On any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf.

In other cases, the threshold limit shall be retained at five thousand rupees.

3. Consequential amendment has also been carried out to the provisions of section 206A relating to furnishing of quarterly return in respect of payment of interest to residents without deduction of tax at source.

4. The Central Government have, vide notification No. S.O. 861 (E) dated 1**st June, 2007, notified the Senior Citizens Savings Scheme, 2004 for the purposes of sub-clause (c) of clause (i) of sub-section (3) of section 194-A of the Income-tax Act. By virtue of this notification, no tax will be required to be deducted at source under section 194A of the Income-tax Act, 1961 on interest credited or paid or likely to be credited or paid on any deposit made under Senior Citizens Savings Scheme, 2004, where such interest does not exceed ten thousand rupees during the financial year.**

5. ***Applicability*- This amendment will take effect from the 1st day of June, 2007.**

[section 53 & 60]

54. Expansion of scope of the provisions of section 194C.

1. The existing provisions of sub-section (1) of section 194C provided for deduction of income-tax at source from any sum credited or paid to the resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the Government, local authorities, statutory corporations, companies, co-operative societies, statutory authorities engaged in providing housing accommodation etc., registered societies, trusts, universities and firms. The rate of TDS is 1% in respect of advertising contracts and 2% in other cases.

2. The existing provisions of sub-section (1) of section 194C did not provide for deduction of tax at source on payments made by an individual or a Hindu undivided family to a contractor.

3. Considering the rising number of contracts being awarded by individuals and HUFs carrying on business or profession and the increasing volume of such payments to contractors, it was felt that there is need to require such persons to deduct tax at source from payments made by them to contractors.

4. There would be genuine difficulties if individuals or HUFs with small business turnovers or gross receipts of profession are required to deduct tax at source. An exception in such cases would be justified. Similarly the contracts awarded by an individual or a member of HUF exclusively for personal purposes merit exclusion.

5. Accordingly, the Finance Act, 2007 has substituted the said sub-section (1) to include in its ambit such individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which sum is credited or paid to the account of the contractor. This amendment shall not apply in respect of payments made to a contractor by any individual or a member of a Hindu undivided family exclusively for their personal purposes.

6. ***Applicability*- This amendment will take effect from the 1st day of June, 2007.**

[section 54]

55. Increase in the rate of TDS under section 194H to 10% and exemption from TDS thereunder from commission payable by Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited to their PCO franchisees.

1. The existing provisions of section 194H required deduction of tax at source on payment of commission or brokerage, the rate for deduction of tax being five per cent.

2. Deduction of tax at source facilitates capturing of income for tax purposes at the earliest point of time. However, deduction of tax at source in cases of payees whose income remains below taxable limit merely results in unnecessary paper work. Public Call Office (PCO) franchisees of Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited represent this category as very small sums of commission are received by them and there would be very few such cases where income would be above the threshold exemption limit.

3. The Finance Act, 2007 has, therefore, amended the said section to provide that tax shall not be deducted on payments of commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.

4. Many cases have come to notice where tax incidence in the case of recipient of commission or brokerage is much higher than the amount of tax collected at the rate of five per cent. This had resulted in either deferment in collection of taxes or escapement of income in some cases. This problem has been addressed by the Finance Act, 2007 by enhancement of the existing rate of five per cent. for deduction of tax at source to ten per cent.

5. ***Applicability*- This amendment will take effect from the 1st day of June, 2007.**

[Section 55]

56. Reduction in the rate for deduction of tax at source on rent for the use of any machinery or plant or equipment under Section 194-I.

1. The existing provisions of section 194-I provided for deduction of tax at source by the person paying any income by way of rent to a resident. Individuals and HUFs, having their turnover below the limits specified in clause (a) or clause (b) of section 44AB, were not required to deduct tax under this section. The existing rate of deduction of tax was fifteen per cent. if the payee was an individual or a Hindu undivided family and twenty per cent. in the case of other payees. "Rent" for the purposes of this section was defined in the Explanation.

2. The existing definition of "Rent" as amended by the Taxation Laws (Amendment) Act, 2006 had come into force from 13**th July, 2006 and in this definition rent on three new items, viz. machinery, plant and equipment had been inserted. Subsequent to the above amendment, representations had been received to the effect that the profit margin in the transactions involving lease or hire of machinery, plant or other equipment being quite low, TDS at the existing rates of 15% and 20% was resulting in higher amounts of collection of tax than the tax incidence in such cases.**

3. Accordingly, the Finance Act, 2007 has amended the said section to separately specify the rate of deduction of tax at source at a lower rate of ten per cent. in respect of any income payable by way of rent for the use of any machinery or plant or equipment.

4. ***Applicability*- This amendment will take effect from the 1st day of June, 2007.**

[Section 56]

57. Enhancement of the rate of TDS under section 194J of the Income-tax Act.

1. Under the existing provisions of sub-section (1) of section 194J, a specified person was required to deduct an amount equal to five per cent. of any sum payable to a resident by way of fees for professional services or fees for technical services.

2. The data collected on tax deduction in various cases of professionals and technical experts, showed that the tax incidence in such cases was much higher than the amount of tax collected by way of deduction of tax at source at the existing rate of five per cent.

3. Accordingly, the Finance Act, 2007 has amended the said section to specify a higher rate of ten per cent. for tax deduction at source. The increased rate for deduction of tax at source shall be applicable to payment of any sum by way of fees for professional services or fees for technical services or royalty or any sum referred to in clause (va) of section 28.

4. ***Applicability*- This amendment will take effect from the 1st day of June, 2007.**

[Section 57]

58. Omission of reference to omitted section 88B from section 197A.

1. The existing provisions of sub-section (1C) of section 197A contained reference to section 88B which was omitted with effect from 1st **April, 2006.**

2. The Finance Act, 2007 has deleted the reference to the omitted section 88B from the said sub-section.

3. ***Applicability*- This amendment will take effect retrospectively from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent assessment years.**

[Section 58]

59. Change of method for calculation of interest from per annum basis to per month basis.

1. Sub-section (1A) of section 201 provided that the person who has not deducted the whole or any part of the tax or after deduction has failed to pay the tax as required by or under the Act, shall be liable to pay simple interest at the rate of twelve per cent. per annum on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.

2. On the other hand, under the other provisions of the Income-tax Act which relate to charge of interest from the assessee, namely, sections 220, 234A, 234B and 234D interest chargeable from the assessee is calculated for every month or part of a month comprised in the period for which interest is to be charged. Under section 234C(1)(a)(i), simple interest is charged at the rate of one per cent. per month for the period specified in that section. Under section 244A also under which interest is paid on refunds to the assessee, interest is calculated for every month or part of a month.

3. The difference between calculation of interest on per-annum basis and per-month basis lies in the difference in procedure followed for calculation of interest under these two methods. When interest is calculated on per annum basis, any fraction of a month is ignored and when interest is calculated for every month or part of a month basis, any fraction of a month is deemed a full month and interest is calculated for the full month. This principle has been followed in framing rule 119A which provides for procedure for calculation of interest on annual or monthly basis.

4. Under the widely applicable provisions of sections 220(2), 234A, 234B, 234C, 234D and 244A, the interest is chargeable on per month basis. Accordingly, the Finance Act, 2007 has changed the method for calculation of interest to per month basis from the existing per annum basis under clause (a) of sub-section (4) of section 132B, sub-section (1A) of section 201, sub-section (6A) of section 245D, rule 60(1)(a) and rule 68A(3) of the Second Schedule to the Income-tax Act, and sub-section (6A) of section 22D of the Wealth-tax Act.

5. The amendments regarding change of method of calculation of interest to monthly basis will be applicable in respect of interest chargeable or payable for the period commencing on or after 1 st **April, 2008. For any period ending on or before 31st March, 2008, interest shall continue to be charged or paid on per annum basis under the aforementioned sections which are proposed to be amended. However, in respect of any period commencing on or before 31st March, 2008 and ending after that date, such interest shall, in respect of so much of such period as falls after that date, be calculated on per month basis.**

6. ***Applicability*- These amendments will take effect on the 1st day of April, 2008.**

[Section 43, 59, 64, 81 & 86]

60. Definition of the expression "mining and quarrying" under section 206C of the Income-tax Act, 1961.

1. The existing provisions of section 206C provided for collection of tax at source, inter alia, from the licensee or lessee in respect of any licence, contract or lease relating to any 'mining and quarrying' specified in column (2) of the Table in sub-section (1C) of the said section. The rate for collection of tax at source was specified in column (3) of the Table.

2. The existing provisions of the said section did not provide for a definition of the expression "mining and quarrying". Representations had been received from a few quarters that this phrase, in the absence of its definition in the section, was being taken to include oil exploration and incidental services and tax was being collected from licensees engaged in such exploration. Since, oil exploration and incidental services are in the organized sector, the provisions of TCS were not intended to be made applicable.

3. The Finance Act, 2007 has, accordingly, inserted Explanation 1 to provide that for the purposes of sub-section (1) of section 206C, "mining and quarrying" shall not include mining and quarrying of mineral oil. ***Explanation* 2 further clarifies that for the purposes of *Explanation* 1, "mineral oil" includes petroleum and natural gas.**

4. ***Applicability*- This amendment will take effect from the 1st day of June, 2007.**

[Section 61]

61. Revised Settlement Scheme

1. Chapter XIX-A of the Income-tax Act contains provisions relating to settlement of cases by the Settlement Commission. With a view to avoid delay in determining the tax liability of an assessee which is caused because of factors like duplication of proceedings, absence of statutory time frame for settling the case and also with a view to streamline the proceedings before the Settlement Commission, provisions of Chapter XIX-A of the Income-tax Act have been amended. The important changes that have been carried out, inter-alia, are enumerated below.

2. Under the existing provisions, an assessee may make an application to the Commission at any stage of the proceedings in his case pending before any Income-tax Authorities. After 31st May, 2007, an assessee can make an application to the Commission only during the pendency of the proceedings before the Assessing Officer. It is further clarified that (a) since intimation under section 143(1) is not an assessment order, there will be no bar in filing an application for settlement subsequent to receipt of an intimation under section 143(1). It is not material whether time-limit for issue of notice under section 143(2) has expired or not; (b) the assessment shall be deemed to have been completed only on the date of service of assessment order to the applicant.

3. The provisions have further been amended to exclude the following proceedings of assessment during which an assessee shall not be allowed to make the application before the Commission—

(a) assessment / reassessment proceedings in response to a notice under section 148. These proceedings shall be deemed to have commenced on the date on which notice under section 148 was issued.
(b) assessment or reassessment proceedings under section 153A for each of six assessment years preceding the assessment year relevant to the previous year in which a search under section 132 was conducted or a requisition under section 132A was made; and also the assessment or reassessment proceedings in case of such persons for the assessment year relevant to the previous year in which the search under section 132 was conducted or the requisition under section 132A was made. These proceedings shall be deemed to have commenced on the date on which the search under section 132 was initiated or the requisition under section 132A was made;
(c) proceedings of making fresh assessment where original assessment was set aside under section 254 by the Appellate Tribunal or under section 263 or section 264 by the Commissioner Such proceedings shall be deemed to have commenced from the date on which the order setting aside the original assessment was passed;

4. The provisions prescribed that an application can be made only if the additional amount of income-tax payable on the income disclosed in the application exceeds one lakh rupees. This limit has been enhanced to three lakh rupees.

5. The provisions prescribed that the income-tax payable on the income disclosed in the application has to be paid after the application is allowed to be proceeded with under sub-section (1) of section 245D. The provision has been amended to provide that such tax along with interest, if any, shall be paid on or before the date of making the application and proof of such payment shall be attached with the application. Further, it has been provided that the applicant shall also intimate the Assessing Officer in the prescribed manner of having made such application to the Settlement Commission.

6. The provisions prescribed that the Commission, on receipt of an application, calls for a report from the Commissioner. After considering the material contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved, the Commission passes an order to reject the application or to allow the application to be further proceeded with. Under the existing provisions, there is no statutory time limit for passing the order for rejecting or allowing the application to be proceeded with. However, a suggestive time limit of one year from the end of the month in which such application was made has been provided. The provisions have been amended to provide that the Settlement Commission, within 7days of receipt of the application shall issue a notice to the applicant to explain as to why his application be admitted. Thereafter, within 14 days from the date of receipt of the application, the Settlement Commission shall pass an order for rejecting the application or allowing the application to be proceeded with. Complexity of the investigation involved in a case shall not be the criteria for admitting or rejecting the application. Further, where no order or rejection or admission of an application is passed within the aforesaid period, the application shall be deemed to have been allowed to be proceeded with. The following has also been provided-

(a) the applications which were made before 1st June, 2007 but pending on that date as to whether to be rejected or allowed to be proceeded with, shall be deemed to have been allowed to be proceeded with if the tax on the income disclosed in the application and the interest is paid on or before 31st July, 2007. In case, such tax and interest is not paid on or before the aforesaid date, the application shall be deemed to have been rejected;

(b) in respect of applications which were admitted before 1st June, 2007 but order of settlement was not passed before the said date, the tax on the income declared in the application and interest thereon shall have to be paid on or before 31st July, 2007. Tax and interest shall be paid by this date even in cases where the Commission has already granted any extension or instalment for payment of tax beyond the said date. If the tax and interest is not paid on or before 31st July, 2007, the application shall not be allowed to be further proceeded with and the proceedings before the Commission shall abate on 31st July, 2007.

7. If an application made on or after 1st June, 2007 is allowed to be proceeded with, the Settlement Commission shall issue a notice to the Commissioner within 30 days from the date on which the application was received. In case of applications referred **to in para 61.6(a) above, if the tax and interest has been paid before 31st July, 2007, such notice shall be issued to the Commissioner on or before the 7th day of August, 2007. The Commissioner shall send his report within 30 days from the date on which the communication from the Settlement Commission is received by him.**

8. On receipt of the report of the Commissioner, the Settlement Commission shall hear the applicant and the Commissioner within fifteen days from the date of receipt of the report. If it is found that the application was not a valid application, the Commission by passing an order may declare the application invalid. Copy of the order declaring an application invalid will have to be sent to the applicant and the Commissioner. In case an application is declared invalid the proceedings before the Commission shall abate. If the Commissioner does not send the report within the specified period, the Commission may proceed in the matter further without the report of the Commissioner.

9. In respect of applications made before 1.7.2007 and referred to in para 61.6(a) or 61.6(b), above which are not declared invalid or as the case may be, allowed to be further proceeded with, **the Settlement Commission, if, is of the opinion to do so, may direct the Commissioner to make or cause to be made such further inquiry or investigation as it deems fit. The Commissioner shall submit his report within 90 days from the date on which the communication from the Settlement Commission is received by him;**

10. The Commission shall, after giving an opportunity to the Commissioner and to the applicant and considering the reports of the Commissioner and other material available with it, pass the settlement order. Under the pre-amended provisions, there was no time limitation for making the order of settlement. The provision has been amended to provide that the Commission shall pass such order within 9 months **from the end of the month in which the application was received. In respect of applications referred to in para 61.6(a) or 61.6(b) above, the Settlement Commission shall pass the order on or before 31st March, 2008;**

11. The provisions provided that the Commission may grant immunity from prosecution under Indian Penal Code, Income-tax Act and any other Central Act. The provisions have been amended to provide that the Commission shall not grant immunity from prosecution under any law other than Income-tax Act and Wealth-tax Act. However, in respect of pending applications, the existing provisions shall continue.

12. The provisions provide that the Commission may, if it is necessary or expedient to do so, reopen completed proceedings. The provisions have been amended to provide that the Commission shall not have powers to reopen the completed proceedings in a case where an application under section 245C has been filed on or after 1st June, 2007.

13. It has also been provided **that, if the application made on or after 1.7.2007 is rejected or such application or an application referred to in para 61.6(a) above is declared invalid or an application referred to in para 61.6(b) above is not allowed to be further proceeded with or the settlement order is not passed within the specified period, the proceedings before the Commission shall abate and the Assessing Officer or other income-tax Authority before whom the proceeding were pending at the time of making the application, as the case may be, shall resume and complete the proceeding. Credit shall be allowed for the tax and interest paid by the applicant by the Assessing Officer. The period from the date on which the application was made before the Commission and upto the date on which proceedings get abated shall be excluded from the time limitation for completing the proceedings by the Assessing Officer;**

14. The provisions have also been amended to provide that after 1.6.2007, an assessee can apply for settlement only once during his lifetime. For this purpose, an application which was not admitted shall not be deemed to be an application;

15. It has also been provided that the definition of "Vice-Chairman" shall include the senior Member among the Members of a Bench so that, if there is no Vice-Chairman at a Bench, it can be presided over by a Member who is senior amongst the Members of the Bench;

16. Chapter V-A of the Wealth-tax Act also contains similar provisions for settling a Wealth-tax case by the Settlement Commission. Similar amendments have been carried out in the Wealth-tax Act also.

17. ***Applicability*- These amendments will take effect from the 1st day of June, 2007.**

[Sections 62,63,64,65,66,67,68,69,70,84,85,86,87,88,89,90,91 & 92]

62. Providing for the right to appeal against the order holding a person as an assessee in default under section 206C(6A).

1. The existing provisions of sub-section (6A) of section 206C deem a person responsible for collecting tax to be the assessee in default in respect of the whole or any part of the tax which he fails to collect or after collection fails to pay in accordance with the provisions of the Act. The Assessing Officer is required to pass an order deeming such person an assessee in default.

2. By virtue of the provisions of the aforesaid sub-section (6A), a liability is visited upon the person responsible for collecting tax and payment thereof as taxes become recoverable from him. Such person should, therefore, have been entitled to file an appeal against the order of the Assessing Officer deeming him as an assessee in default. Provisions for appeal already exist against similar order passed by the Assessing Officer under sub-section (1) of section 201 whereby a person is deemed as an assessee in default if he fails to deduct or after deducting fails to pay the tax to the Government account.

3. The Finance Act, 2007, therefore, has inserted a new clause (hb) in sub-section (1) of section 246A to provide that a person deemed as an assessee in default may appeal before the Commissioner (Appeals).

4. The Finance Act, 2007 has also inserted a new sub-section (1B) in section 246A to provide that an appeal filed by an assessee in default against an order made under sub-section (6A) of section 206C on or after the **1st day of April, 2007 but before the 1st day of June, 2007 shall be deemed to have been filed before the Commissioner (Appeals) under new clause (hb) of sub-section (1) of section 246.**

5. ***Applicability* - These amendments will take effect from the 1st day of June, 2007.**

[Section 71]

63. Provision of appeal by a person denying liability to deduct tax.

1. The provisions of section 248, provided that where any person has deducted and paid tax in accordance with the provisions of sections 195 and 200 in respect of any sum chargeable under the Act, other than interest and who denies his liability to make such deductions, may make an appeal to the Commissioner (Appeals) to be declared not liable to make such deductions.

2. Section 248 has been substituted, so as to provide that where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

3. ***Applicability-*** **These amendments will take effect from the 1st day of June, 2007.**

[Section 72]

64. Provision for Form of appeal and limitation: Consequential to the amendment made to section 248.

1. The provisions of sub-section (2) of section 249 provide the different situations and the relevant dates from which thirty days for filing appeal is to be counted. The provisions of clause (a) of sub-section (2) provided that where the appeal relates to any tax deducted under sub-section (1) of section 195, thirty days for filling appeal shall be counted from the date of payment of the tax.

2. Section 248 has been amended so as to provide for an appeal by a person, who has paid the tax deductible on income of the non-resident under 'net of tax' arrangement and who is denying that any tax was deductible. Consequentially, clause (a) of sub-section (2) of section 249 has been amended providing that where the appeal is under section 248, the prescribed time shall be counted from the date of payment of tax.

3. ***Applicability-*** **These amendments will take effect from the 1st day of June, 2007.**

[Section 73]

65. Provision relating to approval of charitable institutions and funds.

1. The provision of section 80G provides that the deductions in respect of donations to certain funds, charitable institutions are available from the taxable income of the donor. The said section provides for two categories of funds- one that are enumerated in sub-section (2) and the secondly, those funds which are approved by the Commissioner under clause (vi) of sub-section (5) of the said section. Under the pre-amended provisions of section 253, no appeal could be filed before the Appellate Tribunal against the order of rejection of approval by the Commissioner under section 80G (5) (vi).

2. Therefore, section 253 has been amended so as to allow an appeal to be filed against such orders of the Commissioner before the Appellate Tribunal.

3. ***Applicability-*** **This amendment will take effect from the 1st day of June, 2007.**

[Section 74]

66. Prescribing time-limit for grant of stay by the Appellate Tribunal.

1. The provisions of section 254 provided that the Appellate Tribunal may pass an order of stay in any proceeding relating to an appeal filed before it. In such cases, it was provided that the Appellate Tribunal shall dispose of the appeal within a period of one hundred and eighty days from the date of such order. If the appeal is not decided within the period for which the stay was granted, the stay order should be vacated after the expiry of the stay period.

2. Section 254 has been amended so as to provide that the Appellate Tribunal, after considering the merits of the application made by the assessee, may pass an order of stay in any proceeding relating to an appeal filed under sub-section (1) of section 253, for a period not exceeding one hundred and eighty days from the date of such order. The Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order.

3. It is further provided that where such appeal is not disposed of within the aforesaid period of stay, the Appellate Tribunal may extend the period of stay or pass an order of stay for a further period or periods as it thinks fit. Such extension in the period of stay is to be granted on an application made in this behalf by the assessee and after the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee.

4. It has also been provided that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not in any case exceed three hundred and sixty five days. The Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

5. It has also been provided that if the appeal is not disposed of within the period originally allowed or within the period or periods, subsequently extended, the order of stay shall stand vacated after the expiry of such period or periods.

6. ***Applicability-*** **This amendment will take effect from the 1st day of June, 2007.**

[Section 75]

67. Rationalisation of provisions relating to penalty for concealment of or furnishing inaccurate particulars of income.

1. The provisions of clause (b) of Explanation 4 to sub-section (1) of section 271, provided that in a case to which Explanation 3 to the said sub-section (1) applies, the amount of tax sought to be evaded shall mean the tax on the total income assessed.

2. Explanation 4 has been amended so as to provide that in a case to which said Explanation 3 applies, the amount of tax sought to be evaded shall mean the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self assessment tax paid before the issue of notice under section 148.

3. Applicability: This amendment takes effect retrospectively from 1st April, 2003 and will, accordingly, apply in relation to assessment year 2003-04 and subsequent years.

4. The provisions of Explanation 5 to sub-section (1) of section 271, provides that where in the course of a search under section 132, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing (referred to as assets in this Explanation) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income – (i) for any previous year which has ended before the date of the search, but the return of income for such year has not been furnished before the said date or, where such return has been furnished before the said date, such income has not been declared therein; or (ii) for any previous year which is to end on after the date of the search, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of section 271, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income. However, penalty shall not be levied if certain conditions prescribed therein are fulfilled.

5. Explanation 5 has been amended so as to provide that provisions of said Explanation shall be applicable only in a case where search under section 132 was initiated before 1st June, 2007.

6. Applicability: The amendment has taken effect from 1st June, 2007 and will be applicable to cases where search under section 132 is initiated on or after 1st June, 2007.

7. A new Explanation 5A to sub-section (1) of section 271 has also been inserted so as to provide that where in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of – (i) any money, bullion, jewellery or other valuable article or thing (referred to as assets in the proposed new Explanation) or (ii) any income based on any entry in any books of account or other documents or transactions and claims that such assets or entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year; which has ended before the date of the search and the due date for filing the return of income for such year has expired and the assessee has not filed the return, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

8. *Applicability* **– This amendment will take effect from the 1st day of June, 2007 and will be applicable to cases where search under section 132 is initiated on or after 1st day of June, 2007.**

[Section 76]

68. Provision for penalty for concealment in search and seizure cases.

1. A new section 271AAA has also been inserted so as to provide that, in a case where search has been initiated under section 132 on or after 1st June, 2007, the assessee shall be liable to pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year. However, provisions of this section shall not be applicable if the assessee– (i) in a statement under sub-section (4) of section132 in the course of the search, admits the undisclosed income and specifies the manner in which such income has been derived; (ii) substantiates the manner in which the undisclosed income was derived; and (iii) pays the tax, together with interest, if any, in respect of the undisclosed income. It is further provided that no penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be levied or imposed upon the assessee in respect of the undisclosed income referred to in this section. It is also provided that the provisions of section 274 and section 275 shall, so far as may be, apply in relation to the penalty leviable under the new section.

2. For the purposes of this section, undisclosed income has been defined to mean– (i) any income of the specified previous years represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or which has otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of the search; or (ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.

3. For the purposes of this section, specified previous year has been defined, so as to mean the previous year —

   i. which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or

   ii. in which search was conducted.

4. An appeal to the Commissioner against levy of penalty under the proposed new section 271AAA has also been provided.

5. ***Applicability*- This amendment will take effect from the 1st day of June, 2007 and will accordingly apply in relation to assessment year 2007-2008 and subsequent years in cases where search under section 132 is initiated on or after 1st June, 2007.**

[Section 71 & 77]

69. Clarification in respect of presumption as to seized books of account, money, bullion, jewellery or other valuable article or thing to other proceedings under the Income-tax Act.

1. The provisions of sub-section (4A) of section 132 provides that the books of account, money, bullion, jewellery or other valuable article or thing found in the possession or control of any person in the course of a search under section 132 will be presumed to belong to the said person. It is further provided that it will be presumed that the contents of such books of account and other documents are true; and that the signature and every other part of such books of account and other documents which purport to be in handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

2. A new section 292C has been inserted so as to clarify that presumptions provided in sub-section (4A) of section 132 can be made in any proceedings under this Act.

3. Further, similar amendment in the Wealth-tax Act has also been inserted by of a new section 42D.

4. ***Applicability*- This amendment will take effect retrospectively from the 1st day of October, 1975.**

[Section 78 & 93]

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

1. Rule 4 of Part A of the Fourth Schedule to the Income-tax Act provides for the conditions which are required to be satisfied by a provident fund for receiving or retaining recognition under the Income-tax Act. Clause (ea) of the said rule provides that the fund shall be of an establishment to which the provisions of sub-section (3) or sub-section (4) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are applicable and such establishment has been exempted under section 17 of the said Act from the operation of all or any of the provisions of any scheme referred to in that section.

2. With a view to set out the conditions given in clause (ea) in unambiguous terms clause (ea) has been substituted so as to provide that for receiving and retaining recognition under the Income-tax Act, the fund shall be a fund of an establishment to which the provisions of sub-section (3) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 apply or of an establishment which has been notified by the Central Provident Fund Commissioner under sub-section (4) of section 1 of the said Act, and such establishment shall obtain exemption under section 17 of the said Act from the operation of all or any of the provisions of any scheme referred to in that section.

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

4. The proviso to sub-rule (1) of the said rule 3, inter-alia, specifies that in a case where recognition has been accorded to any provident fund on or before 31st **March, 2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4, the recognition to such fund shall be withdrawn, if such fund does not satisfy such conditions on or before 31st March, 2007.**

5. With a view to provide adequate time to the Employees' Provident Fund Organization to decide on the applications seeking exemption under section 17 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, time limit provided under rule 3 of the Fourth Schedule to the Income-tax Act for fulfillment of the condition specified in clause (ea) of rule 4 of Part A of the said Schedule has been extended from 31.3.2007 to 31.3.2008.

6. A proviso in sub-rule (1) of rule 3 has also been inserted so as to provide that the first proviso shall not apply to the provident fund of an establishment in respect of which a notification has been issued by the Central Government under sub-section (2) of section 16 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

7. ***Applicability*- This amendment will take effect from the 1st day of April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent assessment years.**

[Section 82]

71. Exclusion of office or establishment of the Central Government or the Government of a State and enhancement of exemption limit in the provisions of a banking Cash Transaction Tax (BCTT).

1. The provisions of Banking Cash Transaction Tax (BCTT), as contained in Chapter VII of the Finance Act, 2005, in section 94, provides that tax is to be levied at the rate of 0.1 per cent (10 basis points) on taxable banking transactions. Such banking transactions included- (i) Withdrawals of cash (by whatever mode) exceeding Rs. 25,000 in the case of individuals and HUFs and Rs. 1,00,000 for other taxable entities on any single day from an account (other than a saving bank account) with any scheduled bank; and (ii) Receipt of cash exceeding a specified limit from any scheduled bank on any single day on encashment of one or more term deposits, whether on maturity or otherwise. The BCTT was also payable amongst others, by an office or establishment of the Central Government or the Government of a State.

2. The said section has been amended, so as to exclude the offices or establishments of the Central Government and governments of the states from the purview of definition of "person".

3. Further, the existing limit of taxable banking transactions has been enhanced from the present twenty-five thousand to fifty thousand rupees for individuals and Hindu undivided family.

4. *Applicability*- **This amendment will take effect from 1st day of June, 2007.**

[Section 144]