

PAPER – 5 : TAXATION

QUESTIONS

1. State with reasons whether the following statements are true or false [A.Y. 2008-09] -
 - (a) The benefit of weighted deduction under section 35(2AB) in respect of scientific research expenditure would be available up to 31.3.2007.
 - (b) Any sum received by an employer from his employees towards contributions to provident fund, superannuation fund etc. are not taxable.
 - (c) Under section 40A(3), 20% of the expenditure in respect of which payment exceeding Rs. 20,000 has been made by account payee cheque or account payee draft is disallowed.
 - (d) Deemed dividend under section 2(22)(e) is chargeable to tax on mercantile basis, irrespective of the method of accounting followed by the assessee.
2. Mr. Suresh and Mrs. Suresh are foreign citizens. During the previous year 2007-08, Mr. Suresh and Mrs. Suresh have the following income:

Particulars		Mr. Suresh Amount (Rs.)	Mrs. Suresh Amount (Rs.)
(i)	Interest on company deposits in India	50,000	7,50,000
(ii)	Income deemed to be received in India	35,000	60,000
(iii)	Income from business situated in Nepal and controlled from India (40 per cent is received in India and 60 per cent is received outside India)	70,000	42,000
(iv)	Dividend declared by an Indian company	35,000	50,000
(v)	Salary received in India for services rendered outside India	97,000	90,000
(vi)	Interest received from the Government of India (received outside India)	60,000	21,000
(vii)	Interest received from a foreign company outside India (on capital which is utilized outside India)	80,000	7,000
(viii)	Income from a business in France, controlled from Mumbai	42,000	97,000
(ix)	Royalty received in India from the Government of India	15,000	7,000
(x)	Royalty received in India from a non-resident in respect of technology used by such person outside India	22,000	10,000
(xi)	Agricultural income in Europe	58,000	76,000

From the above particulars ascertain the gross total income of Mr. Suresh and Mrs. Suresh for the assessment year 2008-09, if Mr. Suresh is a resident but not ordinarily resident in India and Mrs. Suresh is non-resident in India.

3. Discuss the meaning of the following terms under the Income-tax Act, 1961-
 - (i) Infrastructure Capital Company;
 - (ii) Infrastructure Capital fund;
 - (iii) India.
4. Ramesh was the General Manager of Amity Ltd. in Delhi. He retired from his service on 31-12-2007 after 30 years of service. The following information has been provided by him:
 - (i) Basic Salary Rs. 20,000 p.m. Dearness allowance 40% of basic salary (50% of which forms part of salary for retirement benefits).
 - (ii) House rent allowance Rs. 5,000 p.m. He pays Rs. 6,000 p.m. as rent.
 - (iii) Medical allowance Rs. 1,200 p.m.
 - (iv) A car of 1.4 ltrs. engine cubic capacity is provided by the company for official and personal use and all expenses of running and maintenance of car and salary of the driver are borne by the company.
 - (v) The monthly expenses incurred by Ramesh on gas and electricity were Rs. 800 which were reimbursed by the employer.
 - (vi) Reimbursement of educational expenses of his two children which amount to Rs. 450 p.m.
 - (vii) A watchman, a sweeper and a cook have been provided to whom the company pays a salary of Rs.600 p.m. each.
 - (viii) Loan of Rs. 1,50,000 @ 10% p.a. for construction of his house was given by the company. SBI rate of interest is 8% p.a.
 - (ix) He received Rs. 2,40,000 as gratuity. His salary for the preceding years was as under:

	Particulars	Rs.
(a)	Year ending 31-12-2004	1,10,000
(b)	Year ending 31-12-2005	1,16,000
(c)	Year ending 31-12-2006	1,20,000

- (x) He received Rs. 1,25,000 for encashment of leave being twelve months unavailed leave of Ramesh. He was entitled to one month's leave for every year of service.
- (xi) Ramesh contributes 20% of his salary to a recognised provident fund and the employer's contribution is 10%.
- (xii) He has invested Rs. 20,000 in National Savings Certificates VIII issue and Rs.

15,000 in public provident fund. He paid Rs. 10,000 towards life insurance premium.

Compute the total income of Ramesh for the assessment year 2008-09.

5. Ashok has a house property situated in Delhi which consists of two units. Unit A has 60% floor area, whereas Unit B has 40% floor area. Unit A was self-occupied by Ashok for 8 months and w.e.f. 1-12-2007, it was let out for Rs.12,000 p.m. Unit B was also meant for self occupation but it was also let out w.e.f. 1-10-2007 for Rs. 9,000 p.m. The other particulars of the house property were as under:

	Rs.
Municipal taxes paid	55,000
Insurance premium	8,000
Interest on money borrowed	25,000

Compute income from house property for the assessment year 2008-09.

6. Discuss briefly on:
- Carry forward and set off losses in case of change in constitution of firm or succession
 - Exemption of specified income of Investor Protection Fund set up by commodity exchanges.
7. Dr. Umesh is an individual medical practitioner. His gross receipts from the medical practice for the year ending 31.03.2007 are Rs. 80 Lakhs. The gross receipts for the year ending 31.03.2008 are Rs. 9 Lakhs. During the financial year 2007-08, he makes the following payments to a resident contractor for various activities:

Contract No.	Name of the Contractor	Description of the Contract	Amount paid or credited in the books (Rs.)
A	Mr. P	Medical equipment maintenance contract	50,000
B	Mr. P	Household personal equipment maintenance contract	2,70,000
C	Mr. R	Clinic furnishing contract	19,000
D	Mr. R	Clinic furnishing contract	18,000
E	Mr. R	Clinic furnishing contract	19,500

Examine the liability to deduct tax and the amount of TDS under section 194C(1) for the A.Y. 2008-09.

8. Write short notes on:
- Bond Washing transactions and Dividend Stripping
 - Consequences of failure to deduct or pay tax at source

- (c) Payment of advance tax in case of capital gains/casual income
9. State with reasons whether the following statements are true or false [A.Y. 2008-09] -
- The income of all Mutual Funds will be exempt from tax irrespective of whether or not the prescribed conditions laid down by the Central Government are fulfilled.
 - No capital gains would arise in the hands of the company in respect of compensation received on compulsory acquisition of agricultural land.
 - Partnership firms deriving loss need not file return of income.
 - Interest on loan borrowed which is payable outside India shall not be allowed as deduction.
10. Sumit purchases 2,500 (non-listed) shares in Amit Ltd. on August 16, 1990 for Rs. 10,000. On May 17, 1992, he gets 500 bonus shares. On October 20, 2006, he acquires 1,500 right shares at the rate of Rs. 15 per share. He sells 4,500 (non-listed) shares in Amit Ltd. on February 12, 2008 at the rate of Rs. 150 per share (brokerage on sale: 2 per cent). He owns one residential house property. He purchases a residential house on June 29, 2008 for Rs. 3,50,000. Ascertain the amount of capital gains chargeable to tax for the assessment year 2008-09. [Cost Inflation Index (CII): F.Y.2007-08: 551, F.Y.2006-07: 519, F.Y.1990-91:182]
11. Discuss the provisions of section 80-ID relating to deduction in respect of profits and gains from the business of hotel or business of building, owing and operating a convention centre in NCR.
12. Following are the details of income provided by Mr. Ramaswamy for the year ending 31.3.2008:
- Rental income from property at Chennai - Rs. 5,00,000, Municipal Value – Rs. 4,00,000; Standard Rent - Rs. 3,50,000, Fair Rent – Rs. 3,00,000.
 - Municipal tax paid to Municipality, Current year - Rs. 40,000, Arrears – Rs. 1,60,000.
 - Interest on loan borrowed towards major repairs to the property - Rs. 1,40,000.
 - Arrears of rent from property at Hyderabad which was sold on 10.04.2005 – Rs. 25,000.
- Mr. Ramaswamy furnishes the following additional information regarding sale of a property in Delhi:
- Mr. Ramaswamy's father acquired a property in April 1988 for Rs. 40,000. Mr. Ramaswamy acquired this property by inheritance on 1st December 1988 after the demise of his father.
 - Fair Market Value as on 01.04.1981 was Rs. 15,000.
 - Fair Market Value as on 12.12.1988 was Rs. 45,000.
 - Sale consideration received is Rs. 40,00,000.

- (v) Stamp duty charges paid by the purchaser at the time of registration @ 13% is Rs. 6,50,000 without any protest.
- (vi) Mr. Ramaswamy has invested the sale consideration in a residential flat for Rs. 25 lakhs out of the sale proceeds. A sum of Rs. 20 lakhs was invested in Capital Gains Bonds issued by NHAI and Rural Electrification Corporation Limited.

Compute the total income of Mr. Ramaswamy for the A.Y. 2008-09. [Cost Inflation Index (CII): F.Y.2007-08: 551, F.Y.1988-89: 161]

13. Deepak is an employee of a private limited company in Mumbai. He gets Rs. 18,000 per month as salary and medical allowance at the rate of Rs. 1,200 per month. The employer provides sports club facility. A similar facility will cost Deepak Rs. 8,000 per year.

Compute the total income and tax liability of Deepak for the assessment year 2008-09 after giving due consideration to the following particulars:

Particulars	Rs.
Long term capital gains in respect of commercial buildings	19,000
Long-term capital gains in respect of shares (non-listed)	15,000
Income from horse races (gross)	6,000
Winnings from lottery (gross)	80,000
Expenditure on recovery of lottery prize	20,000
Interest from IFCI	10,000
Interest paid on capital borrowed for the purpose of investment in bonds of IFCI	9,500
Interest on company deposit	50,000
Insurance premium paid on a joint life policy on the life of Deepak and Mrs. Deepak (Sum assured : Rs. 1,00,000)	26,000
Mediclaim insurance on the life of Deepak's father (paid by cheque)	15,000

14. Discuss the provisions regarding deductions allowable to an assessee in respect of the following:
 - (a) Deduction in respect of contributions given by companies to political parties.
 - (b) Deduction in respect of royalty on patents.
15. Discuss the provisions of section 139B relating to the scheme for submission of returns through Tax Return Preparers.
16. Write briefly about the role of a Chartered Accountant in the field of service tax consultancy.
17. Ms. Smita rendered taxable services to a client. A bill for Rs. 50,000 was raised on 27.04.2007; Rs. 25,000 was received from the client on 4.5.2007 and the balance on

25.05.2007. No service tax was separately charged in the bill. The questions are:

- (i) Is Smita liable to pay service tax, even though the same has not been charged by her?
 - (ii) In case she is liable, what is the value of taxable service and the service tax payable?
18. Does service tax law provides any exemption to services provided to a developer or units of special economic zone? If yes, discuss the same.
 19. How will a taxable service be valued when the consideration thereof is not in wholly or partly in terms of money?
 20. Write a note on different methods of computation of VAT.

SUGGESTED ANSWERS/HINTS

1. (a) False – The Finance Act, 2007 has increased the time limit for availing the benefit of weighted deduction under section 35(2AB) in respect of scientific research expenditure. Such benefit would now be available in respect of scientific research expenditure incurred upto 31.03.2012.
 - (b) False – As per section 2(24) of the Income Tax Act, 1961 the term 'income' includes any sum received by the assessee from his employees as contributions to any provident fund (PF) or superannuation fund or Employees State Insurance Fund (ESI) or any other fund for the welfare of such employees.
 - (c) False – The disallowance under section 40A(3) has been raised from 20% to 100% of the expenditure in respect of which payment exceeding Rs. 20,000 has been made otherwise than by way of account payee cheque or account payee draft.
 - (d) False – Deemed dividend under section 2(22)(e) is chargeable to tax on payment basis under section 8, irrespective of the method of accounting followed by the assessee.
2. Computation of Gross Total Income of Mr. Suresh and Mrs. Suresh for the A.Y. 2008-09

Particulars	Mr. Suresh (Resident but not ordinarily resident)	Mrs. Suresh (Non – resident)
	Rs.	Rs.
(i) Interest on company deposits in India	50,000	7,50,000
(ii) Income deemed to be received in India	35,000	60,000

(iii)	Income from business in Nepal		
	- 40% received in India	28,000	16,800
	- 60% received outside India (as business is controlled in India)	42,000	---
(iv)	Dividend declared by an Indian company [exempt under section 10(34)]	---	---
(v)	Salary received in India for services rendered outside India	97,000	90,000
(vi)	Interest received from the Government of India (received outside India)	60,000	21,000
(vii)	Interest received from a foreign company outside India (borrowed money is utilized outside India)	---	---
(viii)	Income from a business in France, controlled from Mumbai	42,000	---
(ix)	Royalty received in India from the Government of India	15,000	7,000
(x)	Royalty received in India from a non-resident in respect of technology used by such person outside India	22,000	10,000
(xi)	Agricultural income in Europe	---	---
	Gross Total Income	3,91,000	9,54,800

3. (i) Infrastructure Capital Company [Section 2(26A)]

Infrastructure Capital Company means such company which makes investments by way of acquiring shares or providing long-term finance to -

(1) any enterprise or undertaking wholly engaged -

(a) in the business referred to in Section 80-IA(4) i.e. business of

(i) developing/operating and maintaining/developing, operating and maintaining any infrastructure facility fulfilling the specified conditions

(ii) providing telecom services, whether basic or cellular

(iii) developing, developing and operating or maintaining and operating an industrial park or special economic zone notified by the Central Government

(iv) generating, transmitting or distributing power or undertaking substantial renovation and modernization of the existing network of transmission or distribution lines.

(b) in the business referred to in Section 80-IAB(1) i.e. any business of developing a SEZ.

- (2) an undertaking developing and building a housing project referred to in section 80-IB(10) i.e. approved before 31.3.2007 by a local authority and commences or commenced development and construction on or after 1.10.98 and completes or completed development and construction within the time specified.
- (3) a project for constructing a hotel of not less than three-star category as classified by the Central Government or
- (4) a project for constructing a hospital with at least 100 beds for patients

(ii) Infrastructure Capital Fund [Section 2(26B)]

Infrastructure Capital Fund means such fund operating under a trust deed registered under the provisions of the Registration Act, 1908 established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to -

- (1) any enterprise or undertaking wholly engaged in the business referred to in section 80-IA(4) or section 80-IAB(1) or
- (2) an undertaking developing and building a housing project referred to in section 80-IB(10) or
- (3) a project for constructing a hotel of not less than three star category as classified by the Central Government or
- (4) a project for constructing a hospital with at least 100 beds for patients.

(iii) India [Section 2(25A)]

The term 'India' means –

- (i) the territory of India as per article 1 of the Constitution,
- (ii) its territorial waters, seabed and subsoil underlying such waters,
- (iii) continental shelf,
- (iv) exclusive economic zone or
- (v) any other specified maritime zone and the air space above its territory and territorial waters.

Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

4. Computation of Total Income of Ramesh for the A.Y. 2008-09

Particulars	Amount (Rs.)	Amount (Rs.)
Basic Salary (Rs. 20,000 x 9)		1,80,000
Dearness Allowance (Rs. 1,80,000 x 40%)		72,000
House Rent Allowance (Rs. 5,000 x 9)	45,000	

Less: Exempt u/s 10(13A) (Note 1)	32,400	12,600
Medical allowance (Rs. 1,200 x 9)		10,800
Value of car (Note 2)		Nil
Gas / electricity (Rs. 800 x 9)		7,200
Education Re-imbursement (Rs. 450 x 9)		4,050
Watchman (Rs. 600 x 9)		5,400
Sweeper (Rs. 600 x 9)		5,400
Cook (Rs. 600 x 9)		5,400
Interest on loan (Note 3)		Nil
Gratuity	2,40,000	
Less: Exempt u/s 10(10) (Note 4)	2,40,000	Nil
Leave salary	1,25,000	
Less: Exempt u/s 10(10AA) (Note 5)	1,25,000	Nil
Income from Salary		3,02,850
Gross total income		3,02,850
Less : Deduction under section 80C		
PF (Note 6)	43,200	
NSC	20,000	
PPF	15,000	
LIP	10,000	88,200
Total Income		2,14,650

Notes:

1. HRA is exempt to the extent of least of the following:

Particulars	Amount (Rs.)
(i) Actual HRA received	45,000
(ii) Rent paid – 10% of Salary (Rs. 54,000 – 10% x (Rs. 1,80,000+ Rs. 36,000))	32,400
(iii) 50% of Salary [50% of (Rs.1,80,000+ Rs.36,000)]	1,08,000

Therefore, Rs. 32,400, being the least amount, is exempt u/s 10(13A).

2. Since the employer is a company, it is liable to FBT. Therefore, the car facility will

be taxable as a fringe benefit in the hands of the company and not as a perquisite in the hands of the employee.

3. Interest on loan is not taxable as interest charged is more than the rate of SBI.
4. Gratuity is exempt to the extent of minimum of the following:

Particulars	Amount (Rs.)
(i) Statutory limit	3,50,000
(ii) Half month's salary for every year of service ($\frac{1}{2} \times 30 \times$ Rs. 24,000)	3,60,000
(iii) Actual gratuity received	2,40,000

Therefore, Rs. 2,40,000 is exempt u/s 10(10). It is assumed that the employee is not covered under The Payment of Gratuity Act, 1972.

5. Leave encashment is exempt to the extent of minimum of the following:

Particulars	Amount (Rs.)
(i) Statutory limit	3,00,000
(ii) Cash equivalent of leave at the credit of the employee (12 x Rs. 24,000)	2,88,000
(iii) 10 months average salary (10 x Rs. 24,000)	2,40,000
(iv) Actual amount received	1,25,000

Therefore, Rs. 1,25,000 is exempt u/s 10(10AA).

6. Employee's Contribution to RPF = 20% of (BS + DA for retirement benefits)
 - = 20% of (Rs. 1,80,000 + Rs. 36,000)
 - = 20% of Rs. 2,16,000
 - = Rs. 43,200

5. In the above question, both house properties are part of the year self occupied and part of the year let out. Hence, benefit of self-occupation for residential purposes shall not be allowed due to the provisions of section 23(3). In this case, annual value of both the house properties shall be determined as per section 23(1).

Computation of Income from House property for the A.Y. 2008-09

Unit A : Gross annual value, higher of the following two :

	Rs.	Rs.
(a) Expected rent (Rs.12,000 x 12)		1,44,000
(b) Actual rent received or receivable (Rs.12,000 x 4)		48,000
Gross annual value (GAV)		1,44,000

Less : Municipal taxes paid (60% of Rs. 55,000)		33,000
Net annual value (NAV)		<u>1,11,000</u>
Less : Deduction under section 24		
(a) Statutory deduction @ 30% of NAV	33,300	
(b) Interest on money borrowed (60% of Rs. 25,000)	<u>15,000</u>	48,300
Income from Unit A		<u>62,700</u>

Unit B: Gross annual value, higher of the following two :

	Rs.	Rs.
(a) Expected rent (Rs. 9,000 x 12)		1,08,000
(b) Actual rent received or receivable (Rs. 9,000 x 6)		54,000
Gross annual value (GAV)		1,08,000
Less : Municipal taxes paid (40% of Rs. 55,000)		<u>22,000</u>
Net annual value (NAV)		86,000
Less : Deduction under section 24		
(a) Statutory deduction @ 30% of NAV	25,800	
(b) Interest on money borrowed (40% of Rs. 25,000)	<u>10,000</u>	35,800
Income from Unit B		<u>50,200</u>

Income from House Property = Rs.62,700 + Rs. 50,200 = Rs.1,12,900

Note : In the absence of information, actual rent has been taken as expected rent.

6. (a) Carry Forward and Set off of Losses in case of change in Constitution of Firm or succession [Section 78]
 - (i) Where there is a change in the constitution of a firm, so much of the loss proportionate to the share of a retired or deceased partner remaining unabsorbed, shall not be allowed to be carried forward by the firm. However, unabsorbed depreciation can be carried forward.
 - (ii) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person shall not be allowed to carry forward and set off against his income, any loss incurred by the predecessor.
 - (iii) Where there is a succession by inheritance, the legal heirs (assessable as BOI) are entitled to set-off the business loss of the predecessor. Such carry forward and set-off is possible even if the legal heirs constitute themselves as a partnership firm. In such a case, the firm can carry forward and set-off the business loss of the predecessor.

- (b) Exemption of specified income of Investor Protection Fund set up by commodity exchanges [Section 10(23EC)]
 - (a) Section 10(23EC) exempts 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.
 - (b) 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 entire 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.
 - (c) A "commodity exchange" means a "registered association" as defined in clause section 2(jj) of the Forward Contracts (Regulation) Act, 1952. i.e. an association to which for the time being a certificate of registration has been granted by the Forward Markets Commission under section 14B of that Act.
- 7. In the case of individuals, the liability to deduct tax under section 194C(1) arises only where they are subject to tax audit under section 44AB in the immediately preceding previous year in which such payments or credit entries are made. In the given case, the individual's account is subject to tax audit for the year ending 31st March 2007 and therefore, the provisions of section 194C(1) are applicable in respect of payments covered there under. Gross receipts for the financial year 2007-08 is not relevant to determine the applicability of section 194C(1). Accordingly, the liability to deduct tax and amount of TDS is as follows:

Contract A

Since the amount of individual contract exceeds Rs. 20,000, the provisions of section 194C(1) are applicable and therefore, tax of Rs. 1,030, being 2.06% of Rs. 50,000 shall be deducted at source at the time of payment or credit, whichever is earlier. Surcharge at 10% is not applicable since the aggregate payment to the contractor during the year does not exceed Rs. 10 Lakhs.

Contract B

In the case of individuals or HUF, where the payment under a contract is made for personal purpose, liability to deduct tax does not arise. In the given case, the contract is for maintenance of household personal equipment and therefore, irrespective of the amount of contract, liability to TDS does not arise.

Contract C, D and E

The liability to deduct tax in respect of payment made in pursuance of a contract arises only where the amount of individual contract exceeds Rs. 20,000 or the aggregate amounts of all contracts to a resident contractor exceeds Rs. 50,000 during the financial year. In the given case, though the independent contract value of all these contracts of C,

D and E does not exceed Rs. 20,000, the aggregate value of all these contracts to Mr. R exceeds Rs. 50,000 during the financial year. Therefore, Dr. Umesh is responsible to deduct tax u/s 194C(1). Accordingly, in the given case the aggregate value of the contract of Rs. 56,500 is subject to TDS at the rate of 2.06% amounting to Rs. 1,164.

Therefore, the total amount of tax to be deducted by Dr. Umesh for the A.Y. 2008-09 under section 194C(1) is Rs. 2,194.

8. (a) Bond washing transactions and Dividend stripping [Section 94]
 - (i) A bond-washing transaction is a transaction where securities are sold some time before the due date of interest and reacquired after the due date is over. This practice is adopted by persons in the higher income group to avoid tax by transferring the securities to their relatives/friends in the lower income group just before the due date of payment of interest. In such a case, interest would be taxable in the hands of the transferee, who is the legal owner of securities. In order to discourage such practice, section 94(1) provides that where the owner of a security transfers the security just before the due date of interest and buys back the same immediately after the due date and interest is received by the transferee, such interest income will be deemed to be the income of the transferor and would be taxable in his hands.
 - (ii) In order to prevent the practice of sale of securities-cum-interest, section 94(2) provides that if an assessee who has beneficial interest in securities sells such securities in such a manner that either no income is received or income received is less than the sum he would have received if such interest had accrued from day to day, then income from such securities for the whole year would be deemed to be the income of the assessee.
 - (iii) Section 94(7) provides that where
 - (a) any person buys or acquires any securities or unit within a period of three months prior to the record date and
 - (b) such person sells or transfers –
 - (1) such securities within a period of three months after such date, or
 - (2) such unit within a period of nine months after such date and
 - (c) the dividend or income on such securities or unit received or receivable by such person is exempted,
 then, the loss, if any, arising therefrom shall be ignored for the purposes of computing his income chargeable to tax. Such loss should not exceed the amount of dividend or income received or receivable on such securities or unit.

(b) Consequences of failure to deduct or pay tax at source [Section 201]

- (1) The following persons shall be deemed to be an assessee in default if they do not deduct the whole or any part of the tax or after deducting fails to pay the tax -
 - (i) any person referred to in section 200; and
 - (ii) the principal officer and the company of which he is the principal officer, in the cases referred to in section 194.
- (2) However, no penalty shall be charged under section 221 from such person, principal officer or company unless the Assessing Officer is satisfied that such person or principal officer or company, as the case may be, has failed to deduct and pay the tax without good and sufficient reasons.
- (3) Such person, principal officer or company shall also be liable to pay simple interest at 12% p.a. (for interest chargeable up to 31.3.2008) and 1% for every month or part of a month in respect of interest chargeable or payable for the period commencing from 1.4.2008. Such interest is chargeable 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.
- (4) Such interest should be paid before furnishing the quarterly statements for each quarter in accordance with section 200(3).
- (5) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the person or the company, as the case may be.

(c) Payment of advance tax in case of capital gains/casual income [Proviso to section 234C]

- (1) Advance tax is payable by an assessee on his/its total income, which includes capital gains and casual income like income from lotteries, crossword puzzles etc.
- (2) Since it is not possible for the assessee to estimate his capital gains, income from lotteries, etc., it has been provided that if any such income arises after the due date for any installment, then, the entire amount of tax payable (after considering tax deducted at source) on such capital gains or casual income should be paid in the remaining installments of advance tax which are due.
- (3) Where no such installment is due, the entire tax should be paid by 31st March of the relevant financial year.
- (4) No interest liability would arise if the entire tax liability is so paid.

9. (a) False – Under section 10(23D), only the income of a Mutual Fund set up by a public sector bank / public financial institution / SEBI / RBI is exempt subject to certain conditions.

- (b) False – Section 10(37) exempts capital gains arising to individual or a HUF from transfer of agricultural land by way of compulsory acquisition. Since the land belongs to a company, the exemption is not available in this case and the compensation would be subject to capital gains tax.
- (c) False – As per section 139(3) any person who sustained loss in any previous year and claims that such loss should be carried forward shall furnish a return of loss within the time allowed under section 139(1) in the prescribed form. Therefore, partnership firms have to file their loss return on or before the due date specified u/s 139(1) to carry forward the loss.
- (d) False – Interest on loan borrowed which is payable outside India shall be allowed as deduction, provided tax has been deducted or paid at source.

10. Computation of Capital Gains for the A.Y. 2008-09

Particulars	2500 original shares Rs.	500 bonus shares Rs.	1500 right shares Rs.
Gross Sale consideration @ Rs. 150 per share	3,75,000	75,000	2,25,000
Less: Expenses on transfer (Brokerage @ 2%)	7,500	1,500	4,500
Net Sale consideration	3,67,500	73,500	2,20,500
Less : Indexed cost of acquisition (Note 1)	30,275	Nil	23,887
Long-term capital gain	3,37,225	73,500	1,96,613
Long-term capital gain as percentage of net sale consideration	91.76%	100%	89.17%
Order of preference for claiming exemption under section 54F	2	1	3
Exemption under section 54F (Note 2)	2,53,722	73,500	Nil
Long term capital gain	83,503	Nil	1,96,613

Taxable Long Term Capital Gain = Rs. 83,503 + Rs. 1,96,613 = Rs. 2,80,116.

Notes –

1. Indexed cost of acquisition is computed as follows:

$$\text{Original Shares (Non-Listed)} = \text{Rs. } 10,000 \times \frac{551}{182} = \text{Rs. } 30,275$$

$$\text{Right Shares (Non-Listed)} = \text{Rs. } 1,500 \times 15 \times \frac{551}{519} = \text{Rs. } 23,887$$

2. The amount of exemption is determined as under –

Particulars	Investment utilized for claiming exemption	Exemption
Bonus shares [Rs. 73,500 / Rs. 73,500 x Rs. 73,500]	73,500	73,500
Original shares [Rs. 3,37,225 / Rs. 3,67,500 x Rs. 2,76,500]	2,76,500	2,53,722
Total [any other order of preference will give lower exemption]	3,50,000	3,27,222

11. Tax holiday in respect of profits and gains from the business of hotel or business of building, owning and operating a convention centre in NCR [New section 80-ID]
- Section 80-ID provides a deduction of 100% of profits and gains derived by an undertaking from the eligible business i.e. business of hotel or business of building, owning and operating a convention centre in a specified area, for a period of 5 consecutive assessment years beginning from the year in which such hotel starts functioning or convention centre starts operating on a commercial basis. However, such hotel or convention centre should be constructed at any time during the period from 1.4.2007 to 31.3.2010.
 - Such business should not be formed by the splitting up, or the reconstruction, of a business already in existence. It should not be formed by the transfer to a new business of a building previously used as a hotel or convention center. Further, it should not be formed by the transfer to a new business of machinery or plant previously used for any purpose exceeding 20% of the total value of machinery and plant used in the business.
 - For this purpose, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose if the following conditions are fulfilled:
 - such machinery or plant was not at any time used in India;
 - such machinery or plant is imported into India from any country outside India; and
 - no deduction on account of depreciation has been allowed in respect of such machinery or plant to any person earlier.
 - The profits and gains from the eligible business should be computed as if such eligible business were the only source of income of the assessee during the relevant assessment year.
 - The deduction under this section should not exceed the profits of such eligible business of the undertaking.

- (vi) The deduction shall be allowed only if the accounts are audited by a Chartered Accountant, who is also required to certify that the deduction has been correctly claimed. Further, the audit report should be furnished along with the return of income.
- (vii) Further, where any amount of profits of an undertaking or enterprise is allowed as deduction under this section, no deduction under any other provision of Chapter VI-A or section 10AA is allowable in respect of such profits.
- (viii) Where any goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee or, where any goods held for any other business are transferred to the eligible business and, in either case, if the consideration for such transfer as recorded in the accounts of the eligible business does not correspond to the market value thereof, then the profits eligible for deduction shall be computed by adopting market value for such goods or services. In case of exceptional difficulty in this regard, the profits shall be computed by the Assessing Officer on a reasonable basis.
- (ix) Similarly, where due to the close connection between the assessee and the other person or for any other reason, it appears to the Assessing Officer that the profits of eligible business is increased to more than the ordinary profits, the Assessing Officer shall compute the amount of profits on a reasonable basis for allowing the deduction.
- (x) The Central Government may notify that the benefit conferred by this section shall not apply to any class of undertaking with effect from any specified date.

12. Computation of Total income of Mr. Ramaswamy for the A.Y. 2008-09

Particulars	Amount (Rs.)	Amount (Rs.)
Income from House Property		
Computation of Gross Annual Value (GAV)		
ALV for the year = Higher of Municipal Value (MV) and Fair Rent (FR), but restricted to Standard Rent (SR)	3,50,000	
Actual rent received or receivable for the period	5,00,000	
GAV is the higher of the ALV and Actual rent received or receivable	5,00,000	
Gross Annual Value (GAV)		5,00,000
Less : Municipal taxes paid (Current year + Arrears)		2,00,000
Net Annual Value (NAV)		3,00,000
Less : Deduction under section 24		
(i) 30% of NAV i.e. 30% of Rs. 3,00,000	90,000	
(ii) Interest on loan borrowed	1,40,000	2,30,000
		<u>70,000</u>

Arrears of rent received from property in Hyderabad	25,000	
Less : Deduction under section 25B		
– 30% of Arrears of rent	7,500	17,500
Income from House Property		87,500
Capital Gains		
Sale consideration as per section 50C (Note1)	50,00,000	
Less : Indexed cost of acquisition (Note 2)	1,36,894	
Long Term Capital Gains	48,63,106	
Less : Exemptions under section 54 & 54EC		
- under section 54 – Residential Flat	25,00,000	
- under section 54EC – NHAI & RECL bonds	20,00,000	
Long term Capital Gains		3,63,106
Total Income		4,50,606

Notes:

- As per section 50C, where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both, is less than the valuation by the stamp valuation authority, such value adopted or assessed by the stamp valuation authority shall be deemed to be the full value of consideration. Hence, the value of house property sold by an individual shall be higher of (i) actual sale consideration & (ii) value applied for stamp duty.

(a) Actual sale consideration = Rs. 40,00,000

(b) Value for stamp duty = Rs. 6,50,000 / 13% = Rs. 50,00,000

Therefore, the value for stamp duty i.e. Rs. 50,00,000 shall be taken as the sale consideration for the purpose of capital gain as per section 50C.

- Indexed cost of acquisition = Rs. 40,000 $\times \frac{551}{161}$ = Rs. 1,36,894

13. Computation of Total income of Deepak for the A.Y. 2008-09

Particulars	Amount (Rs.)	Amount (Rs.)
Income from salary		
Basic salary (Rs. 18,000 x 12)		2,16,000
Medical allowance (Rs. 1,200 x 12)		14,400
Income from salary		2,30,400
Capital gains (Rs. 19,000 + Rs. 15,000)		34,000

Income from other sources		
Income from horse races	6,000	
Winnings from lotteries [See Note 2 below]	80,000	86,000
Interest from IFCI	10,000	
Less : Interest paid on capital borrowed	9,500	500
Income from company deposit		50,000
Gross total income		4,00,900
Less : Deduction under sections 80C to 80U		
Under section 80C [See Note 3 below]	20,000	
Under section 80D	15,000	35,000
Total income		3,65,900
Computation of tax liability		
Income tax		
- On winning from lotteries and income from horse races of Rs. 86,000 @ 30% [as per section 115BB]	25,800	
- On LTCG of Rs. 34,000 @ 20% [as per section 112]	6,800	
- On balance of total income (i.e. 3,65,900 – Rs. 86,000 – Rs. 34,000)	23,180	
Total Tax		55,780
Add: Surcharge (not applicable if total income does not exceed Rs. 10,00,000)		Nil
		55,780
Add : Education cess @ 2%		1,116
Add : Secondary and higher education cess @ 1%		558
		57,453
Tax liability		57,453
Tax liability (rounded off)		57,450

Notes:

1. The perquisite in respect of club facility is not chargeable to tax in the hands of Deepak. However, it is subject of fringe benefit tax in the hands of employer.
2. No expenditure is allowable against winnings from lottery.
3. Deduction under section 80C in respect of Life Insurance Premium is restricted to so much of the premium paid as does not exceed 20% of actual capital sum assured.

14. (a) Deduction in respect of contributions given by companies to political parties [Section 80GGB]
- (i) Section 80GGB provides for deduction of any sum contributed in the previous year by an Indian company to any political party.
 - (ii) For the purposes of this section, the word “contribute” has the same meaning assigned to it under section 293A of the Companies Act, 1956, which provides that -
 - (a) a donation or subscription or payment given by a company to a person for carrying on any activity which is likely to effect public support for a political party shall also be deemed to be contribution for a political purpose;
 - (b) the expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed to be a contribution to such political party or a contribution for a political purpose to the person publishing it.
 - (iii) “Political party” means a political party registered under section 29A of the Representation of the People Act, 1951.
- (b) Deduction in respect of royalty on patents [Section 80RRB]
- (i) This section allows deduction to a resident individual in respect of income by way of royalty of a patent registered on or after 1.4.03 up to an amount of Rs.3 lakhs.
 - (ii) This deduction shall be available only to a resident individual who is registered as the true and first inventor in respect of an invention under the Patents Act, 1970, including the co-owner of the patent.
 - (iii) This exemption shall be restricted to the royalty income including consideration for transfer of rights in the patent or for providing information for working or use thereof in India.
 - (iv) The exemption shall not be available on any consideration for sale of product manufactured with the use of the patented process or patented article for commercial use.
 - (v) In respect of any such income which is earned from sources outside India, the deduction shall be restricted to such sum as is brought to India in convertible foreign exchange within a period of 6 months or extended period as is allowed by the competent authority (Reserve Bank of India). For claiming this deduction the assessee shall be required to furnish a certificate in the prescribed form signed by the prescribed authority, alongwith the return of income.

- (vi) No deduction in respect of such income will be allowed under any other provision of the Income-tax Act.
- (vii) Where the patent is subsequently revoked or the name of the assessee was excluded from the patents register as patentee in respect of that patent, the deduction allowed during the period shall be deemed to have been wrongly allowed and the assessment shall be rectified under the provisions of section 155.

15. Scheme for submission of returns through Tax Return Preparers [Section 139B]

- (1) Section 139B provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a Scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.
- (2) The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme, and shall also affix his signature on such return.
- (3) A Tax Return Preparer can be an individual, other than
 - (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
 - (ii) any legal practitioner who is entitled to practice in any civil court in India.
 - (iii) a chartered accountant.
 - (iv) an employee of the 'specified class or classes of persons'.
- (4) The "specified class or classes of persons" for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Act.
- (5) The Scheme notified under the said section may provide for the following -
 - (i) the manner in which and the period for which the Tax Return Preparers shall be authorised,
 - (ii) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,
 - (iii) the code of conduct for the Tax Return Preparers,
 - (iv) the duties and obligations of the Tax Return Preparers,
 - (v) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and
 - (vi) any other relevant matter as may be specified by the Scheme.
- (6) Every Scheme framed by the CBDT under this section shall be laid before each

House of Parliament while it is in session to make the same effective.

- (7) If both the houses decide in making any modification of Scheme, then the Scheme will have effect only in such modified form.
- (8) Similarly, if both the Houses decide that any Scheme should not be framed, then such Scheme will thereafter be of no effect.
- (9) However, such modification or annulment should be without prejudice to the validity of anything previously done under that scheme.
- (10) Accordingly, the CBDT has, in exercise of the powers conferred by this section, framed the Tax Return Preparer Scheme, 2006, which came into force from 1.12.2006.

As per this scheme, Tax Return Preparer means any individual who has been issued a Tax Return Preparer Certificate and a unique identification number by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the provisions of this Scheme. However, the following persons are not eligible to act as a Tax Return Preparer -

- (i) any person referred to in clause (ii) or clause (iii) or clause (iv) of sub-section (2) of section 288, namely, any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings, any legal practitioner who is entitled to practice in any civil court in India and an accountant.
- (ii) any person who is in employment and income from which is chargeable to income-tax under the head salaries

Educational qualification for Tax Return Preparers

Any individual who holds a graduation degree from a recognized Indian University in the fields of Business Administration or Management or Commerce or Economics or Law or Mathematics or Statistics shall be eligible to act as Tax Return Preparer.

16. Role of a Chartered Accountant

As the gamut of service tax is expanding there is a great need for professionals to advice and assist the assesseees. A chartered accountant with his training and experience is well-equipped to position himself in the new role as an advisor and facilitator for due compliance of service tax law. The nature of services are:

- (a) **Advisory services:** With the selective coverage of service tax on certain specified services a great deal of professional acumen is required to interpret and understand the law and advise the applicability of service tax qua an activity or service. A chartered accountant is able to fill this void.
- (b) **Procedural compliance:** The service tax law envisages registration, payment of tax, filing returns and assessments involving interface with the excise department. A chartered accountant with his experience and expertise is the best person to assist the assessee in all the above functions and ensure compliance.

- (c) Personal representation: As per the service tax law read with the Central Excise Act and Rules, a chartered accountant is allowed to appear before the assessment authority, Commissioner (Appeals) (first appeal) and Tribunal (second appeal). Here, too with his experience and expertise a chartered accountant is well positioned to represent his clients in these fora.
 - (d) Certification and audit: With the widening of tax base there has been a phenomenal growth in the number of service tax assessees. In the ensuing years, the department would have to evolve a mechanism where there is management by exception i.e. generally accept all the returns as correct and pick and choose those returns which need detailed scrutiny. In this mechanism, a chartered accountant could be of great assistance. Service tax returns and financial statements could be certified by the chartered accountant from the perspective of service tax similar to an audit under section 44AB of the Income-tax Act.
 - (e) Onerous task to keep pace: The service tax like excise is administered more by way of trade notices issued by various commission rates. A chartered accountant will have to keep himself abreast of the latest notifications and trade notices in addition to the changes in law so as to meet the client expectations. Thus, in order to render good value added services in the area of service tax, a chartered accountant has an onerous task to keep pace with the latest in the legal front.
17. Section 68 of the Finance Act, 1994 casts the liability to pay service tax upon the service provider or upon the person liable to pay service tax as per Rule 2(1)(d). This liability is not contingent upon the service provider realizing or charging the service tax at the prevailing rate. The statutory liability does not get extinguished if the service provider fails to realize or charge the service tax from the service receiver. Hence, Ms. Smita is liable to pay service tax.

However, sometimes it may happen that the assessee is not able to charge service tax because of the nature of service or he fails to recover the service tax from the client/customer as he is not aware that his services are taxable. Hence, in these cases the amount recovered from the client in lieu of having rendered the service will be taken to be inclusive of service tax and accordingly tax payable will be calculated by making back calculations.

The rates for service tax payable are:

Basic rate	12%
Education cess (@2% of 12%)	12.24%

Service tax is payable on receipt basis

$$\text{Value of taxable service} = \frac{\text{Gross amount charged}}{(100 + \text{Effective rate})} \times 100$$

$$\text{Value of Taxable Service} = \frac{50,000}{112.24} \times 100 = \text{Rs. 44,547}$$

$$\text{Service Tax payable} = \frac{50,000}{112.24} \times 12.24 = \text{Rs. 5,453}$$

18. Exemption to services provided to a developer or units of special economic zone

Taxable service provided to a developer of special economic zone or a unit (including a unit under construction) of special economic zone by any service provider, for consumption of the services within such special economic zone, are exempt from the whole of service tax leviable thereon under section 66 of the Act. However, such an exemption is subject to the following conditions, namely:-

- (i) the developer has been approved by the Board of Approvals to develop, operate and maintain the special economic zone;
- (ii) the unit of the special economic zone has been approved by the Development Commissioner or Board of Approvals, as the case may be, to establish the unit in the special economic zone
- (iii) the developer or unit of a special economic zone shall maintain proper account of receipt and utilization of the said taxable services.

Here,

- (1) "Board of Approvals" means the combined Board of Approvals for export oriented unit and special economic zone units, as notified in the Official Gazette, from time to time by the Government of India in the Ministry of Commerce and Industry.
- (2) "developer" means a person engaged in development or operation or maintenance of special economic zone, and also includes any person authorized for such purpose by any such developer.
- (3) "Special Economic Zone" means a zone specified as special economic zone by the Central Government in the notification issued under clause (iii) of Explanation 2 to the proviso to sub-section (1) of section 3 of the Central Excise Act, 1944.

Special Economic Zone (SEZ) is a specifically delineated duty free enclave which is deemed to be foreign territory for the purposes of trade operations and duties and tariffs. Therefore, goods supplied to SEZ from the Domestic Tariff Area (DTA) are treated as deemed exports and goods brought from SEZ to DTA are treated as imported goods. The special economic zones envisage a simple and transparent policy and procedure for promotion of exports with minimum paper work.

19. If the consideration for a taxable service is not wholly or partly in terms of money, then the value of such service shall be such amount in money, with the addition of service tax charged, is equivalent to the consideration.

In other words, where the service rendered is for a consideration not wholly or partly consisting of money, the value of the taxable service is equivalent to the total value of the

consideration. However, the total of such money and non-money value of the consideration has to be treated as inclusive the service tax payable thereon.

Example: Mr. X, a company secretary provides taxable professional services to one of its clients. In lieu of rendering such services, Mr. X charges Rs.10,000 from its client and also asks its client to give him a Law book worth Rs.2,360. The total consideration in this case will be Rs.12,360 and the value of the taxable service shall be Rs.10,000

$\left(\frac{12,360}{100 + 12.36} \times 100 \right)$ and Rs.2,360 shall be the service tax payable.

20. There are several methods to calculate the 'value added' to the goods for levy of tax. The three commonly used methods are:

- (a) addition method,
- (b) invoice method and
- (c) subtraction method.

The subtraction method can be further divided into:

- (a) direct subtraction method
- (b) intermediate subtraction method

- (a) **Addition Method:** This method aggregates all the factor payments including profits to arrive at the total value addition on which the rate is applied to calculate the tax. This type of calculation is mainly used with income variant of VAT. Addition method does not easily accommodate exemptions of intermediate dealers. A drawback of this method is that it does not facilitate matching of invoices for detecting evasion.
- (b) **Invoice Method:** This is the most common and popular method for computing the tax liability under 'VAT' system. Under this method, tax is imposed at each stage of sales on the entire sale value and the tax paid at the earlier stage is allowed as set-off. In other words, out of tax so calculated, tax paid at the earlier stage i.e., at the stage of purchases is set-off, and at every stage the differential tax is being paid. The most important aspect of this method is that at each stage, tax is to be charged separately in the invoice. This method is very popular in western countries. In India also, under Central Excise Law this method is followed. This method is also called the 'Tax Credit Method' or 'Voucher Method'.
- (c) **Subtraction Method:** While the above-stated invoice or tax-credit method is the most common method of VAT, another method to determine the liability of a taxable person is the cost subtraction method, which is also a simple method. Under this method, the tax is charged only on the value added at each stage of the sale of goods. Since, the total value of goods sold is not taken into account, the question of grant of claim for set-off or tax credit does not arise. This method is normally applied where the tax is not charged separately. Under this method for imposing tax, 'value added' is simply taken as the difference between sales and purchases.

IMPORTANT CIRCULARS / NOTIFICATIONS ISSUED BETWEEN 1.5.07 and 30.04.08

Students may note that the Study Material for Taxation contains all the relevant amendments made by the Finance Act, 2007. The following are the amendments which have been made between 1.05.2007 and 30.04.2008. It may carefully be noted that for the students appearing in November 2008 examination, the amendments made by Notifications, Circulars etc. up to 30.04.2008, as detailed hereunder, are relevant.

A INCOME TAX

I NOTIFICATIONS

(1) NOTIFICATION NO. 208 / 2007, DATED 27-6-2007

Rule 6DD of the Income-tax Rules has been substituted. This Rule now provides for cases and circumstances in which payment in a sum exceeding twenty thousand rupees may be made otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

As per this rule, no disallowance under clause (a) of sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under clause (b) of sub-section (3) of section 40A where any payment in a sum exceeding twenty thousand rupees is made otherwise than by an account payee cheque drawn on a bank or account payee bank draft in the cases and circumstances specified hereunder, namely:

- (a) where the payment is made to
 - (i) the Reserve Bank of India or any banking company;
 - (ii) the State Bank of India or any subsidiary bank;
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society;
 - (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by
 - (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
 - (v) the use of electronic clearing system through a bank account;
 - (vi) a credit card;

- (vii) a debit card.
 - (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
 - (e) where the payment is made for the purchase of -
 - (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;
 - (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
 - (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
 - (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
 - (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
 - (j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;
 - (k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
 - (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.
- (2) NOTIFICATION NO. 213/2007, DATED 3-8-2007
- Section 2(48) defining zero coupon bonds requires that such bonds should be notified by

the Central Government. Accordingly, the Central Government has, vide Notification No. 213/2007 dated 3.8.2007, specified the 15 year zero coupon bonds of Power Finance Corporation (PFC), to be issued on or before 31.3.2009, as zero coupon bonds for the purposes of section 2(48).

(3) NOTIFICATION NO. 214/2007, DATED 3-8-2007

The Central Government has, vide notification no.214/2007 dated 3.8.2007 specified the cost inflation index for the financial year 2007-08. The CII for F.Y. 2007-08 is 551.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161
9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551

(4) NOTIFICATION NO. 271/2007 DATED 7-11-2007

The Finance Act, 2007 has introduced a deeming provision to define concession in the

matter of rent by inserting Explanations to section 17(2)(ii) with retrospective effect from 1.4.2006, that is, with effect from assessment year 2006-07. This has necessitated reduction of rates in case of both rent free and concessional rent accommodations and leased accommodation in Table I of rule 3 with retrospective effect from 1st April, 2006, that is, in relation to assessment year 2006-07 and subsequent years. The amendment has taken place in valuation of perquisite of unfurnished accommodation (rent free and concessional) provided to other than Government employees.

Employee	Value of perquisite
Where the accommodation is owned by the employer.	Where accommodation is provided in a city where population as per 2001 census is: (a) 10 lakh or less – 7.5% of salary; (b) More than 10 lakh upto 25 lakh -10% of salary. (c) More than 25 lakh – 15% of salary in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.
Where the accommodation is taken on lease or rent by the employer and provided to the employee	The value of perquisite would be the lower of the following: (a) Actual amount of lease rental paid or payable by the employer ; or (b) 15% of salary. This value would be reduced by the rent, if any, actually paid by the employee.

Further, the Finance Act, 2005 had inserted a new Chapter XII-H in the Act, relating to levy of fringe benefit tax on the employer with effect from 1st April, 2006, i.e., applicable for assessment year 2006-07 and subsequent years. Accordingly, rule 3 was amended vide notification number S.O. 265(E) dated the 28th February, 2005, to avoid double taxation on certain items.

Since, Chapter XII-H relating to Fringe Benefit Tax, as provided in the Finance Act, 2005, is not applicable to the employer, being an individual or a Hindu undivided family or any fund or trust or institution eligible for exemption under clause (23C) of section 10 or registered under section 12AA, rule 3 is required to be amended so as to include valuation of perquisite in case of benefits provided by such employers to its employees. Accordingly, sub-rules 2, 6, 7 (ii), (iii), (iv), (v) and (vi) have been inserted to provide for such valuation. 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 will take effect from 1st April, 2008 and will, accordingly, apply in relation to A.Y.2008-09 and subsequent years.

The following perquisites provided by an employer, who is not liable to pay fringe benefit tax under Chapter-XIIH, shall be chargeable to tax in the hands of the employee under the head "Salaries".

Motor Car - Rule 3(2)

Sl. No.	Circumstances	Where cubic capacity of engine does not exceed 1.6 litres	Where cubic capacity of engine exceeds 1.6 litres
(1)	(2)	(3)	(4)
(1)	Where the motor car is owned or hired by the employer and		
	(a) is used wholly and exclusively in the performance of his official duties;	No value, provided the documents specified in Note 2 below this table are maintained by the employer.	No value, provided the documents specified in Note 2 below this table are maintained by the employer.
	(b) is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer;	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.
	(c) is used partly in the performance of duties and partly for private or personal purposes of his own or any member of his household and		

	(i) the expenses on maintenance and running are met or reimbursed by the employer,	Rs.1,200 (plus Rs.600, if chauffeur is also provided to run the motor car)	Rs.1,600 (plus Rs.600, if chauffeur is also provided to run the motor car)
	(ii) the expenses on running and maintenance for such private or personal use are fully met by the assessee.	Rs.400 (plus Rs.600, if chauffeur is provided by the employer to run the motor car)	Rs.600 (plus Rs.600, if chauffeur is also provided to run the motor car)
(2)	Where the employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and		
	(i) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes,	No value, provided that the documents specified in Note 2 below this table are maintained by the employer.	No value, provided that the documents specified in Note 2 below this table are maintained by the employer.
	(ii) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.	The actual amount of expenditure incurred by the employer as reduced by Rs.1,200 (plus Rs.600, if chauffeur is also provided to run the motor car). However, the documents specified in Note 2 below this table should be maintained by the employer.	The actual amount of expenditure incurred by the employer as reduced by Rs.1,600 (plus Rs.600, if chauffeur is also provided to run the motor car). However, the documents specified in Note 2 below this table should be maintained by the employer.
(3)	Where the employee owns any other automotive		

	conveyance but the actual running and maintenance charges are met or reimbursed to him by the employer and		
	(i) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes,	No value, provided that the documents specified in Note 2 below this table are maintained by the employer.	Not applicable
	(ii) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee.	The actual amount of expenditure incurred by the employer as reduced by an amount of Rs.600, provided the documents specified in Note 2 below this table are maintained by the employer.	

Note -

- (1) Where one or more motor-cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all or any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car in accordance with Sl. No. (1)(c)(i) of the above Table as if the employee had been provided one motor-car for use partly in the performance of his duties and partly for his private or personal purposes and the amount calculated in respect of the other car or cars in accordance with Sl. No. (1)(b) of the above Table as if he had been provided with such car or cars exclusively for his private or personal purposes.
- (2) Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty or that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(ii) or 3(ii) of the above Table, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount of charges met or reimbursed by the employer as reduced by such higher amount attributable to official use of the vehicle provided that the following conditions are fulfilled:
 - (a) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon;
 - (b) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

- (3) The normal wear and tear of a motor-car shall be taken at 10 per cent per annum of the actual cost of the motor-car or cars.

Free or concessional tickets [Sub-rule (6) of Rule 3]

The value of any benefit or amenity resulting from the provision by an employer (who is not liable to pay FBT) engaged in the carriage of passengers or goods to any employee or to any member of his household for personal or private journey free of cost or concessional fare in any conveyance owned, leased or made available by any other arrangement shall be the value at which such benefit or amenity is offered by such employer to the public. Any amount recovered from the employee for such benefit or amenity shall be reduced in determining the value of the perquisite.

However, this sub-rule shall not apply to the employees of an airline or the railways.

Travelling, touring and accommodation [Sub-rule 7(ii) of Rule 3]

The value of travelling, touring, stay and other expenses borne by the employer for any holiday availed by the employee or any member of his household shall be the amount of the expenditure incurred by the employer. This provision applies in respect of trips other than those which are exempt under section 10(5) read with Rule 2B. If the facility is maintained by the employer and it is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public.

Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity. However, if the official tour is extended as a vacation, the value of such fringe benefit will be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

Free or concessional food and non-alcoholic beverages [Sub-rule 7(iii) of Rule 3]

The value of free food and non-alcoholic beverages provided by the employer shall be the amount of expenditure incurred by the employer as reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity. However, the following shall not be chargeable as perquisites:

- (a) Free food and non-alcoholic beverages provided by the employer during the working hours at office or business premises up to Rs.50 per meal;
- (b) Free food and non-alcoholic beverages provided through paid vouchers which are not transferable and usable only at eating joints if the value thereof is up to Rs.50 per meal;
- (c) Tea or snacks provided during working hours; and
- (d) Free food and non-alcoholic beverages during working hours provided in a remote area or an offshore installation.

Value of gift, voucher or token in lieu of such gift [Sub-rule 7(iv) of Rule 3]

The value of any gift, or voucher or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be the sum equal to the amount of such gift. If the value of such gift, voucher or token is below Rs. 5,000 in the aggregate during the previous year, the value of perquisite shall be taken as nil.

Credit card expenses [Sub-rule 7(v) of Rule 3]

The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household which is charged to a credit card (including add-on-card) provided by the employer or otherwise, paid for or reimbursed by the employer shall be taken to be the value of perquisite chargeable to tax. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity. However, such expenses incurred wholly and exclusively for official purposes would not be treated as a perquisite if the following conditions are satisfied:

- (a) complete details in respect of such expenditure are maintained by the employer which may, inter alia, include the date of expenditure and the nature of expenditure;
- (b) the employer gives the certificate for such expenditure to the effect that the same - was incurred wholly and exclusively for the performance of official duties;

Club expenditure [Sub-rule 7(vi) of Rule 3]

If employer reimburses or makes payment of any expenditure incurred in a club including the amount of annual or periodical fee for the employee or any member of household, the actual amount of such expenditure shall be the value of perquisite. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity. Where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

If the employer provides uniformly to all employees the use of health club, sports and similar facilities, there will be no taxable perquisite in respect of such facilities. Besides, there will be no taxable perquisite if the club expenditure is incurred wholly and exclusively for business purposes and the following conditions are fulfilled:

- (a) complete details in respect of such expenditure are maintained by the employer which may, inter alia, include the date of expenditure and the nature of expenditure and its business expediency;
- (b) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

Other benefit or amenity [Sub-rule 7(ix) of Rule 3]

The value of any other benefit or amenity, service, right or privilege provided by the

employer shall be determined on the basis of cost to the employer under an arms' length transaction as reduced by the employee's contribution, if any. However, there will be no taxable perquisite in respect of expenses on telephones including mobile phone actually incurred on behalf of the employee by the employer i.e., if an employer pays or reimburses telephone bills or mobile phone charges of employee, there will be no taxable perquisite.

(5) NOTIFICATION NO. 281/2007, DATED 27-11-2007

The Finance Act, 2007 inserted a new section 80-ID in the Income-tax Act, 1961 to provide for a 100% deduction of the profits and gains derived by an undertaking from the business of operating a hotel or from the business of building, owning and operating a convention centre in a specified area subject to the conditions prescribed therein.

Clause (a) of sub-section (6) of section 80-ID of the said Act defines a 'convention centre' as a building of prescribed area and having such other facilities as may be prescribed. Accordingly, a new rule 18DE and a new form 10CCBBA have been inserted in the Income-tax Rules for this purpose.

Rule 18DE prescribes the following conditions to be fulfilled in order to avail deduction under section 80-ID:

- (a) the convention centre shall have a minimum covered plinth area of 25,000 sq. mts;
- (b) it shall have minimum of 3,000 seating capacity;
- (c) there shall be minimum of 10 convention halls;
- (d) the convention centre shall have convention halls, whether called conference halls or seminar halls or auditorium for holding seminars and conferences;
- (e) each convention hall of the convention centre shall be equipped with modern public address system, slide and power-point projection system and LCD projector or video screening facility;
- (f) the convention centre shall have a documentation centre with computers and printers, telephone with STD or ISD facilities, e-mail, photocopy and scanning facility along with trained operators to provide these facilities;
- (g) the convention centre shall be completely centrally air-conditioned;
- (h) the convention centre shall have adequate parking facility and other public convenience as per local building regulations and should also fulfill all local building regulations in respect of fire and safety.

In addition to the above facilities, the convention centers may have the following:

- (a) an amphitheatre and landscaped open spaces for outdoor conference or seminar related activities;
- (b) a kitchen, dining facility, cafeteria or restaurant only to support events in the convention centre.

The new rule 18DE and the new form 10CCBBA will take effect from 1st April, 2008 and

will, accordingly, apply in relation to A.Y.2008-09 and subsequent years.

(6) NOTIFICATION NO. 2/2008, DATED 8-1-2008

The CBDT has substituted the existing Rule 18C with new Rule 18C, which lays down the following eligibility criteria for Industrial Parks to claim benefit under section 80-IA (4)(iii) -

- (1) The undertaking should begin to develop, develop and operate or maintain and operate an industrial park any time during the period from 1.4.2006 to 31.3.2009.
- (2) The undertaking and the Industrial Park should be notified by the Central Government under the Industrial Park Scheme, 2008.
- (3) The undertaking should continue to fulfill the conditions envisaged in the Industrial Park Scheme, 2008.

(7) NOTIFICATION NO. 6/2008, DATED 14-1-2008

Section 10(15)(vii) exempts interest on bonds issued by a local authority or by a State Pooled Finance Entity and notified by the Central Government in the Official Gazette. Accordingly, the Central Government has specified the "Tax-free Pooled Finance Development Bonds" under Pooled Finance Development Fund Scheme of Government of India, interest from which would be exempt under section 10(15)(vii).

(8) NOTIFICATION NO. 7/2008, DATED 15-1-2008

As per section 10(39), any specified income arising from any notified international sporting event held in India, to the person or persons notified by the Central Government in the Official Gazette, is exempt from tax. Accordingly, in exercise of the powers conferred by section 10(39), the Central Government has notified the following:

- (a) the Commonwealth Games Federation, London, United Kingdom as the person,
- (b) the Commonwealth Games 2010 to be held in India, as the international sporting event,
- (c) the income arising to Commonwealth Games Federation from Commonwealth Games 2010 on account of Host Fee, received or receivable from the Organising Committee Commonwealth Games 2010 Delhi, India amounting to 7.3 million GBP, as the specified income, for the purposes of exemption under section 10(39).

(9) NOTIFICATION NO. 21/2008, DATED 5-2-2008

Section 36(1)(xii) provides that deduction shall be allowed in respect of any expenditure (not being a capital expenditure) incurred by a corporation or a body corporate, by whatever name called, if such corporation or a body corporate is, inter alia, notified by the Central Government in the Official Gazette. Accordingly, the Central Government has notified the Oil Industry Development Board for the purpose of deduction under section 36(1)(xii), w.e.f. A.Y.2008-09.

(10) NOTIFICATION NO. 23/2008, DATED 6-2-2008

Section 2(48) defining zero coupon bonds requires that such bonds should be notified by the Central Government. Accordingly, the Central Government has, vide this Notification, specified the 10 year zero coupon bonds of National Housing Bank (NHB), to be issued on or before 31.3.2009, as zero coupon bonds for the purposes of section 2(48).

(11) NOTIFICATION NO. 34/2008, DATED 13-3-2008

The CBDT has inserted a new Rule 125 which has made electronic payment of taxes (including interest and penalty) by corporate assessees and assesseees subject to tax audit mandatory on or after 1st April 2008. Electronic payment of taxes means payment of taxes by way of internet banking facility or credit or debit cards.

(12) NOTIFICATION NO. 45/2008, DATED 24-3-2008

The CBDT has inserted a new Rule 8D which lays down the method for determining amount of expenditure in relation to income not includible in total income.

If the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –

- (a) the correctness of the claim of expenditure by the assessee; or
- (b) the claim made by the assessee that no expenditure has been incurred in relation to exempt income for such previous year, he shall determine the amount of expenditure in relation to such income in the manner provided hereunder -

The expenditure in relation to income not forming part of total income shall be the aggregate of the following:

- (i) the amount of expenditure directly relating to income which does not form part of total income;
- (ii) in a case where the assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula, namely :

$$A \times \frac{B}{C}$$

Where,

A = amount of expenditure by way of interest other than the amount of interest included in clause (i) incurred during the previous year;

B = the average of value of investment, income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

C = the average of total assets as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year;

- (iii) an amount equal to one-half per cent of the average of the value of investment,

income from which does not or shall not form part of the total income, as appearing in the balance sheet of the assessee, on the first day and the last day of the previous year.

'Total assets' means total assets as appearing in the balance sheet excluding the increase on account of revaluation of assets but including the decrease on account of revaluation of assets.

(13) NOTIFICATION NO. S.O. 752(E), DATED 28-3-2008

The CBDT has notified income-tax return forms for the A.Y. 2008-09. In Appendix II, Form ITR-1, Form ITR-2, Form ITR-3, Form ITR-4, Form ITR-5, Form ITR-6, Form ITR-7 and Form ITR-8 have been substituted by new forms.

S. No.	Form No.	Description
1	ITR-1	For Individuals having income from Salary & Interest
2	ITR-2	For Individuals & HUFs not having Income from Business or Profession
3	ITR-3	For Individuals/HUFs being partners in firms and not carrying out business or profession under any proprietorship
4	ITR-4	For Individuals & HUFs having income from a proprietary business or profession
5	ITR-5	For firms, AOPs and BOIs
6	ITR-6	For Companies other than companies claiming exemption under section 11
7	ITR-7	For persons including companies required to furnish return under section 139(4A) or section 139(4B) or section 13(4C) or section 139(4D). (Not available for e-Filing)
8	ITR-8	Return of Fringe Benefits

II CIRCULARS

(1) CIRCULAR NO.4/2007 DATED 15.6.2007

This Circular provides the tests for distinction between shares held as stock-in-trade and shares held as investment.

The Income Tax Act, 1961 makes a distinction between a capital asset and a trading asset. Capital asset is defined in section 2(14). Long-term capital assets and gains are dealt with under section 2(29A) and section 2(29B). Short-term capital assets and gains are dealt with under section 2(42A) and section 2(42B). Trading asset is dealt with under section 28.

The Central Board of Direct Taxes (CBDT) had, through Instruction No.1827 dated August 31, 1989, brought to the notice of the Assessing Officers that there is a distinction between shares held as investment (capital asset) and shares held as stock-in-trade

(trading asset). In the light of a number of judicial decisions pronounced after the issue of the above instructions, the same have been further updated for the information of assesseees as well as for guidance of the Assessing Officers.

- (1) The Supreme Court, in, CIT (Central), Calcutta vs Associated Industrial Development Company (P) Ltd 82 ITR 586, observed that:

“Whether a particular holding of shares is by way of investment or forms part of the stock-in-trade is a matter which is within the knowledge of the assessee who holds the shares and it should, in normal circumstances, be in a position to produce evidence from its records as to whether it has maintained any distinction between those shares which are its stock-in-trade and those which are held by way of investment.”

- (2) In the case of CIT, Bombay vs H. Holck Larsen 160 ITR 67, the Supreme Court observed that:

“The High Court, in our opinion, made a mistake in observing whether transactions of sale and purchase of shares were trading transactions or whether these were in the nature of investment was a question of law. This was a mixed question of law and fact.”

- (3) The Authority for Advance Rulings (AAR) 288 ITR 641, referring to the decisions of the Supreme Court in several cases, has culled out the following principles :-

- (i) where a company purchases and sells shares, it must be shown that they were held as stock-in-trade and that existence of the power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction;
- (ii) the substantial nature of transactions, the manner of maintaining books of accounts, the magnitude of purchases and sales and the ratio between purchases and sales and the holding would furnish a good guide to determine the nature of transactions;
- (iii) ordinarily the purchase and sale of shares with the motive of earning a profit, would result in the transaction being in the nature of trade/adventure in the nature of trade; but where the object of the investment in shares of a company is to derive income by way of dividend etc. then the profits accruing by change in such investment (by sale of shares) will yield capital gain and not revenue receipt.

It is possible for a tax payer to have two portfolios, i.e., an investment portfolio comprising of securities which are to be treated as capital assets and a trading portfolio comprising of stock-in-trade which are to be treated as trading assets. Where an assessee has two portfolios, the assessee may have income under both heads i.e., capital gains as well as business income.

The above principles would help in determining whether, in a given case, the shares are held by the assessee as investment (and therefore giving rise to capital gains) or as

stock-in-trade (and therefore giving rise to business profits). It is to be noted that no single principle would be decisive and the total effect of all the principles should be considered to determine whether, in a given case, the shares are held by the assessee as investment or stock-in-trade.

(2) CIRCULAR NO. 6/2007, DATED 11-10-2007

This Circular is to clarify the issue of allowability of the claim of harvesting and transportation expenses incurred by the Co-operative sugar mills for procuring sugarcane from farmers, who are members of such Co-operative Sugar Mills and who are bound under an agreement to supply the sugarcane exclusively to the concerned sugar Mill.

The issue of allowability of such expenses in the case of Co-operative Sugar Mills has been examined by the CBDT. These expenses are incurred by the Sugar Mills for ensuring an adequate and sustained supply of freshly cut sugarcane that is an essential input for the continuous running of such Mills. These expenses are, therefore, incurred for commercial expediency and are prima facie wholly and exclusively for the purpose of business. Such expenses are, therefore, allowable in the computation of the income of the Co-operative Sugar Mills.

(3) CIRCULAR NO. 1/2008, DATED 10-1-2008

This Circular provides clarification regarding applicability of provisions of section 194-I to payments made by the customers on account of cooling charges to the cold storage owners.

The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage.

However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194-C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.

(4) CIRCULAR NO. 2/2008, DATED 22-2-2008

Securities and Exchange Board of India (SEBI) vide Circular No. MRD/DoP/SE/DEP/Cir. 14/2007, dated 20-12-2007, has decided to permit all classes of investors (individuals, institutional, etc.) to short sell. Further, with a view to provide a mechanism for borrowing of securities to enable settlement of securities sold short, SEBI has also decided to put in place a full-fledged Securities Lending and Borrowing (SLB) Scheme for all market participants in the Indian securities market under the overall framework of Securities Lending Scheme, 1997 of SEBI.

In this context, the following taxation issues have arisen in respect of transactions under the scheme of securities lending -

- (i) Would the lending/borrowing of securities under the Securities Lending Scheme

amount to a transfer under section 2(47) in the hands of the lender?

- (ii) Would lending/borrowing of the securities be subject to Securities Transaction Tax (STT)?

The Lending and Borrowing of Securities under the new scheme notified by SEBI vide Circular No. MRD/DoP/SE/DEP/Cir.14/2007, dated 20-12-2007 is in accordance with the overall framework of the Securities Lending Scheme of 1997. Accordingly, the provisions of section 47(xv) will be equally applicable in respect of the transactions under the new scheme.

Securities Transaction Tax (STT) is levied on purchase or sale of an equity share, unit and derivative, under such circumstances as specified in section 98 of the Finance (No. 2) Act, 2004. The transactions in the nature of lending and borrowing under the new scheme do not fall within the scope of section 98 to the Finance (No.2) Act, 2004. Therefore, the transactions of lending and borrowing are not liable to Securities Transaction Tax (STT).

(5) CIRCULAR NO. 4/2008, DATED 28-4-2008

This Circular provides clarification on deduction of tax at source (TDS) on service tax component of rental income under section 194-I.

As per the provisions of 194-I, tax is deductible at source on income by way of rent paid to any resident. Further, rent has been defined in 194-I to mean any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any,-

- (a) land; or
- (b) building (including factory building); or
- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee.

Service tax paid by the tenant doesn't partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax.

B. SERVICE TAX

Notification No. 23/2007 ST dated 22.05.2007 has notified 01.06.2007 as the date on which the services introduced by the Finance Act, 2007 have become effective. Further,

the amendments made in the existing services vide the Finance Act, 2007 have also become effective from 01.06.2007.

Exemptions

1. With effect from 01.06.2007, Notification No. 24/2007 ST dated 22.05.2007 has exempted the taxable service of renting of immovable property from so much of the service tax leviable thereon as is in excess of the service tax calculated on a value which is equivalent to the gross amount charged for renting of such immovable property less taxes on such property, namely property tax levied and collected by local bodies.

However, any amount such as interest, penalty paid to the local authority by the service provider on account of delayed payment of property tax or any other reasons shall not be treated as property tax for the purposes of deduction from the gross amount charged.

Further, wherever the period for which property tax paid is different from the period for which service tax is paid, property tax proportionate to the period for which service tax is paid shall be calculated and the amount so calculated shall be excluded from the gross amount charged for renting of the immovable property for the said period, for the purposes of levy of service tax.

Example:

Property tax paid for April to September	= Rs. 12,000/-
Rent received for April	= Rs. 1,00,000/-
Service tax payable for April	= Rs. 98,000/- (1,00,000–2,000) * applicable rate of service tax

2. With effect from 01.06.2007, Notification No. 25/2007 ST dated 22.05.2007 has exempted commercial or industrial construction service and services provided in relation to the execution of works contract provided to any person by any other person in relation to construction of port or other port from the whole of the service tax leviable thereon.

It has been declared that-

- (i) commercial or industrial construction service or services provided in relation to the execution of works contract in relation to construction of port or other port shall not include services of completion and finishing, repair, alteration, renovation, restoration, maintenance or repair provided in relation to existing port or other port; and
- (ii) "port" and "other port" have the meanings respectively assigned to them in clauses (81) and (76) of section 65 of the Finance Act.

Consequently, with effect from 01.06.2007, Notification No. 26/2007 ST dated 22.05.2007 has rescinded Notification No. 16/2005 ST dated 07.06.2005. Notification No. 16/2005 ST dated 07.06.2005 exempted the commercial or industrial construction service provided to any person by a commercial concern in relation to construction of

port or other port from the whole of service tax leviable thereon.

3. Notification No. 33/2007 ST dated 23.05.2007 has exempted all taxable services specified in section 65 of the said Act provided by any person, for the official use of a foreign diplomatic mission or consular post in India, from whole of the service tax leviable under section 66 of the said Act. The Notification also prescribes a procedure for availing the said exemption.
4. Notification No. 34/2007 ST dated 23.05.2007 has exempted all taxable services specified in section 65 of the said Act provided by any person, for the personal use or for the use of the family members of diplomatic agents or career consular officers posted in a foreign diplomatic mission or consular post in India, from whole of the service tax leviable under section 66. The Notification also prescribes a procedure for availing the said exemption.
5. During the period between 01.07.1994 and 14.07.2007 there was a practice of not levying service tax on roaming service provided to an international in-bound roaming subscriber, by a telegraph authority. However, such services were liable to service tax under section 65(105)(b) of the Finance Act.

Therefore, in exercise of the powers conferred by section 11C of the Central Excise Act 1944 read with section 83 of the Finance Act, the Central Government has directed vide Notification No. 36/2007-ST dated 15.06.2007 that the service tax payable on roaming services provided by a telegraph authority to an international in-bound roaming subscriber, which was not being levied in accordance with the said practice, shall not be required to be paid in respect of such roaming service provided during the aforesaid period.

6. Notification No. 38/2007 ST dated 23.08.2007 has amended Notification No. 1/2006 ST dated 01.03.2006 so as to increase the percentage of abatement from 60% to 75% in the case of services provided by a tour operator in relation to a package tour. Further, package tour has also been redefined as a tour wherein transportation, accommodation for stay, food, tourist guide, entry to monuments and other similar services in relation to tour are provided by the tour operator as part of the package tour to the person undertaking the tour.
7. Notification No. 41/2007 ST dated 06.10.2007 has exempted the taxable services specified in column (3) of the Schedule (hereinafter referred to as specified services) received by an exporter and used for export of goods (hereinafter referred to as said goods), from the whole of the service tax leviable thereon under section 66 and section 66A subject to the conditions specified in the corresponding entry in column (4) of the Schedule. It may be noted that -
 - (a) the exemption shall be claimed by the exporter of the goods for the specified services received and used by the exporter for export of the said goods;
 - (b) the exemption claimed by the exporter shall be provided by way of refund of service tax paid on the specified services used for export of the said goods;

- (c) the exporter claiming the exemption has actually paid the service tax on the specified services;
- (d) no CENVAT credit of service tax paid on the specified services used for export of said goods has been taken under the CENVAT Credit Rules, 2004;
- (e) the said goods have been exported without availing drawback of service tax paid on the specified services under the Customs, Central Excise Duties and Service Tax Drawback Rules, 1995;
- (f) exemption or refund of service tax paid on the specified services used for export of said goods shall not be claimed except under this notification.

The exemption contained in this notification shall be given effect to in the following manner, namely:-

- (a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the exporter and used for export of the said goods, and such person shall not be eligible to claim exemption for the specified services.

However, where the exporter of the said goods and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

- (b) the exporter shall claim the exemption by filing a claim for refund of service tax paid on specified services.

Provided that-

- (i) the manufacturer-exporter of the said goods shall file the claim for refund to the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factory of manufacture or warehouse, and
- (ii) the exporter, other than a manufacturer-exporter, shall file the claim for refund to the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the registered office or the head office, as the case may be, of such exporter;
- (c) the exporter who is not registered as an assessee under the Central Excise Act, 1944 or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the prescribed Form with the respective jurisdictional Assistant/Deputy Commissioner of Central Excise;
- (d) the jurisdictional Assistant/Deputy Commissioner of Central Excise shall after due verification, allot a service tax code (STC) number to the exporter within seven days from the date of receipt of the said Form;
- (e) the claim for refund shall be filed on a quarterly basis, within sixty days from the end of the relevant quarter during which the said goods have been exported:

The said goods shall be deemed to have been exported on the date on which the proper officer of Customs makes an order permitting clearance and loading of the said goods for exportation under section 51 of the Customs Act, 1962;

- (f) the refund claim shall be accompanied by documents evidencing, -
- (i) export of the said goods;
 - (ii) payment of service tax on the specified services for which claim for refund of service tax paid is filed;
 - (iii) wherever applicable, a copy of the written agreement entered into by the exporter with the buyer of the said goods, as the case may be;
- (g) the Assistant/Deputy Commissioner of Central Excise shall after satisfying himself that the said services have been actually used for export of said goods, refund the service tax paid on the specified services used for export of said goods;
- (h) where any refund of service tax paid on specified services used for export of said goods has been paid to an exporter but the sale proceeds in respect of the said goods have not been realised by or on behalf of the exporter in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, such service tax refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

Schedule

Sl. No.	Taxable services		Conditions
	Classification under Finance Act, 1994	Description	
(1)	(2)	(3)	(4)
1.	Section 65(105)(d)	Services provided to an exporter by an insurer, including a re-insurer carrying on general insurance business in relation to insurance of said goods	(i) document issued by the insurer, including re-insurer, for payment of insurance premium shall be specific to export goods and shall be in the name of the exporter.
2.	Section 65(105)(zn)	Services provided for export of said goods	-
3.	Section 65(105)(zzh)	Services provided by a technical testing and analysis agency in relation to technical testing and analysis of said goods where such technical	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring testing and

		testing and analysis is required to be undertaken as per the written agreement between the exporter and the buyer of the said goods	analysis of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the exporter.
4.	Section 65(105)(zzi)	Services provided by an inspection and certification agency in relation to inspection and certification of export goods where such technical inspection and certification is required to be undertaken as per written agreement between the exporter and the buyer of the export goods	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring inspection and certification of the said goods; and (ii) the invoice issued by the service provider shall be specific to export goods and shall be in the name of the exporter.
5.	Section 65(105)(zzl)	Services provided for export of said goods	-
6.	Section 65(105)(zzp)	Services provided for transport of said goods from the inland container depot to the port of export	-
7.	Section 65(105)(zzzp)	Services provided for transport of said goods from the inland container depot to the port of export	-
8.	Section 65(105)(zzzd)	Specialized cleaning services namely disinfecting, exterminating, sterilizing or fumigating of containers used for export of said goods provided to an exporter.	(i) the exporter furnishes a copy of the written agreement entered into with the buyer of the said goods requiring such specialized cleaning of containers used for export of said goods; and (ii) the service provider is accredited by the competent statutory authority to provide such specialized cleaning services.

9.	Section 65(105)(zza)	Services provided for storage and warehousing of said goods.	(i) the said goods are stored in a storage or warehouse which is approved by the competent authority; and (ii) the storage or warehouse is exclusively used for the purpose of storage or warehousing of export goods."
10.	Section 65(105)(f)	Services provided by a courier agency to an exporter in relation to transportation of time-sensitive documents, goods or articles relating to export, to a destination outside India.	(i) the receipt issued by the courier agency specifies the importer-exporter (IEC) code number of the exporter, export invoice number, nature of courier, destination of the courier including name and address of the recipient of the courier, and (ii) the exporter produces evidence to link the use of courier service to export goods.
11.	Section 65(105)(zzp)	Services provided to an exporter in relation to transport of export goods directly from the place of removal, to inland container depot or port or airport, as the case may be, from where the goods are exported.	(i) export goods are transported directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported, (ii) invoice issued by the exporter in relation to export goods shall indicate the name of the inland container depot or port or airport from where the goods are exported, (iii) details of exporter's invoice relating to export goods are specifically

			mentioned in the lorry receipt and the corresponding shipping bill, (iv) exporter shall declare in the refund claim indicating whether such service has been received from the said service provider for purposes other than for export.
12.	Section 65(105)(zzzp)	Services provided to an exporter in relation to transport of export goods directly from the place of removal to inland container depot or port or airport, as the case may be, from where the goods are exported.	(i) export goods are transported directly from place of removal to inland container depot or port or airport from where the goods are exported, (ii) invoice issued by the exporter in relation to export goods shall indicate the inland container depot or port or airport from where the goods are exported, (iii) details of exporter's invoice relating to export goods are specifically mentioned in the lorry receipt and the corresponding shipping bill, (iv) exporter shall declare in the refund claim indicating whether such service has been received from the said service provider for purposes other than for export."

13.	Section 65(105)(h)	services provided by a custom house agent in relation export goods exported by the exporter.	exporter shall produce,- (i) invoice issued by custom house agent for providing services specified in column (3) specifying: (a) number and date of shipping bill, (b) description of export goods, (c) number and date of the invoice issued by the exporter relating to export goods, (d) details of all the charges, whether or not reimbursable, collected by the custom house agent from the exporter in relation to export goods, (ii) details of other taxable services provided by the said custom house agent and received by the exporter, whether or not relatable to export goods.
14.	Section 65(105)(zm)	(i) services provided in relation to collection of export bills, (ii) services provided in relation to export letters of credit such as advising commission, advising amendment, confirmation charges.	exporter shall produce evidence to link the use of services specified in column (3) for goods exported.
15.	Section 65(105)(zzb)	Services provided by a commission agent, located outside India, and engaged under a contract or agreement or any other document by the exporter in India, to act on behalf of the exporter, to cause sale of goods exported by him.	(i) exporter shall provide agreement or contract or any other document, requiring the commission agent located outside India to provide services to the exporter in relation to sale of export goods, outside India,

			(ii) exporter shall declare the amount of commission paid or payable to the commission agent in the shipping bill, (iii) commission sought to be remitted is not on export of a canalized item, project exports, or exports financed under lines of credit extended by Government of India or EXIM Bank, or exports made by Indian partners towards equity participation in an overseas joint venture or wholly owned subsidiary, (iv) documents evidencing actual export of goods, (v) documents evidencing actual payment of commission to the commission agent, (vi) refund of service tax shall be restricted to actual amount of service tax paid or service tax calculated on two per cent. of FOB value of export goods, whichever is less."
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Note: Services mentioned in point nos. 8 and 9 were inserted vide Notification No. 42/2007 ST dated 29.11.2007.

Services mentioned in point nos. 10, 11 and 12 were inserted vide Notification No. 3/2008 ST dated 19.02.2008.

Services mentioned in point nos. 13, 14 and 15 were inserted vide Notification No. 17/2008 ST dated 01.14.2008

8. Notification No. 43/2007 ST dated 29.11.2007 has exempted the taxable service provided in relation to business exhibition of goods by the organiser of business exhibition to a manufacturer of goods falling under Chapters 57, 61, 62 and 63 of the Central Excise Tariff Act, 1985 from the whole of the service tax leviable thereon subject to following conditions:
 - (a) prior to availment of exemption under this notification, the said manufacturer has exported goods falling under Chapters 57, 61, 62 and 63 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the said goods) and is registered as exporter of said goods with any of the following organisations, namely :
 - (i) Apparel Export Promotion Council;
 - (ii) Carpet Export Promotion Council;
 - (iii) The Cotton Textiles Export Promotion Council;
 - (iv) Handloom Export Promotion Council;
 - (v) The Indian Silk Export Promotion Council;
 - (vi) Powerloom Development & Export Promotion Council;
 - (vii) Synthetic & Rayon Textiles Export Promotion Council;
 - (viii) Wool & Woollens Export Promotion Council;
 - (ix) Wool Industry Export Promotion Council;
 - (x) Jute Manufacturers Development Council;
 - (b) the exemption shall be claimed by the said manufacturer for the said service received;
 - (c) the exemption claimed by the said manufacturer shall be provided by way of refund of service tax paid on the said service;
 - (d) the said manufacturer claiming the exemption has actually paid the service tax on the said service;
 - (e) no CENVAT credit of service tax paid on the said service has been taken under the CENVAT Credit Rules, 2004.

The exemption contained in this notification shall be given effect to in the following manner, namely:

- (a) the person liable to pay service tax under section 68 of the said Finance Act shall pay service tax as applicable on the said service provided to the said manufacturer and such person shall not be eligible to claim exemption for the said service;
- (b) the said manufacturer shall claim the exemption by filing a claim for refund of service tax paid on the said service to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, having

jurisdiction over the factory of manufacture or warehouse;

- (c) the claim for refund shall be filed on a quarterly basis, within sixty days from the end of the relevant quarter during which payment of the value of the said service and the service tax thereon has been made;
- (d) the refund claim shall be accompanied by documents evidencing payment of service tax on the said service for which claim for refund of service tax paid is filed;
- (e) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said service has been actually used by the said manufacturer in relation to business exhibition of the said goods manufactured by him, refund the service tax paid on the said service.

The exemption contained in this notification shall be valid upto 31st March, 2009.

9. The annual threshold limit of service tax exemption for small service providers has been increased from Rs.8 lakh to Rs.10 lakh with effect from 01.04.2008 by amending Notification No.6/2005-ST dated 01.03.05 vide Notification No. 8/2008 ST dated 01.03.08.

Consequent upon the increase in the threshold exemption limit from Rs.8 lakh to Rs.10 lakh, the annual turnover limit for obtaining service tax registration has also been increased from Rs.7 lakh to Rs.9 lakh with effect from 01.04. 2008 by amending Notification Nos.26/2005-ST and No.27/2005-ST, both dated 07.06.05 vide Notification Nos. 9/2008 ST and 10/2008 ST, both dated 01.03.08 respectively.

10. Notification No. 14/2008 ST dated 01.03.2008 has exempted the taxable services provided by a person, having his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, and which is received by a hotel located in India, in relation to booking of an accommodation in the said hotel, for a customer, who has his place of business, fixed establishment, permanent address or usual place of residence, in a country other than India, from the whole of the service tax leviable thereon. Hotel has been defined to mean a place that provides boarding and lodging facilities to public on commercial basis.

Other Amendments

11. Following amendments have been made in the Service Tax Rules, 1994:

- (i) With effect from 01.06.2007, in rule 2, in sub-rule (1), in clause (d), in sub-clause (i), for the words "a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit", the words "telecommunication service" have been substituted vide Notification No. 28/2007 ST dated 22.05.2007.
- (ii) Rule 5(2) has been substituted with a new sub-rule. The new sub-rule lays down that every assessee shall furnish to the Superintendent of Central Excise at the time of filing of return for the first time or the 31st day of January, 2008, whichever is later, a list in duplicate, of-

- (i) all the records prepared or maintained by the assessee for accounting of transactions in regard to,-
 - (a) providing of any service, whether taxable or exempted;
 - (b) receipt or procurement of input services and payment for such input services;
 - (c) receipt, purchase, manufacture, storage, sale, or delivery, as the case may be, in regard of inputs and capital goods;
 - (d) other activities, such as manufacture and sale of goods, if any.
- (ii) all other financial records maintained by him in the normal course of business [Notification No. 45/2007 ST dated 28.12.2007].
- (iii) Notification No.39/2007 ST dated 12.09.2007 has substituted rule 6(1) of the Service Tax Rules, 1994 with the following sub-rule:

The service tax shall be paid to the credit of the Central Government,-

- (i) by the 6th day of the month, if the duty is deposited electronically through internet banking; and
- (ii) by the 5th day of the month, in any other case,

immediately following the calendar month in which the payments are received, towards the value of taxable services.

However, where the assessee is an individual or proprietary firm or partnership firm, the service tax shall be paid to the credit of the Central Government by the 6th day of the month if the duty is deposited electronically through internet banking, or, in any other case, the 5th day of the month, as the case may be, immediately following the quarter in which the payments are received, towards the value of taxable services.

Further, notwithstanding the time of receipt of payment towards the value of services, no service tax shall be payable for the part or whole of the value of services, which is attributable to services provided during the period when such services were not taxable.

Also, the service tax on the value of taxable services received during the month of March, or the quarter ending in March, as the case may be, shall be paid to the credit of the Central Government by the 31st day of March of the calendar year.

- (iv) In rule 6, after sub-rule (1), a new sub-rule (1A) has been inserted so as to facilitate the assessee to make advance payment of service tax on his own volition and adjust the amount so paid against the service tax which he is liable to pay for the subsequent period. Such facility shall be available when the assessee shall (i) intimate the details of the amount of service tax paid in advance, to the Jurisdictional Superintendent of Central Excise within a period of 15 days from the date of such payment, and (ii) indicate the details of the advance payment made,

and its adjustment, if any in the subsequent return to be filed under section 70 [Notification No. 4/2008 ST dated 01.03.2008].

- (v) Sub-rule (4B) of rule 6 has been amended so as to provide that where an assessee has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, the assessee may adjust such excess amount paid by him subject to 1 lakh rupees [prior to this amendment, such limit was Rs.50,000] against his service tax liability for the succeeding month or quarter, as the case may be [Notification No. 4/2008 ST dated 01.03.2008]
- (vi) With effect from 01.06.2007, in rule 6, after sub-rule (4B), sub-rule (4C) has been inserted. Sub-rule (4C) provides that notwithstanding anything contained in sub-rules (4), (4A) and (4B), where the person liable to pay service tax in respect of services provided or to be provided in relation to renting of immovable property has paid to the credit of Central Government any amount in excess of the amount required to be paid towards service tax liability for a month or quarter, as the case may be, on account of non-availment of deduction of property tax paid in terms of Notification No.24/2007 ST dated 22.05.2007 from the gross amount charged for renting of the immovable property for the said period at the time of payment of service tax, the assessee may adjust such excess amount paid by him against his service tax liability within 1 year from the date of payment of such property tax. The details of such adjustment shall be intimated to the Superintendent of Central Excise having jurisdiction over the service provider within a period of 15 days from the date of such adjustment [Notification No. 28/2007 ST dated 22.05.2007].
- (vii) Rule 7B has been amended so as to increase the period of submission of revised return from "60 days" to "90 days" from the date of submission of the return under rule 7 [Notification No. 4/2008 ST dated 01.03.2008]
- (viii) Notification No. 20/2007 ST dated 12.05.2007 has inserted rule 7C after rule 7B in the Service Tax Rules, 1994. Rule 7C is in respect of amount to be paid for delay in furnishing the prescribed return. It provides that where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Central Government, for the period of delay of-
 - (i) 15 days from the date prescribed for submission of such return, an amount of Rs.500;
 - (ii) beyond 15 days but not later than 30 days from the date prescribed for submission of such return, an amount of Rs.1,000; and
 - (iii) beyond 30 days from the date prescribed for submission of such return an amount of Rs.1,000 plus Rs.100 for every day from the 31st day till the date of furnishing the said return.

However, the total amount payable in terms of this rule, for delayed submission of

return, shall not exceed the amount specified in section 70 of the Act. Further, where the assessee has paid the amount as prescribed under this rule for delayed submission of return, the proceedings, if any, in respect of such delayed submission of return shall be deemed to be concluded.

Any pending proceedings under section 77 for delayed submission or non-submission of return that has been initiated before 11.05.2007 shall also be deemed to be concluded if the amount specified for delay in furnishing the return is paid by the assessee within 60 days from 11.05.2007.

- (ix) Rule 7C has been amended by inserting third proviso after second proviso. The new proviso provides that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filling the return, reduce or waive the penalty [Notification No. 4/2008 ST dated 01.03.2008]

12. With effect from 01.06.2007, in Notification No. 36/2004 ST dated 31.12.2004 in paragraph (A), in sub-paragraph (i), for the words "a telephone connection or pager or a communication through telegraph or telex or a facsimile communication or a leased circuit", the words "telecommunication service" have been substituted vide Notification No. 27/2007 ST dated 22.05.2007.

13. In case of services provided for the transport of goods by road in a goods carriage, generally the service tax is required to be paid by certain categories of persons who pay the freight instead of the service provider namely Goods Transport Agency. The actual amount of service tax payable is computed on 25% of the amount of freight i.e. 75% of the amount of freight is provided as abatement, subject to the condition that no CENVAT credit of the duty paid has been availed of under CENVAT Credit Scheme.

Notification No.13/2008 ST dated 01.03.08 has exempted such service from the payment of service tax unconditionally to the extent of 75% of the freight. In other words, service tax shall be required to be paid only on 25% of the freight irrespective of who pays the service tax. Simultaneously, the benefit of CENVAT credit has been withdrawn to GTA service under CENVAT Credit scheme by deleting the said service from the scope of output service in the CENVAT Credit Rules, 2004. Henceforth, the person who is required to pay service tax under reverse charge method on GTA service can pay service tax on 25% of the freight unconditionally. Recipient of GTA service paying service tax under reverse charge method is no more required to prove non availment of CENVAT credit by the GTA service provider.

14. Circular No. 93/04/2007 ST dated 10.05.2007 has withdrawn the following 48 circulars/clarifications/instructions on the basis of the recommendations made in the report submitted by Shri T.R. Rustagi and views/comments/suggestions received from the trade and industry associations and the departmental officers as these circulars had lost their relevance due to changes in law, procedures, etc:

Sl. No.	Circular No./F.No.	Date
1.	1/1/94 – ST	29.06.1994

2.	2/2/94 – ST	08.07.1994
3.	4/4/94 – ST	06.09.1994
4.	5/5/94 – ST	11.10.1994
5.	6/1/95 – ST	02.05.1995
6.	7/1/96 – ST	29.02.1996
7.	8/2/96 – ST	11.03.1996
8.	9/3/96 – ST	11.03.1996
9.	13/7/96 – ST	20.09.1996
10.	15/9/96 – ST	04.10.1996
11.	16/10/96 – ST	15.10.1996
12.	19/13/96 –ST	21.11.1996
13.	20/14/96 – ST	31.12.1996
14.	21/1/97 – ST	27.01.1997
15.	F. No. B.43/1/97- TRU	06.06.1997
16.	F. No. 148/3/97 – CX4	09.09.1997
17.	23/3/97 – ST	13.10.1997
18.	F.No.354/128/97 –TRU	18.12.1997
19.	25/2/98 – ST	23.07.1998
20.	26/3/98 – ST	10.09.1998
21.	27/1/99 – ST	19.05.1999
22.	28/2/99 – ST	04.07.1999
23.	30/1/2000 – ST	05.06.2000
24.	31/2/2000 – ST	31.07.2000
25.	34/2/2001 – ST	30.04.2001
26.	36/4/2001 – ST	08.10.2001
27.	37/5/2001 – ST	27.12.2001
28.	38/1/2002 – ST	07.02.2002
29.	39/2/2002 – ST	20.02.2002
30.	42/5/2002 – ST	29.04.2002
31.	45/8/2002 – ST	30.07.2002
32.	48/10/2002-ST	13.09.2002
33.	51/13/2002 – ST	07.01.2003
34.	53/2/2003 – ST	27.03.2003
35.	54/3/2003-ST	21.04.2003

36.	55/4/2003 – ST	24.04.2003
37.	56/5/2003 – ST	25.04.2003
38.	57/6/2003 – ST	20.05.2003
39.	64/13/2003 – ST	28.10.2003
40.	65/14/2003 – ST	05.11.2003
41.	70/19/2003 – ST	17.12.2003
42.	73/3/2004 – ST	05.01.2004
43.	74/4/2004 – ST	23.01.2004
44.	77/07/2004 – ST	10.03.2004
45.	78/8/2004 – ST	23.03.2004
46.	79/9/2004 – ST	13.05.2004
47.	F. No. 341/20/2005-TRU	12.05.2005
48.	F.No./354/106/2005-TRU	08.08.2005

15. Circular No. 94/5/2007-ST dated 15.05.2007 has clarified that “entry and exit load” charged by mutual fund would not attract service tax levy under the category of fund management service. Entry and exit load charges are not towards fund management service provided by the Asset Management Company to the mutual fund but to meet the initial issue expenses and other specified expenses, incurred by the mutual fund.

In a mutual fund, fund management activity is undertaken by an asset management company (AMC) right from the stage of inception of mutual fund. For its services of fund/asset management, an AMC charges the mutual fund an ‘investment and advisory fee’ in accordance with provisions contained in the SEBI regulation. This fee is chargeable to service tax under ‘fund management service’. Similarly, service provided by the distributors/selling agents, brokers, custodians, trustees etc., to the fund, is also taxable under respective taxable service such as business auxiliary service, stock broking service and banking & other financial services.

WORKS CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) RULES, 2007

Notification No. 32/2007 ST dated 22.05.2007 has notified Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. These rules have come into effect from 01.06.2007.

Rule 2 contains the following definitions:

- (a) “Act” means the Finance Act, 1994 (32 of 1994);
- (b) “section” means the section of the Act;
- (c) “works contract service” means services provided in relation to the execution of a works contract referred to in sub-clause (zzzza) of clause (105) of section 65 of the Act;

- (d) words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

Sub-rule (1) of rule 3 lays down that notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 4%* of the gross amount charged for the works contract.

The gross amount charged for the works contract shall not include value added tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

Sub-rule (2) provides that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

Sub-rule (3) provides that the provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works contract and shall not be withdrawn until the completion of the said works contract.

* Notification No. 7/2008 ST dated 01.03.2008 has amended sub-rule (1) of rule 3 of "Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007" so as to increase the optional rate of service tax from "two" percent of the gross amount charged for the works contract to "four" percent of the gross amount charged for the works contract.

CIRCULAR No. 96/7/2007 ST DATED 23.08.2007

This circular has been issued to clarify technical issues relating to taxation of services under the Finance Act, 1994. This circular supersedes all circulars, clarifications and communications, other than Orders issued under section 37B of the Central Excise Act, 1944 (as made applicable to service tax by section 83 of the Finance Act, 1994), issued from time to time by the CBEC, DG (Service Tax) and various field formations on all technical issues including the scope and classification of taxable services, valuation of taxable services, export of services, services received from outside India, scope of exemptions and all other matters on levy of service tax. With the issue of this circular, all earlier clarifications issued on technical issues relating to service tax stand withdrawn.

At the time of introduction of the Finance Bills and after enactment of respective Finance Acts, letters are issued by TRU explaining the provisions contained in the Finance Bills / Finance Acts. Such letters explaining the provisions contained in the Finance Bill / Finance Act would be read in the relevant context.

Views stated in the circular reflect the interpretation of the law and the current practice of the department. This circular is not to be treated as part of law and does not override the legal provisions. The relevant statutory provisions must be referred to and they will prevail.

Particulars	Date of issue of clarification	Issue	Clarification
Telecommunication Service [Section (105)(zzzx)]	23.08.07	Whether service tax is liable on the amount collected as surcharge for delayed payment of telephone bills?	An amount collected for delayed payment of a telephone bill is not to be treated as consideration charged for provision of telecom service and, therefore, does not form part of the value of taxable service under section 67 read with Service Tax (Determination of Value) Rules, 2006.
Advertising agency [Section (105)(e)]	23.08.07	Persons / agencies canvass advertisements for publishing, on commission basis. Such persons / agencies do not provide any other services like making, preparation, display or exhibition of advertisement. Whether merely canvassing advertisement for publishing on a commission basis by persons / agencies is classifiable as Advertising Agency service [section 65(105)(e)] or not?	Merely canvassing advertisements for publishing, on commission basis, is not classifiable under the taxable service falling under section 65(105)(e). Such services are liable to service tax under business auxiliary service [section 65(105)(zzb)].
(i) Courier agency [Section (105)(f)]	23.08.07	Some transporters undertake door- to-door transportation of goods or articles and they have made special arrangements for speedy transportation and timely delivery of such goods or articles. Such services are known as 'Express Cargo Service' with assurance of timely	The nature of service provided by 'Express Cargo Service' provider falls within the scope and definition of the courier agency. Hence, the said service is liable to service tax under courier agency service [section 65(105)(f)].

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		delivery. Whether such 'Express cargo service' is covered under courier agency service [section 65(105)(f)]?	
(ii) Courier agency [Section (105)(f)]	23.08.07	"Angadia" undertakes delivery of documents, goods or articles received from a customer to another person for a consideration. Whether services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)]?	Angadias are covered within the definition of 'courier agency' [section 65(33)]. Therefore, such services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)].
Consulting engineer [Section (105)(g)]	23.08.07	Whether a self-employed professionally qualified engineer can be considered as 'consulting engineer' [section 65(31)] and service provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)]?	Consulting engineers include self-employed professionally qualified engineer, whether or not employing others for assistance. Services provided by such self-employed professionally qualified engineer to a client in relation to one or more discipline of engineering is liable to service tax under consulting engineer service [section 65(105)(g)].
(i) Manpower recruitment agent [Section (105)(k)]	23.08.07	Educational institutes such as IITs, IIMs charge a fee from prospective employers like corporate houses / MNCs, who come to the institutes for recruiting candidates through campus interviews. Whether services provided by such institutions in relation to recruitment of manpower	'Manpower recruitment or supply agency' is defined as "any person engaged in providing any service, directly or indirectly, in any manner for recruitment or supply of manpower, temporarily or otherwise, to a client" [section 65(68)]. Educational institutes such as IITs and IIMs fall within

Particulars	Date of issue of clarification	Issue	Clarification
		are liable to service tax under 'manpower recruitment or supply agency' service [section 65(105)(k)]?	the definition of 'manpower recruitment or supply agency', and service tax is liable on services provided by such institutions in relation to campus recruitment under section 65(105)(k).
(ii) Manpower recruitment agent [Section (105)(k)]	23.08.07	Business or industrial organisations engage services of manpower recruitment or supply agencies for temporary supply of manpower which is engaged for a specified period or for completion of particular projects or tasks. Whether service tax is liable on such services under manpower recruitment or supply agency's service [section 65(105)(k)]	In the case of supply of manpower, individuals are contractually employed by the manpower recruitment or supply agency. The agency agrees for use of the services of an individual, employed by him, to another person for a consideration. Employer-employee relationship in such case exists between the agency and the individual and not between the individual and the person who uses the services of the individual. Such cases are covered within the scope of the definition of the taxable service [section 65(105)(k)] and, since they act as supply agency, they fall within the definition of "manpower recruitment or supply agency" [section 65(68)] and are liable to service tax.
(i) Mandap keeper [Section (105)(m)]	23.08.07	"Mandap" is defined as any immovable property as defined in section 3 of the Transfer of Property Act, 1882 and includes any furniture, fixtures, light fittings and floor coverings therein let out for a	Halls, rooms etc. let out by hotels / restaurants for a consideration for organising social, official or business functions are covered within the scope of "mandap" [section 65(66)], and such hotels and restaurants are

Particulars	Date of issue of clarification	Issue	Clarification
		consideration for organizing any official, social or business function. [section 65(66)] “Mandap keeper” is defined as a person who allows temporary occupation of a mandap for a consideration for organising any official, social or business function [section 65(67)]. Whether hotels / restaurants letting out their halls, rooms etc. for social, official or business functions fall within the definition of “mandap” and allowing temporary occupation of halls, rooms etc by such hotels / restaurants for organizing any official, social or business function is liable to service tax under “mandap keeper service” [section 65(105)(m)]?	covered within the scope of “mandap keeper” [section 65(67)]. Accordingly, service tax is leviable on services provided by hotels and restaurants in relation to letting out of halls, rooms, etc. for organizing any official, social or business function under mandap keeper service [section 65(105)(m)].
(ii) Mandap keeper [Section (105)(m)]	23.08.07	Whether allowing temporary occupation of a hall for the purpose of holding dance, drama or music programme or competitions is liable to service tax under Mandap Keeper Service?	Dance, drama or music programme or competitions are social functions and allowing temporary occupation of a hall for a consideration for organizing such functions are liable to service tax under Mandap Keeper Service [section 65(105)(m)].
Broadcasting agency or organization [Section	23.08.07	Whether Prasar Bharati Corporation (Doordarshan and All India Radio) are liable to pay service tax	Prior to 1.3.2003, Prasar Bharati Corporation did not pay service tax by virtue of erstwhile section 22 of the

Particulars	Date of issue of clarification	Issue	Clarification
(105)(zk)]		under Broadcasting Service [section 65(105) (zk)]?	Prasar Bharati (Broadcasting Corporation of India) Act, 1990. However, the said section 22 was omitted vide section 163 of the Finance Act, 2002 with effect from 1.4.2003. In view of the above statutory changes, with effect from 1.4.2003 Prasar Bharati Corporation is liable to pay service tax for the broadcasting services provided like any other broadcasting agency or organization engaged in providing service in relation to broadcasting.
(i) Banking and other financial services [Section (105)(zm)]	23.08.07	Moneychangers are persons authorized under section 7 of Foreign Exchange Management Act, 1973 to deal in foreign currency. Explanation given under Section 7 of the said Act states that 'dealing' means purchasing foreign currency in the form of notes, coins or traveller's cheques or selling foreign currency in the form of notes, coins or traveller's cheques. Whether services provided by a money changer in relation to dealing of foreign currency (buying or selling), at specified rates, without separately charging any amount as commission for such dealing, is liable to	Moneychangers are authorized by RBI to buy and sell foreign exchange at the prevalent market rates. Buying or selling of foreign exchange by such persons without separately charging any amount as commission or brokerage does not fall within the scope of foreign exchange broking and is not liable to service tax under section 65(105)(zm).

Particulars	Date of issue of clarification	Issue	Clarification
		service tax as foreign exchange broking under 'banking and other financial services' [section 65(105)(zm)]?	
(ii) Banking and other financial services [Section (105)(zm)]	23.08.07	'Asset management and all other forms of fund management' are liable to service tax under 'banking and other financial service' [section 65(12)]. Whether the amount charged as 'entry and exit load' from the investor by a mutual fund is liable to service tax as asset / fund management services under banking and other financial services [section 65(105)(zm)]?	Entry load and exit load charged by a mutual fund are not for the purpose of management of assets. Thus, amount charged as "entry and exit load" are not to be treated as consideration received by an Asset Management Company for asset management and hence not liable to service tax under Banking and other Financial service [section 65(105)(zm)].
(iii) Banking and other financial services [Section (105)(zm)]	23.08.07	Whether depository services and Electronic Access to Securities Information (EASI) services provided by Central Depository Services (India) Ltd., (CDSL) is liable to service tax under Banking and other Financial Services[section 65(105)(zm)]?	Definition of "Banking and other Financial Services" specifically includes "provision and transfer of information and data processing [section 65(12)(a)(vii)]". Services provided by CDSL falls within the scope of "provision and transfer of information and data processing". These services are not in the nature of "on-line information and data base access or retrieval services". Therefore, the depository services provided by CDSL including Electronic Access to Securities Information (EASI) for a fee are liable to service tax under Banking and other Financial

Particulars	Date of issue of clarification	Issue	Clarification
			Services. [section 65(105)(zm)]
(iv) Banking and other financial services [Section (105)(zm)]	23.08.07	Services provided by banking company or a financial institution including a non-banking financial company or any other body corporate or commercial concern in relation to asset management including portfolio management, and all forms of fund management, is leviable to service tax under "banking and other financial services" [section 65(105)(zm) and section 65(12)]. The said taxable service also includes cash management services provided. Services are provided in relation to chit funds. Chit Funds are of two types, namely:- (a) <u>Simple Chit Funds</u>: In this case, members agree to contribute to the fund a certain amount at regular interval. Lots are drawn periodically and the member, whose name appears, gets the periodical collection. No separate amount is charged from the members. (b) <u>Business Chit Funds</u>: In this case, there is a promoter known as foreman	Reserve Bank of India has clarified that the business of a chit fund is to mobilize cash from the subscribers and effectively cause movement of such cash to keep it working and, therefore, the activity of chit funds is in the nature of cash management. (a) In the case of Simple Chit Funds, no consideration is paid or received for the services provided and, therefore, the question of levy of service tax does not arise. (b) In the case of Business Chit Funds, cash management service is provided for a consideration and, therefore, leviable to service tax under "banking and other financial services".

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		who draws up the terms and conditions of the scheme and enrolls subscribers. Every subscriber has to pay his subscription in regular installments. The foreman charges a separate amount for the services provided. Some States prescribe a ceiling limit for the amount to be charged by such promoter for the services provided. Commission amount is retained by the promoter as consideration for providing the services in relation to chit fund. Whether services provided in relation to chit fund is leviable to service tax under "banking and other financial services" or not?	
Port [Section (105)(zn)]	23.08.07	Management Committee of Paradeep Port was constituted as per the directions of Supreme Court of India. The Committee operates under the "Paradeep Port, Clearing, Forwarding and Handling Workers (Regulation of Employment) Scheme, 1994". Officers of the Paradeep Port Trust are associated with the Committee. The Committee is authorized by the Port Trust to provide a number of services within the port area for a	As the Management Committee of Paradeep Port is authorized by the Port Trust to provide services within the port area at the prescribed rates, such services provided by the Committee are liable to service tax under Port Service. [section 65(105)(zn)]

Particulars	Date of issue of clarification	Issue	Clarification
		consideration. Whether services provided by the Management Committee within the port area for a consideration is liable to service tax under Port Service?	
(i) Authorized service station [Section (105)(zo)]	23.08.07	Authorized dealers of motor vehicles provide to customers free servicing of motor vehicles without charging any amount as service charge from the customers. The vehicle manufacturer promises such a facility to attract customers and reimburses the service charges to the authorised dealers, who provide to customers free servicing of motor vehicles. However, as per agreement, consideration for the service provider is not directly paid by the customer but by the vehicle manufacturer. Whether such 'free services' given to the customer free of cost by the authorized dealers (for which they are reimbursed by the vehicle manufacturers) are liable to service tax under authorised service station service [section 65(105)(zo)]?	In this case, service is provided by an authorised service station to a customer and the service provider receives the consideration for the services provided from the manufacturer. Service tax is liable on the amount received from the vehicle manufacturer for the purpose of servicing of vehicles.
(ii) Authorized service	23.08.07	Whether servicing / repair of heavy vehicles like trucks	Service tax is liable on services provided by an

Particulars	Date of issue of clarification	Issue	Clarification
station [Section (105)(zo)]		by authorized service station is liable to service tax under section 65(105)(zo)?	authorised service station to a customer in relation to service, repair, reconditioning or restoration of motorcars, light motor vehicles or two-wheeled motor vehicles [section 65(105)(zo)]. Thus, servicing of heavy vehicles like trucks, not being one of the specified categories of motor vehicles, is at present not covered within the scope of the said taxable service.
(iii) Authorized service station [Section (105)(zo)]	23.08.07	Whether spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax? Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?	Service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sales tax / VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the transaction. Payment of VAT / sales tax on a transaction indicates that the said transaction is treated as sale of goods. Any goods used in the course of providing service are to be treated as inputs used for providing the service and accordingly, cost of such inputs form integral part of the value of the taxable service. Where spare parts are used by a service station for servicing of vehicles, service

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			tax should be levied on the entire bill, including the value of the spare parts, raised by the service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles.
Event management [Section (105)(zu)]	23.08.07	Organizers of Trade Fairs and Exhibitions solicit participation from the trade and industry and provide space and other facilities, including furniture, cabins, security, electricity, etc., to display products and provision of services. Whether services provided by the organizers of trade fairs / exhibitions are covered within the scope of event management service [section 65(015)(zu)]?	Trade fairs and exhibitions are organised by persons. Such organisers of trade fairs and exhibitions provide services to exhibitors in relation to business exhibition. Services provided by an organizer of trade fairs and exhibitions to an exhibitor in relation to business exhibition is liable to service tax under "Business Exhibition Service" [Section 65(105)(zto)] w.e.f. 10.09.2004. In addition, an organiser of the trade fair or business exhibition may engage an event manager to provide service to the organiser in relation to organising trade fairs and exhibitions. In such cases, the event manager

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			renders the service of "Event Management" to the organisers and is liable to pay service tax under "Event Management Service". The two services, namely "Business Exhibition Service" and "Event Management Service", and the two service providers of the respective services are distinct.
Storage and warehousing [Section (105)(zza)]	23.08.07	Whether services provided in relation to handling / storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)]?	Empty containers are covered within the meaning of "goods" [section 65(50)]. Thus, services provided in relation to storage and warehousing of empty containers is liable to service tax under storage and warehousing service [section 65(105)(zza)]
Business auxiliary service [Section (105)(zzb)]	23.08.07	Whether commission received by distributors for distribution of mutual fund units is liable to Service Tax under business auxiliary service?	Distributors receive commission from mutual fund for providing services relating to purchase and sale of Mutual fund units. Services provided by such distributors are in the nature of commission agent and are, thus, liable to service tax under business auxiliary service [section 65(105)(zzb)].
Management, maintenance or repair [Section (105)(zzg)]	23.08.07	Services provided by any person to a customer in relation to management, maintenance or repair is liable to service tax [section 65(105)(zzg)]. "Management, maintenance	Explanation to section 65(64) provides that "goods" includes computer software. Since, maintenance or repair of any goods is liable to service tax, services provided in relation to

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		or repair” includes maintenance or repair of any goods, excluding motor vehicle [section 65(64)]. Whether maintenance or repair of software is liable to service tax?	maintenance or repair or servicing of computer software is liable to service tax under “management, maintenance or repair” service [section 65(105)(zzg)].
(i) Club or association [Section (105)(zzze)]	23.08.07	“Club or association” is defined as any person or body of persons providing services, facilities or advantages, for a subscription or any other amount, to its members, but does not include such person or body of persons engaged in any activity having objectives which are of a charitable nature. Whether a club or association enjoying exemption under the provisions of Income Tax Act as a public charitable institution gets automatically excluded from levy of service tax under section 65(105)(zzze) read with section 65(25a) of the Finance Act, 1994?	Exemption under the Income Tax Act on the ground of being a public charitable institution is of no consequence or relevance for service tax purposes. Levy of service tax is entirely governed by the provisions contained in the Finance Act, 1994 and the rules made thereunder. “Charity” is defined as “aid given to the poor, the suffering or the general community for religious, educational, economic, public safety, or medical purposes”, and “charitable” is defined as “dedicated to a general public purpose, usually for the benefit of needy people who cannot pay for the benefits received” [Black’s Law Dictionary]. Whether a club or association is engaged in activity having objectives which are of a charitable nature or not is to be determined purely on the basis of the facts and circumstances of the case.

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(ii) Club or association [Section (105)(zzze)]	23.08.07	Services provided by a resident welfare association to its members under club or association service [section 65(105) (zzze)] is exempted from service tax vide notification No.8/2007-Service Tax, dated 01.03.07, subject to the condition that the total consideration received from an individual member by the said association for providing the said services does not exceed three thousand rupees per month. Whether a resident welfare association registered as a co-operative society with the Registrar of Co-operative Societies is entitled for the benefit of service tax exemption under notification No.8/2007-Service Tax, dated 01.03.2007 or not?	A resident welfare association, even if it is registered as a co-operative society with the Registrar of Co-operative Societies, is eligible to avail of exemption from levy of service tax vide notification No.8/2007-Service Tax, dated 01.03.2007 provided the following conditions are satisfied, namely:- (i) The exemption is available for the services specified under section 65(105)(zzze) of the Finance Act, 1994 and provided or to be provided by the association to its members. (ii) The sole criterion for membership of the resident welfare association is the residential status of a person in a residential complex or locality i.e., membership of the association is restricted to the residents of the complex or locality. (iii) The value of total consideration received from an individual member by the association for providing the services does not exceed Rs.3,000/- per month.
Construction of complex [Section (105)(zzzh)]	23.08.07	Whether service tax is liable under construction of complex service [section 65(105)(zzzh)] on builder, promoter, developer or any	(a) In a case where the builder, promoter, developer or any such person builds a residential complex, having more than 12 residential

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		such person,- (a) who gets the complex built by engaging the services of a separate contractor, and (b) who builds the residential complex on his own by employing direct labour?	units, by engaging a contractor for construction of the said residential complex, the contractor in his capacity as a taxable service provider (to the builder / promoter / developer / any such person) shall be liable to pay service tax on the gross amount charged for the construction services under 'construction of complex' service [section 65(105)(zzzh)]. (b) If no other person is engaged for construction work and the builder / promoter / developer / any such person undertakes construction work on his own without engaging the services of any other person, then in such cases,- (i) service provider and service recipient relationship does not exist, (ii) services provided are in the nature of self-supply of services. Hence, in the absence of service provider and service recipient relationship and the services provided are in the nature of self-supply of services, the question of providing taxable service to any person by any other person does not arise.
(i) Transport of passenger	23.08.07	An international journey commencing from an Indian	Aim of the passenger is to travel from Mumbai to New

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embarking in India for international journey by air [Section (105)(zzzo)]		airport involves stopover / transfer at intermediate airports outside India before reaching the destination (say Mumbai-Dubai-London-New York). Whether service tax would be liable in such case on the value indicated in the ticket for the entire journey or only on that part of the value attributable to the first sector (Mumbai-Dubai) of the journey?	York. Actual destination of the international journey is the criterion to decide the value of the service (in this case, New York). Stopover / transfer at intermediate airports, being merely incidental and part of the main journey, is of no relevance or consequence for levy of service tax under section 65(105)(zzzo) read with section 66. Service tax in such cases is leviable on the total consideration of a single composite service relating to the entire journey. i.e., value indicated on the ticket for the entire journey.
(ii) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	An international journey (say Delhi-Mumbai-London) includes travel in a domestic sector (Delhi – Mumbai) as part of the international journey. Whether service tax is liable on the value of whole journey or after excluding the value attributable to the domestic sector from the total value of the ticket?	In this case, the journey is a single composite journey. The aim of the passenger is to travel from India to a place outside India. Part of the travel in the domestic sector cannot be segregated from the single journey. Service tax is, therefore, leviable on the total value of the ticket treating the domestic sector as integral part of the international journey without excluding the value attributable, if any, to travel in the domestic sector.
(iii) Transport of passenger embarking in	23.08.07	An international journey commences from an airport outside India and	In this case, the journey being a single one and the aim of the passenger is not

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India for international journey by air [Section (105)(zzzo)]		completed at an airport outside India but including a sector wherein the passenger disembarks and subsequently embarks at an Indian airport as part of international journey (say Sydney-Mumbai-Dubai-Singapore-Sydney). Whether service tax is liable for Mumbai-Dubai sector only or on the total value of the ticket?	to travel from India to a place outside India, service tax is not leviable under section 65(105)(zzzo).
(iv) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	Whether ticket issued outside India for an international journey commencing from India (say Delhi-London) is liable to service tax?	Service tax is payable by the service provider, namely aircraft operator, for the taxable service provided. Place of purchase/ issue of ticket is of no relevance or consequence to determine the levy of service tax under section 65(105)(zzzo) read with section 66. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.
(v) Transport of passenger embarking in India for international journey by air [Section (105)(zzzo)]	23.08.07	Whether service tax is liable on the total value of the ticket or only half the value of the ticket in the case of round trip / return ticket (say Delhi-London-Delhi)?	Service tax is leviable on the total value of the ticket.
Services of renting of immovable	04.01.08 vide Circular No.98/1/2008	Whether commercial or industrial construction service or works contract	Right to use immovable property is leviable to service tax under renting of

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property [Section (105)(zzzz)]	ST dated 04.01.2008 amending the basic circular	service used for construction of an immovable property, could be treated as input service for the output service namely renting of immovable property service under the CENVAT Credit Rules, 2004?	immovable property service. Commercial or industrial construction service or works contract service is an input service for the output namely immovable property. Immovable property is neither subjected to central excise duty nor to service tax. Input credit of service tax can be taken only if the output is a 'service' liable to service tax or a 'goods' liable to excise duty. Since immovable property is neither 'service' nor 'goods' as referred to above, input credit cannot be taken.
(i) Services involved in the execution of works contract [Section (105)(zzzza)]	23.08.07	Whether CENVAT credit of duty paid on capital goods and service tax paid on input services can be taken by a service provider who opts to pay an amount equivalent to two per cent. of the gross amount charged for the works contract instead of paying service tax at the rate specified in section 66, under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, notified vide notification No.32/2007-Service Tax dated 22.05.07?	Rule 3(2) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides that the provider of taxable service opting to pay service tax under the composition scheme is not entitled to take CENVAT credit of duty on inputs, used in or in relation to the said works contract, under the provisions of the CENVAT Credit Rules, 2004. There is no restriction under notification No.32/2007-Service Tax dated 22.05.07 to take CENVAT credit of duty paid on capital goods and service tax paid on input services.
(ii) Services involved in	04.01.08	Whether excise duty paid on goods, subjected to levy	Value for the purposes of levy of service tax under

Particulars	Date of issue of clarification	Issue	Clarification
the execution of works contract [Section (105)(zzzza)]	vide Circular No.98/1/2008 ST dated 04.01.2008 amending the basic circular	of VAT/sales tax under works contract service, can be taken as credit under the CENVAT Credit Rules, 2004?	works contract service does not include the value pertaining to transfer of property in goods involved in the execution of a works contract leviable to VAT/sales tax. Works contract service provider is, therefore, not eligible to take credit of excise duty paid on such goods involved in the execution of works contract.
(iii) Services involved in the execution of works contract [Section (105)(zzzza)]	04.01.08 vide Circular No.98/1/2008 ST dated 04.01.2008 amending the basic circular	Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 provides option to pay service tax @ 2% of the gross amount charged for the works contract. However, the service provider opting for composition scheme for payment of service tax should exercise the option prior to payment of service tax. The issue pertains to,- (i) contracts entered into prior to 01.06.07 for providing erection, commissioning or installation and commercial or residential construction service, and (ii) service tax has already been paid for part of the payment received under the respective taxable service. Whether in such cases, the	Classification of a taxable service is determined based on the nature of service provided whereas liability to pay service tax is related to receipt of consideration. Vivisecting a single composite service and classifying the same under two different taxable services depending upon the time of receipt of the consideration is not legally sustainable. In view of the above, a service provider who paid service tax prior to 01.06.07 for the taxable service, namely, erection, commissioning or installation service, commercial or industrial construction service or construction of complex service, as the case may be, is not entitled to change the classification of the single composite service for the purpose of payment of service tax on or after 01.06.07 and hence, is not

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		service provider can revise the classification to works contract service from the respective classification and pay service tax for the amount received on or after 01.06.07 under the Composition Scheme?	entitled to avail the Composition Scheme.
(i) Miscellaneous	23.08.07	Sovereign/public authorities perform functions assigned to them under the law in force, known as "statutory functions". For example, Regional Reference Standards Laboratories (RRSL) undertake verification, approval and calibration of weighing and measuring instruments; Regional Transport Officers (RTO) issue fitness certificate to motor vehicles; Directorate of Boilers inspects and issues certificates for boilers; or Explosive Department inspects and issues certificate for petroleum storage tank, LPG/CNG tank in terms of provisions of the relevant laws. Authorities providing such functions, required to be performed as per law, may collect specific amount or fee and the amount so collected is deposited into government account.	Activities assigned to and performed by the sovereign / public authorities under the provisions of any law are statutory duties. The fee or amount collected as per the provisions of the relevant statute for performing such functions is in the nature of a compulsory levy and are deposited into the Government account. Such activities are purely in public interest and are undertaken as mandatory and statutory functions. These are not to be treated as services provided for a consideration. Therefore, such activities assigned to and performed by a sovereign / public authority under the provisions of any law, do not constitute taxable services. Any amount / fee collected in such cases are not to be treated as consideration for the purpose of levy of service tax. However, if a sovereign / public authority provides a service, which is not in the nature of statutory activity

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		Whether such activities of a sovereign / public authority, performed under a statute, can be considered as 'provision of service' for the purpose of levy of service tax and the amount or fee collected, if any, for such purposes can be treated as consideration for the services provided?	and the same is undertaken for a consideration (not a statutory fee), then in such cases, service tax would be leviable as long as the activity undertaken falls within the scope of a taxable service as defined.
(ii) Miscellaneous	23.08.07	Department of Posts provides a number of services. What is the status of those services for the purpose of levy of service tax?	(i) Following services provided by Department of Posts are not liable to service tax. Basic mail services known as postal services such as post card, inland letter, book post, registered post provided exclusively by the Department of Posts to meet the universal postal obligations. Transfer of money through money orders, operation of savings accounts, issue of postal orders, pension payments and other such services. (ii) In addition to the services mentioned in (i) above, Department of Posts also provides a number of services such as courier services (Speed Post), insurance services (Postal Life Insurance), agency or intermediary services on commission basis

Particulars	Date of issue of clarification	Issue	Clarification
			(distribution of mutual funds, bonds, passport applications, collection of telephone and electricity bills), which are also provided by other commercial organizations. Such services are liable to service tax under appropriate taxable services.
(iii) Miscellaneous	23.08.07	A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work?	A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

CIRCULAR No. 97/8/2007 DATED 23.08.2007

This Circular has been issued to consolidate the procedural issues relating to service tax, including those relating to availment and utilization of CENVAT credit. This circular supersedes all previous circulars/clarifications/instructions issued on these subjects. It is, however, clarified that this circular is intended only to clarify the scope of the Act and the rules, and therefore, in the event of any inadvertent inconsistency or contradiction between this circular and the provisions of the Act or the rules, the latter shall prevail. The relevant portions of the Circular are reproduced below:

1. Issuance of invoices, bills, challans, consignment notes and other documents: Rule 4B of the Rules prescribes that the goods transport agency shall issue a consignment note, which would be serially numbered and would contain the names of the consignor and consignee, the vehicle registration number, details of goods transported, details of place of origin and destination, and the person (consignor / consignee/goods transport agency) liable to pay service tax. In case of less container load (LCL) cargo, where the goods transport agent is not aware of the vehicle registration number at the time when he receives the goods and issues consignment note, he may mention the non-availability of vehicle registration number on the copy issued to the consignor. However, after he comes to know about the vehicle registration number, he should mention the same, consignment note-wise, in the records maintained by him and produce the same in case of verification. Similarly, in case of trans-shipment of goods en-route (i.e. where the goods covered under a consignment note are shifted from one vehicle to another), the records of registration numbers of the vehicles carrying such goods under a consignment note must be recorded as soon as the said information is available to the goods transport agent. These procedural relaxations are provided for such special cases only and, in all other cases, mention of vehicle registration number on the consignment note, at the time of its issue would continue to remain a mandatory requirement.
2. Delayed return: To avoid late fee, the taxpayer must ensure timely filing of return. In case of returns filed late, the appropriate late fees should be paid at the time of filing the return, without waiting for any communication or notice from the department. Mere non-submission of evidence of payment of late fee along with the return is, however, not a ground for refusal to allow filing of the return.
3. Audit: The selective audit of service taxpayers and other assessees like input service distributors, may be done by the jurisdictional central excise officer (authorized for the purpose) or by an audit party deputed by the Comptroller and Auditor General of India. Rule 5 of the Rules makes it mandatory for every assessee to make available the records, on demand, for inspection and examination to such authorized person/audit party.
4. Adjudication of cases: Central Board of Excise & Customs (CBEC) has directed that in respect of demands for an amount upto one thousand rupees towards short payment/non-payment of service tax, if the service provider, on the default being pointed out, pays the service tax along with interest within a period of one month of the default in payment, the

penalty should be waived, taking recourse to the provisions under section 80 of the Act. In other cases, i.e. where amount of service tax involved is over Rs one thousand, penal action prescribed under sections 76, 77 and 79 would be attracted.

5. CENVAT Credit: With effect from 10.9.2004, under CENVAT Credit Rules, 2004, CENVAT Credit across goods and services has been allowed. This circular deals only with certain commonly raised issues relating to certain provisions of these rules that relate to service tax credit. The following are the issues which have been examined in this circular:

- (a) ISSUE: Whether a manufacturer or taxable service provider having credit balance in his account can utilize that credit for payment of service tax on goods transport by road, as a consignor or as a consignee?

COMMENTS: In terms of rule 3 (4) of the Rules, CENVAT credit can be utilized for the following payments:

- (a) any duty of excise payable on any final product;
- (b)
- (c)
- (d) service tax on any output service

In terms of the CENVAT Credit Rules, 'output service' means any taxable service provided by the provider of taxable service to the service receiver. Further, the definition of 'provider of taxable service' includes a person liable to pay service tax. Therefore, reading the two definitions in conjunction, it is clear that, to form 'output service', taxable service has to be actually provided by the 'provider of taxable service'. Even if due to a legal fiction, a consignor or a consignee qualifies to fall under the definition of 'a person liable to pay service tax' (and consequently a 'provider of taxable service'), it cannot be said that he has actually provided any taxable service. The service provided by a Goods Transport Agent (GTA) for which the consignor or the consignee is made liable to pay service tax does not become an 'output service' for such consignor or the consignee. Therefore, the service tax payable by the consignor or consignee on transportation of goods by road cannot be paid through credit accumulated by such consignor or consignee. For example, a manufacturer of steel sheets procures duty paid steel ingots as input and avails CENVAT credit of the excise duty paid on ingots. He clears his finished goods, i.e., steel sheets on payment of excise duty and sends the same to his customer, engaging the service of a goods transport agency. In this case, he pays service tax on service received by him for transportation of the goods. However, the input credit taken on steel ingots cannot be used for payment of service tax applicable to goods transport agency. The reason is that the such manufacturer (consignor) is not the service provider. The transport service is being provided by the 'goods transport agency' and the excise assessee pays the service tax only for the reason that the liability for payment of service tax has been shifted to the service receiver. Accordingly, the consignor or the consignee has to be pay service tax in cash on goods transport by road service.

- (b) **ISSUE:** Whether a consignee can take credit of the amount paid as service tax either by himself (as consignee) or by the consignor or by the Goods Transport Agency?

COMMENTS: As per Rule 3 of the CENVAT Rules, 2004, CENVAT Credit of, inter alia, service tax leviable and paid on any 'input services' can be taken. The rule does not distinguish as to who (i.e. the GTA, the consignor or the consignee himself) has paid the aforesaid tax. The only condition required to be satisfied is that the consignee must be a manufacturer of excisable goods or a provider of taxable service and the service must be in the nature of 'input service' for such activity. In case of inward transportation of inputs or capital goods, such service (being specifically mentioned under the definition of 'input service') would qualify to be called as 'input service' and, thus, the service tax paid (by any of the persons mentioned above) on it would be eligible as credit to the receiver if he is either a manufacturer of excisable goods or a provider of taxable service.

- (c) **ISSUE:** Up to what stage a manufacturer/consignor can take credit on the service tax paid on goods transport by road?

COMMENTS: This issue has been examined in great detail by the CESTAT in the case of M/s Gujarat Ambuja Cements Ltd. vs CCE, Ludhiana [2007 (006) STR 0249 Tri-D]. In this case, CESTAT has made the following observations:-

"the post sale transport of manufactured goods is not an input for the manufacturer/consignor. The two clauses in the definition of 'input services' take care to circumscribe input credit by stating that service used in relation to the clearance from the place of removal and service used for outward transportation upto the place of removal are to be treated as input service. The first clause does not mention transport service in particular. The second clause restricts transport service credit upto the place of removal. When these two clauses are read together, it becomes clear that transport service credit cannot go beyond transport upto the place of removal. The two clauses, the one dealing with general provision and other dealing with a specific item, are not to be read disjunctively so as to bring about conflict to defeat the laws' scheme. The purpose of interpretation is to find harmony and reconciliation among the various provisions".

Similarly, in the case of M/s Ultratech Cements Ltd vs CCE Bhavnagar 2007-TOIL-429-CESTAT-AHM, it was held that after the final products are cleared from the place of removal, there will be no scope of subsequent use of service to be treated as input. The above observations and views explain the scope of the relevant provisions clearly, correctly and in accordance with the legal provisions. In conclusion, a manufacturer / consignor can take credit on the service tax paid on outward transport of goods up to the place of removal and not beyond that.

In this connection, the phrase 'place of removal' needs determination taking into account the facts of an individual case and the applicable provisions. The phrase 'place of removal' has not been defined in CENVAT Credit Rules. In terms of sub-rule (t) of rule 2 of the said rules, if any words or expressions are used in the CENVAT Credit Rules, 2004 and are not defined therein but are defined in the Central Excise

Act, 1944 or the Finance Act, 1994, they shall have the same meaning for the CENVAT Credit Rules as assigned to them in those Acts. The phrase 'place of removal' is defined under section 4 of the Central Excise Act, 1944. It states that, -

"place of removal" means-

- (i) a factory or any other place or premises of production or manufacture of the excisable goods;
- (ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be stored without payment of duty ;
- (iii) a depot, premises of a consignment agent or any other place or premises from where the excisable goods are to be sold after their clearance from the factory; from where such goods are removed."

It is, therefore, clear that for a manufacturer /consignor, the eligibility to avail credit of the service tax paid on the transportation during removal of excisable goods would depend upon the place of removal as per the definition. In case of a factory gate sale, sale from a non-duty paid warehouse, or from a duty paid depot (from where the excisable goods are sold, after their clearance from the factory), the determination of the 'place of removal' does not pose much problem. However, there may be situations where the manufacturer /consignor may claim that the sale has taken place at the destination point because in terms of the sale contract /agreement (i) the ownership of goods and the property in the goods remained with the seller of the goods till the delivery of the goods in acceptable condition to the purchaser at his door step; (ii) the seller bore the risk of loss of or damage to the goods during transit to the destination; and (iii) the freight charges were an integral part of the price of goods. In such cases, the credit of the service tax paid on the transportation up to such place of sale would be admissible if it can be established by the claimant of such credit that the sale and the transfer of property in goods (in terms of the definition as under section 2 of the Central Excise Act, 1944 as also in terms of the provisions under the Sale of Goods Act, 1930) occurred at the said place.

A doubt has been raised regarding admissibility of CENVAT credit on service tax paid in respect of mobile phones. In the Service Tax Credit Rules, 2002, it was prescribed that credit of service tax was admissible only on telephone connection installed in the business premises. A clarification to this effect was also issued vide circular No. 59/8/2003-ST, dated 20.6.2003, in the context of the Service Tax Credit Rules, 2002. However, in the CENVAT Credit Rules, 2004 no such condition has been prescribed. Therefore, w.e.f. 10.9.2004, credit of service tax paid in respect of mobile telephone service is admissible, provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods.

Input service distributor is an office or premises of the manufacturer or taxable service provider which receives bills/invoices etc., of input services. The input service distributor can distribute the eligible credit to any unit of the manufacturer or any premises/office of taxable service provider.