

## **The Indian Budget 2008-09**

Globalization is here to stay, it knows no boundaries and is the single most compelling force that has broken all barriers to free open interaction, trade and commerce.

Post globalization no country, no state, no region can think, plan and work in isolation. Everyone be it the state, an industry, a businessman or an individual has to think globally and act locally.

A country's budget is generally considered as a positive statement reflecting the policies of the government and is also a wish list indicative of the way forward. It is an instrument of fiscal policy that fuels economic growth and complements with other policies including monetary policy, which deals with economic stability money supply and inflation. The Union Budget 2008 -09 which was presented on 29<sup>th</sup> February 2008 in the Indian parliament has to be viewed in this context.

The budget is also a barometer of economic stability, growth, freedom, justice and fair play. The emphasis on level playing field has grown with the paradigm shift in the approach to economic development post – 1991, when the socialistic regime with marginal tax rate reaching above 90% was replaced by market driven economy with tax rates becoming 30% at the maximum.

In a global economy however too much stability leads to stagnation. It is instability that promotes, enables and realizes economic growth through successive disequilibrium and equilibrium. This requires taking new initiatives, promoting Research and Development ventures, fostering creativity and innovation and prudent risk taking. Creating a knowledge society demands an incremental contribution of fiscal policy to rejuvenate the creativity and innovation. Creativity is possible only if industry and business are shaken out of the cocoon of sheltered stability – and this requires radical structural change.

The Union Budget 2008-09 was presented on 29<sup>th</sup> February 2008 in the Indian parliament.

It is, as expected, an outright election budget being the last full budget of the UPA Government before their term comes to an end. However in terms of its sheer audacity and pleasing cross sections across all categories of vote banks it is far more bold and brash than ever in the past. To such an extent that it has even left the 'left' parties smarting but unable to openly voice dissent. The budget directly doles out largesse and benefits to over 14 crore Indians. Compare this with the total number of Indians who voted for the Congress in the last general elections – 10.4 crores and it becomes clear that it is indeed a politically driven election eve budget.

Though populist and probably having far reaching consequences in terms of their fiscal as well as systemic impact, and the impact and signals it sends to the law abiding conscientious citizens who follow and honour the system, given that its immediate thrust is to alleviate the fate of the poor farmers driven to the brink of suicide, there are and will be hardly any protests.

Significantly there is no provision made in the budget for the loan waiver of Rs. 60,000 crores. It is not yet figured out where the money is going to come from. Add to this the package announced earlier of Rs. 17,000 crores for these farmers, which is unplanned expenditure and hence outside the budget. It even remains to be seen how much will actually reach the farmer and whether all deserving cases will really get the benefit, given the fact that most farmers in Vidarbha have larger holdings exceeding the limit proposed by the Finance Minister.

But the real issue here is not that the farmers got the relief that they rightly deserve, but the way it has been given. What message does it send to the law-abiding people who in the teeth of greater adversity have stood up and honored their commitment and repaid their debts, in the past and would have done so in the future?

It gives a message to the Indian people, to the common man to be profligate, to have scant regard for values, since if you don't you benefit in the end.

It has been the same story all along whether it is for providing amnesty to tax evaders/avoiders, the writing off of disputed tax dues under the controversial Kar Vivad Samadhan Scheme (KVSS) or for regularizing illegal encroachment by slum dwellers, with the cut off date advancing every time, or now the case of waivers of loans.

The message has all along been that it is those with the maximum dues and defaults who benefit most. It is a replay of the story of the return of the prodigal son from the Bible, but with a slight difference. There the prodigal son returned, but once, to the path of God and was forgiven and a grand feast held for it. But here the prodigals keep returning in one guise or the other, only to stray again and again and be let off lightly for having 'returned' to the fold every time.

I think a time has come when some limits, for that matter, are set even to what a finance minister or a government is allowed to present in a budget and allowed to do with the tax payers money and with the exchequer.

After all if everyone were to default on their dues and duties be it the borrowers on their loans and interest, the tax payers on their taxes, contracting parties on their commitments, corporate and mutual funds on their borrowings, the police on maintaining law and order, the armed forces on defending the Country employees on their duties and children on their studies, one only can shudder as to what will be the consequences on a civilized society.

Even in the past, election budgets have always seen an increase in expenditure and concessions across board. The budget thus holds sops for everyone. The children, the women, the senior citizens, the handicapped, the rural sector, farmers, artisans, backward sections, scheduled castes, tribes and minorities right up to industry and tax payers, middle class and even high network individuals, all of them have reason to cheer, some benefit coming their way.

Some have more than expected, some less than what inflation has taken away from them, but as the saying goes "something is better than nothing".

The jolts to the economy had already come through with the stock market wash out as a part of the general global meltdown, followed by the fuel price hike and the ever-threatening inflation and signs of a global slowdown.

So the budget was expected as one, which would provide some much-expected relief in the form of an impetus to the consumption, to savings and investments, to production to the economy and relief to various cross-sections of society. Economic growth is consumption driven, fuelled by the multiplier effect on the demand side and realized through capital investments, ensured by a positive net present value.

### **The positive side: -**

Expenditure on education, health, women and child welfare, employment schemes, on the northeastern region, on backward, scheduled castes, tribes and minorities is up.

General Excise duty rate has been lowered from 16% to 14% with further relief on certain items. Pharmacy, Steel and Cement sector have been benefited.

Raising of exemption limit for individual income tax upto Rs. 1,50,000 for individuals, Rs. 1,80,000 for women and Rs. 2,25,000 for senior citizens.

Some relief in FBT and in tax holiday for non-urban hospitals and hotels in tourist spots has been another benefit.

### **The downside: -**

Increase of tax on short-term capital gain on shares and equity oriented mutual funds from 10% to 15%.

Service tax net is widened.

No provision in the budget for the liability arising from 6<sup>th</sup> pay commission, or for the farmers' loan waivers – which will fuel inflationary pressures.

### **Expectations belied: -**

Nothing concrete for saving the environment expect small allocation for save the tiger.

No major fillip to investment and capital industry except reduction of excise.

Nothing concrete to monitor the supply side to contain the leakage and to reign in inflation.

Again as in earlier year nothing much to boost infrastructure, and research and development.

Environment, Aviation and Ports have also been neglected and not paid enough attention.

A populist budget raising expectations of an early election. Overall it is an attempt to use the increased resources that have come in with the buoyancy in taxes to cater to specific vote banks – farmers, landless, unemployed, scheduled and backward castes, minorities, the government employees and the middle class. How much of this will actually reach these groups and after accounting for leakage, actually benefit them remains to be seen.

The budget as mentioned earlier, is a reflection and a statement of the fiscal policy of the government and reflects the government's view and perception of direction and thrust of the economy. If viewed in that perspective it definitely leaves much to be desired.

The Honorable Finance Minister has taken growth, savings and investments at 36% as a *fait accompli*. The wish list expressed in the budgetary outlay has to be realized in the actual expenditure. There is often a lag between these, resulting in a 'saving' in proposed expenditure, which often is used to offset surreptitious off budget expenditures, which are spent more out of political compulsions and administrative expediency than to support and grow the economy.

The budget and budgetary process has to be transparent, strict, and proper – it has to be disciplined – freedom of the market cannot be interpreted as unfettered freedom to licentious behaviour. With the advent of consumerism, brand culture, rising disposable incomes and plastic money becoming popular with the middle classes, Indians are clearly overspendings – vulgar capitalism, ostentation, opulence, prodigal dispensation of wealth, these are clearly reflected in the way cricketers are auctioned, defaulters of car loans are mercilessly beaten up, property prices are going through the roof, malls and mega stores are replacing industrial units, schools and gymnasiums.

Economic justice demands inclusive growth. This is possible in the long run not by generous grants, doles, handouts, compassion, and succour alone but by empowerment and opportunity. Empowerment requires that those left behind, untouched by globalization need to be strengthened through awareness, advocacy, education, providing skill sets, leading to empowerment and ennoblement. This has to be matched by creating enough opportunities - ultimately to really emancipate a person as the Chinese proverb says, "It is not enough to feed him fish, it is necessary to teach him how to fish".

If India is to realize its dream, to quote the finance minister, "of covering more than 50% of world trade along with China, as in the ancient past", then it is necessary to build public private partnerships not just in infrastructure and industry, but also by privatization of education, welfare measures and activities. India Inc, NGOs and the government need to come together to deliver education and welfare to the people. It is only then that leakages will be minimized and maximum value realized from this and the following budgets year after year.

## SALIENT FEATURES OF BUDGET 2008

### TAX RATES:

- 1) Income tax exemption limit increased for individuals and HUFs across the board

<b>Income Tax on Individuals</b>	<b>New</b>	<b>Old</b>	<b>Saving</b>
0 – 150000	Nil	4000	4000
150000 – 300000	15000	35000	20000
300000 – 500000	40000	60000	20000
Total Tax on Rs. 5 Lakh	55000	99000	44000

<b>Income Tax on Women</b>	<b>New</b>	<b>Old</b>	<b>Saving</b>
0 -180000	Nil	6500	6500
180000 – 300000	12000	29000	17000
300000 – 500000	40000	60000	20000
Total Tax on Rs. 5 Lakh	52000	95500	43500

<b>Income Tax on Senior Citizens 65 years &amp; above</b>	<b>New</b>	<b>Old</b>	<b>Saving</b>
0 – 225000	Nil	6000	6000
225000 – 300000	7500	20000	12500
300000 - 500000	40000	60000	20000
Total Tax on Rs. 5 Lakh	47500	86000	38500

- 2) No change in the rate of the tax on firms and companies.
- 3) a) Surcharge @ 10% of Income Tax on Individual, HUF, AOP & BOI having income exceeding Rs. 10 Lakh.  
b) Surcharge @10% on firms & Companies having income exceeding One Crore. For foreign companies surcharge is 2.5%.  
c) Education Cess on Income Tax @ 1 % shall continue.

### WIDENING OF TAX BASE

- 4) **Deduction for production and refining of mineral oil** at 100% of profits under section 80-IB (9) to be discontinued for units beginning production on or after 1<sup>st</sup> April, 2009.
- 5) **Commodities Transaction Tax (C.T.T)** is proposed to be levied on commodities transactions similar to the Securities Transaction Tax.

<b>Sr. No.</b>	<b>Particulars</b>	<b>CTT Payable</b>	<b>Who is to pay</b>
a)	Sale of option	0.017% on option premium	seller to pay
b)	Sale of option where option exercised	0.125% on settlement price of option	purchaser to pay
c)	Any other derivative	0.017% of price at which derivative is sold	seller to pay

With effect from A.Y 2009-10.

## **WELFARE MEASURES:**

### **6) Reverse Mortgage Schemes: (w.e.f A.Y 2008-09)**

- (i) Under section 47 (xa), any transfer of a capital asset in a transaction of reverse mortgage under an approved/notified scheme shall not be regarded as transfer and shall not attract capital gains tax.
- (ii) The loan received either in lump sum or in installments under the reverse mortgage scheme will not be liable to tax under section 10 (43).
- (iii) The borrower will be liable to income tax as capital gain only at the point when the property is alienated to the mortgagee (bank) for the recovery of the loan.

### **7) Enlargement of scope of eligible saving instruments under Section 80C**

Two new types of investments are added to eligible savings for deduction under section 80C within the overall limit of Rs 1, 00, 000/-

- (i) Five year time deposits in an account under Post Office Time Deposit Rules, 1981, and
- (ii) Deposit under Senior Citizens Savings Scheme.

If an assessee withdraws any amount before the completion of five years from date of deposit from such account, the amount so withdrawn shall be deemed to be income of the assessee in the year of withdrawal - [Section 80C (2)]

The amendment is with immediate effect and applies to current financial year 2007-08, i.e. for A.Y 2008-09 and thereafter.

### **8) Additional deduction for health insurance for parents w.e.f AY 2009-10 – Section 80D.**

Additional deduction of upto Rs 15,000/- paid other than in cash, by an individual for medical insurance premium for his parents (need not be dependent) – (Rs 20, 000/- in case any parent is a senior citizen). This will be over and above present deduction of Rs 15,000/- available on medical insurance of self and family. Payment borne by the parent will be eligible for deduction to the parent directly.

## **RATIONALIZATION AND SIMPLIFICATION MEASURES:**

### **9) Change in the definition and scope of charitable purpose- section 2(15) and section 10(23C) and section 11. (w.e.f A.Y.2009-10).**

Charitable purpose includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.

“Advancement of any other object of general public utility” shall not be a charitable purpose if it involves the carrying on of –

- (i) any activity in the nature of trade, commerce or business or

- (ii) any activity of rendering of any service in relation to trade, commerce or business for a fee or a cess or any other consideration, irrespective of the nature or use or application of the income from such activity or the retention of such income by the entity for charitable purposes.

This can affect other charitable and religions trusts, carrying on such fund raising activities.

10) **Extension of amortization of preliminary expenses section 35D- w.e.f A.Y 2009-10.**

Preliminary expenses are allowable at 1/5<sup>th</sup> of expenditure for 5 years relating to such expenses incurred prior to commencement by the business or after.

Post commencement of business such expenses are allowed only in relation to extension of an industrial undertaking or setting up of a new unit.

This benefit is now extended to the service sector for specified post commencement preliminary expenses.

11) **Dividend Distribution Tax: Section 115-0 w.e.f 1st April, 2008.**

In computing dividend liable to distribution tax in the hands of a company, the dividend received by it from its subsidiary will be deducted provided subsidiary has paid dividend distribution tax on it and the company itself is not a subsidiary of another company.

**RATIONALIZATION OF PROVISIONS OF TAX DEDUCTION AND TAX COLLECTION AT SOURCE.**

12) **Enlargement of scope of TDS under section 194C to cover Association of Persons and body of Individuals.**

Any AOP/BOI like a Joint venture, which makes payment to a contractor, will have to deduct tax under section 194C of IT Act 1961 from such payment.  
Amendment w.e.f 1<sup>st</sup> June 2008.

13) **Provision for furnishing of information regarding TDS. Section 195- w.e.f 1<sup>st</sup> April 2008.**

Person responsible for paying interest, royalty fee for technical service etc. to non-resident or foreign company will have to furnish the information relating to all such payments electronically as specified. This will enable the Government to track and recover tax on such transactions from non-residents.

14) **Deferment of scheme of dematerialization of TDS and TCS certificates.**  
Dematerialization of TDS and TCS will create an effective, efficient, transparent method of payment of tax and grant of credit. As the infrastructure and system is not ready the scheme, which was to be introduced from 1.4.2005 and then 1.4.2006, is now deferred till 1.4.2010.

15) **Removal of TDS on corporate bonds.** Section 193 – w.e.f. 1<sup>st</sup> June, 2008

In respect of listed corporate bonds there will be no deduction of tax at source on interest paid on such bonds by companies w.e.f 1<sup>st</sup> June, 2008. This will boost corporate bond / security market.

**MEASURES TO PROMOTE SCIENTIFIC RESEARCH AND DEVELOPMENT**

16) **Weighted deduction for payments to company for scientific research. Section 35 (1) (iia) w.e.f AY 2009 – 10**

To encourage scientific research weighted deduction of 125 percent is available in respect of payments to approved scientific research association, approved university, college or other institution.

Payments made to the company for scientific research will now be eligible for 125 percent deduction if such company is:

- (i) Registered in India
- (ii) Has as its main object the scientific research and development
- (iii) Is for the time being approved by the prescribed authority in the prescribed manner, and
- (iv) Fulfills such other conditions as may be prescribed.

Such company cannot claim 150% weighted deduction for its own research expenditure.

**MEASURES TO PROMOTE SOCIO ECONOMIC DEVELOPMENT**

17) **Widening the scope of Agricultural Income. Section 2(IA) AND 10(1) – w.e.f. AY 2009 – 10**

Income from nursery operations including seeds and saplings, whether connected with land or not will be treated as agricultural income and exempt U/S 10(I) of 1961.

18) **Exemption to “Sikkimese” Individual. Section 10 (26AAA) w.e.f. 1990 – 91 and onwards**

Income of such individual other than Sikkimese woman who marries a non-sikkimese after 1-4-2008, in respect of income from any source in Sikkim or income by way of dividend and interest on securities will be fully exempt from tax..

19) **Exception of income of Coir Board. Section 10 (29A) w.e.f. AY 2009 – 10**

Income of Coir Board exempt from tax w.e.f. AY 2009 – 10.

20) **Exemption to special undertaking of UTI.**

The exemption has expired on 31-1-2008.

It has been extended upto 31-3-2009 with effect from 1-2-2008 to facilitate liquidation of UTI undertaking and close all the schemes.

21) **Five year tax holiday for hospitals in Non-Urban Agglomeration Areas. Section 801B (11B) w.e.f A.Y 2009-10,**

- (i) Tax benefit of 100% of profit derived from operating and maintaining a hospital
- (ii) Should commence operation between 1-4-2008 and 31-3-2013,
- (iii) Should not be in area comprising urban agglomeration of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore, Ahmedabad, Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar, Gandhinagar and city of Secunderabad.
- (iv) Other conditions as per 80-1B(11B)

22) **Five year tax holiday for hotels in specified districts having world heritage sites Section 80-ID - w.e.f A.Y 2009-10.**

The scope of 80-ID is extended to cover two star, three star, four star category hotels.

Tax benefit 100% of profit derived from operating the hotel

- (i) Should commence operations between 1-4-2008 and 31-3-2013.
- (ii) Should be in districts of Agra, Jalgaon, Aurangabad, Kancheepuram, Puri, Bharatpur, Chattarpur, Thanjavur, Bellary, South 24 Paragaras (excluding Kolkata), Chamoli, Raisen, Gaya, Bhopal, Panchmahal, Kamrup, Goalpara, Nagaon, North Goa, South Goa, Darjeeling and Nilgiri
- (iii) Satisfy other conditions specified in section 80ID.

**MEASURES FOR ADDITIONAL REVENUE MOBILIZATION**

23) **Increase in tax on short term Capital Gain. Section 111 A & 115 AD w.e.f AY 2009-10.**

The special tax rate of 10% on short term capital gain arising from transfer of short term capital asset being equity shares of company or unit of equity oriented fund (charged to STT), is now increased to 15%.

**MEASURES TO PLUG REVENUE LEAKAGES**

24) **Amendment to disallowance u/s 40A (3) [Section 40A (3) w.e.f AY 2009-10.]**

Where payment is made otherwise than by account payee cheque on the same day aggregating to more than Rs. 20,000/-, even if individual payments do not exceed Rs. 20,000/- the aggregate (total) of such amount will be disallowed.

**RATIONALIZATION AND SIMPLIFICATION OF ADMINISTRATIVE AND COMPLIANCE PROCEDURES.**

**25) Advancement of due date of returns from 31<sup>st</sup> October to 30<sup>th</sup> September in certain cases. Section 139, w.e.f. 1<sup>st</sup> April, 2008.**

The due date of furnishing return for the company, tax audit and other audit cases, as well as of fringe benefit tax returns is 31<sup>st</sup> October, 2008. It is now advanced to 30<sup>th</sup> September, 2008 from AY 2008-09 and onwards.

There is no change for other categories of assessee for which due date remains 31<sup>st</sup> July, 2008.

**26) Correction of mistakes and adjustments to returns in processing of tax cases by Assessing Officer Section 143 (1) w.e.f. 1<sup>st</sup> April, 2008.**

The current provision U/S 143(1) (Summary assessment) requires accepting a return without adjustment.

Now the assessing officer can make the following adjustments -

- (i) Any arithmetical errors in the return
- (ii) An incorrect claim apparent from information in the return including where supporting information / evidence not supplied or deduction exceeding statutory limit, etc.

Similar amendment in processing return of fringe benefit U/S 115 WE

**27) Provision for assessment in the case of annulment of the proceeding under Section 153A**

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

At present, there are a number of questions relating to revival of proceedings and time limits, which remain ambiguous. With the view to providing clarity and reducing disputes, it is proposed to amend the Income tax Act to provide that:

- (i) If any proceeding initiated under section 153A or any order of assessment or reassessment made under sub-section (1) of this section has been annulled in any appeal or other legal proceeding, the abated assessment or reassessment relating to any assessment year shall stand revived and if such order of annulment is set aside, such revival shall cease to have effect.
- (ii) That time limit for completion of such assessment or assessment shall be one year from the end of the month in which the abated assessment revives or

within the period already specified in section 153 or in sub-section (1) of section 153B, whichever is later.

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

**28) Granting of power to the assessing officer to extend the time for completion of special audit under Sub-Section (2A) of Section 142**

Sub-sections (2A) to (2D) of section 142 deal with power of Assessing Officer to order a special audit. Such power is required to be exercised by the Assessing Officer having regard to the nature and complexity of the accounts of the assessee and the interest of the revenue. The time limit for furnishing the audit can be extended on request of assessee. It is proposed to amend the said proviso so as to also allow the Assessing Officer to extend this period of furnishing of audit report *suo motu* upto 180 days from date of issue of directions. Hence, while the Assessing Officer shall continue to have power to grant extension on an application made in this behalf by the assessee and when there are good and sufficient reasons for such extension, he can also grant such extension on his own.

The amendment will take effect from 1st April, 2008.

**29) Extension of time limit set out in rule 3 for complying with the condition laid down in Clause (EA) of Rule 4 of Part A of the Fourth Schedule to the Income Tax Act.**

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.

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.

The proviso to sub-rule (1) of the said rule 3, inter-alia, specifies that in a case where recognition has been accorded to any provident fund on or before 31st day of March, 2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31st day of March, 2008, the recognition to such fund shall be withdrawn.

With a view to provide further time to Employees' Provident Fund Organization (EPFO) to decide on the pending applications seeking exemption under section 17 of the EPF&MP Act, it is proposed to amend the said proviso, so as to extend the time limit by one more year i.e., from 31st day of March, 2008 to 31st day of March, 2009.

This amendment will take effect from 1st April 2008.

30) **Satisfaction for initiation of penalty under Section 271 (1)**

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

Given the conflicting judgments on the issue and the legislative intent, it is proposed to amend the Income tax Act to unambiguously provide that where any amount is added or disallowed in computing the total income or loss of an assessee in any order of assessment or reassessment; and such order contains a direction for initiation of penalty proceedings under sub-section (1), such an order of assessment or reassessment shall be deemed to constitute satisfaction of the assessing officer for initiation of penalty proceedings under sub-section (1).

Similar amendment has also been proposed in the Wealth-tax Act.

These amendments will take effect retrospectively from 1st April, 1989.

31) **Service of notice and the time limit for issuance of notice under Section 143 (2) of the Income Tax Act**

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

It is proposed to insert a new section 292BB in the Income-tax Act to provide that where an assessee has appeared in any proceeding or cooperated in any inquiry related to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act has been duly served upon him in time in accordance with the relevant provision of the Act. Further, such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was,

- (i) Not served upon him; or
- (ii) Not served upon him in time; or
- (iii) Served upon him in an improper manner.

If assessee wants to resist belated notice he or the representative should not appear before the ITO in any manner.

Similar amendment is also proposed in the Wealth-tax Act.

Further, it is also proposed to amend clause (ii) of sub-section (2) of section 143 to provide that the notice under sub-section (2) of section 143 shall be served on the assessee within a period of six months from the end of the financial year in which the return is furnished.

This amendment will take effect from 1st April, 2008.

32) **Presumption as to books of accounts, other documents, etc. to be extended to survey operations**

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

It is proposed to amend section 292C of the Income-tax Act, so as to extend this presumption also to books of account, other documents, etc., found in the possession or control of any person in the course of a survey operation. This amendment will take effect retrospectively from 1st June, 2002.

33) **Authentication of documents/notices/letters - Section 282A**

Where any notice or other document is required to be issued, served or given, it shall be deemed to have been authenticated if the name and office of a designated income tax authority is printed, stamped or otherwise written thereon. It is also proposed to provide that for the purpose of this section, a designated income tax authority shall mean any income tax authority authorized by the Board for this purpose.

This amendment will take effect from the 1st June, 2008.

34) **Consequence of non-filing of appeal in respect of cases where the tax effect is less than the prescribed monetary limit**

Non-filing of appeal by the Department cannot be taken as acceptance of view and cannot be used against department in any appellate proceedings for a different year or a different assessee for the same or different year.

This amendment will take effect retrospectively from 1st April, 1999.

35) **Capital gains on transfer in the context of Foreign Currency Exchangeable Bonds (FCEBs)**

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

The Government has now allowed established Indian companies to issue foreign currency exchangeable bond (FCEB). These are bonds expressed in foreign currency, the principal and interest in respect of which is payable in foreign currency. The FCEBs differ from FCCBs in as much as the latter can only be converted into shares of the issuing company, whereas FCEBs can also be converted into or exchanged for the shares of a group company.

With a view to providing a level playing field to FCEBs, it is proposed to provide that the conversion of FCEBs into shares or debentures of any company shall not be treated as a 'transfer' within the meaning of Income-tax Act. Further it is also proposed to substitute sub-section (2A) of section 49 to provide that the cost of

acquisition of the shares received upon conversion of the bond shall be the price at which the corresponding bond was acquired.

These amendments will take effect retrospectively from 1st April, 2008, and will accordingly apply in relation to assessment year 2008-09 and subsequent assessment years. [Clauses 11, 12]

### **CLARIFICATORY AMENDMENTS**

#### **36) Clarification regarding definition of written down value under Section 43(6)**

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

Some persons were exempt from tax and, therefore, not required to compute their income under the head “profits and gains of business or profession”. Upon withdrawal of exemption, such persons became liable to income-tax and hence, required to compute their income for income-tax purposes. In this context, dispute has arisen on the basis for allowing depreciation under the Income-tax Act in respect of assets acquired during the years when it enjoyed exemption.

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

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

#### **37) Clarification regarding add back of ‘deferred tax’, ‘dividend distribution tax’, etc. for calculating book profit under Section 115JB**

The following amounts shall be added back to calculate the book profits:

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

- (v) Secondary and Higher Education Cess on income-tax, if any, as levied by the Central Acts from time to time.

These amendments will take effect retrospectively from 1st April, 2001 and will accordingly apply in relation to assessment year 2001-02 and subsequent assessment years.

38) **Amendments in respect of reassessment proceedings to clarify correct legislative intention**

It is proposed to –

- (i) Amend section 148 of the Income-tax Act to provide that the assessing officer may assess or reassess an income which is chargeable to tax and has escaped assessment other than those income involving matters which are the subject matter of any appeal, reference or revision;
- (ii) Amend section 151 of the Income-tax Act to provide that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the assessing officer about fitness of a case for the issue of notice under section 148, need not issue the notice himself.

Similar amendments have been proposed in the Wealth-tax Act.

The amendments relating to section 148 will take effect from 1st April, 2008.

The amendments relating to section 151 will take effect retrospectively from 1st October, 1998.

39) **Consequences of non-deduction of tax at source**

Failure to deduct tax at source will also be considered as a default, on the same lines as non-payment of tax deducted at source.

The amendment to substitute sub-section (1) of section 201 shall take effect retrospectively from 1st June, 2002.

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

The amendment to substitute Explanation to section 191 will take effect retrospectively from 1st June, 2003.

40) **Clarification regarding stay of demand by Income Tax Appellate Tribunal**

It is proposed to amend section 254 of the Income-tax Act and further provide that the aggregate of the period of stay originally allowed by the ITAT and the period or periods so extended or allowed shall not, in any case, exceed three hundred and sixty-five days, even if the delay in disposing of the appeal is not attributable to the assessee.

This amendment will take effect from 1st October, 2008. [Clause 46]

41) **Rationalisation of revised settlement scheme**

Provision regarding immunity from penalty and prosecution and providing a time limit for assessment relating to abatement of settlement proceedings is proposed to be introduced w-e-f 01-04-2008 (Details given in Section 245)

42) **Rationalisation of the provision of the fringe benefit tax**

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

With a view to rationalizing the provisions of Fringe Benefit Tax, the following amendments to sub-section (2) of section 115WB of the Income-tax Act are proposed:

- (i) Any expenditure on or payment through pre-paid electronic meal card shall also be excluded from the hospitality expenditure for calculation of the value of fringe benefit. Such electronic meal card should not be transferable, should be usable only at eating joints or outlets and should fulfill such other conditions, as may be prescribed.
- (ii) Explanation to clause (E) is proposed to be amended to provide that any expenditure incurred or payment made to –
  - provide crèche facility for the children of the employee; or
  - sponsor a sportsman, being an employee; or
  - organize sports events for employees,shall not be considered as expenditure for employees' welfare for the purpose of calculation of the value of fringe benefits.
- (iii) Clause (K) is proposed to be omitted. Hence, any expenditure on or payment made for maintenance of any accommodation in the nature of guest house shall not be included for valuation of fringe benefits.

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

These amendments shall take effect from 1st April, 2009 and shall accordingly apply in relation to assessment year 2009-10 and subsequent years.

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

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

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

The new section further seeks to provide that, notwithstanding anything contained in this Act, in the above situation, the employee shall not be entitled for any refund out of such deemed payment of tax; and shall also not be entitled to claim any credit of such deemed payment of tax against tax liability on other income or against any other tax liability.

This amendment shall take effect from 1st April, 2008 and shall accordingly apply in relation to assessment year 2008-09 and subsequent years.

44) **Rationalization of provision of Securities Transaction Tax**

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

It is proposed to amend Section 98 and 99 so as to provide that:

- (i) In case of sale of an option in securities, STT shall be levied at the rate of 0.017 per cent of the option premium and shall be paid by the seller;
- (ii) In case of sale of an option in securities, where option is exercised, STT shall be levied at the rate of 0.125 per cent of settlement price and shall be paid by the purchaser; and
- (iii) In case of sale of a futures in securities, STT shall be levied at 0.017 per cent and shall be payable by the seller.

This amendment will take effect from 1st June, 2008.

At present, the amount of STT paid is allowed as rebate under section 88-E of the Income-tax Act. This rebate is allowed when the income from taxable securities transactions is included under the head 'profits and gains of business or profession'.

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

This amendment will take effect from 1st April, 2008.

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

This amendment will take effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

45) **DISCONTINUATION OF BANKING CASH TRANSACTION TAX**

The Banking Cash Transaction Tax (BCTT) is proposed to be withdrawn w-e-f 01-04-2009.

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