

***FINANCE ACT 2008
AMENDMENTS
(FOR CA FINAL)***

income liable to tax. For Individuals, HUFs, AOPs and BOIs the slab rates of tax on total income are as under :

<i>Total Income slab</i>	<i>Tax rates for resident senior citizens</i>	<i>Tax rates for resident women below 65 years of age</i>	<i>Tax rates for others</i>
Up to Rs. 150,000	Nil	Nil	Nil
Rs. 150,001 to Rs. 180,000	Nil	Nil	10%
Rs. 180,001 to Rs. 225,000	Nil	10%	10%
Rs. 225,001 to Rs. 300,000	10%	10%	10%
Rs. 300,001 to Rs. 500,000	20%	20%	20%
Above Rs. 500,000	30%	30%	30%

The provisions relating to surcharge of 10% of tax where income exceeds Rs. 10,00,000 and education cess aggregating to 3% on tax and surcharge continue as in the preceding year.

An illustrative chart showing tax saving at various levels of total income in case of Mr. X who is not a senior citizen and who has no income by way of short term capital gains (STCG) is as under:

<i>Total Income Rs.</i>	<i>Tax including applicable surcharge and cess for AY 2008-09 Rs.</i>	<i>Tax including applicable surcharge and cess for AY 2009-10 Rs.</i>	<i>Tax saving Rs.</i>
150,000	4,120	0	4,120
200,000	14,420	5,150	9,270
250,000	24,720	10,300	14,420
300,000	40,170	15,450	24,720
400,000	71,070	36,050	35,020
500,000	101,970	56,650	45,320
10,00,000	256,470	211,150	45,320
15,00,000	452,067	402,215	49,852

ii) Rates for firms, companies and co-operative societies

There is no change in the rates of tax for firms, companies and co-operative societies.

2. INCREASE IN RATE OF TAX ON STCG: SECTIONS 111A & 115AD

The rate of tax on STCG arising from transfer of equity shares or units of equity oriented funds where Securities Transactions Tax (STT) is chargeable, has been increased from 10% to 15% [plus applicable surcharge & cess].

Individuals, HUFs, AOPs and BOIs having only STCG are at a disadvantage, as compared to their counterparts having normal income, since they would have to pay tax on the entire income above the basic exemption limit @ 15% without the advantage of the first slab rate of 10%. For example, in respect of Mr. X (not being a senior citizen) having only STCG of Rs. 300,000, as per normal tax provisions, tax liability would be Rs. 15,450, whereas, now, as per Section 111A, the liability will be Rs. 23,175.

3. DEFINITION OF 'CHARITABLE PURPOSE' - SECTION 2(15)

Under Section 11 and clauses (iv) and (v) of Section 10(23C) income of charitable trusts, funds or institutions is exempt from income tax. Definition of 'charitable purpose' includes 'advancement of any other object of general public utility'. This part of the definition of 'charitable purpose' in Section 2(15) has been amended to provide that 'advancement of any other object of general public utility' will not be considered as 'charitable purpose' if it involves carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for any fee, cess or other consideration. If any such activity is carried on by a trust, fund or institution, then such an organisation will not be entitled to any exemption under Section 11 and its income will be chargeable to tax even if utilised for charity unless such trust is carrying on other charitable activities and the trust is created prior to 1st April, 1962.

This amendment changes the law settled for many years and may adversely affect many organisations. The amendment also lacks clarity and will lead to a spate of litigation. However, the

amendment will not affect trusts, etc. engaged exclusively in relief of the poor, medical relief and education.

4. DEFINITION OF AGRICULTURAL INCOME – SECTION 2(1A)

It is provided that any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income qualifying for tax exemption regardless of whether a nursery does or does not carry out any basic operation on land.

5. WEIGHTED DEDUCTION FOR PAYMENT TO A COMPANY FOR SCIENTIFIC RESEARCH – SECTION 35(1)(iia)

A weighted deduction of 125% will now be allowed in respect of expenditure by way of payment for scientific research, made to a company registered in India, whose main object is scientific research and development, which is approved by the prescribed authority and fulfils specified conditions. Earlier, such deduction was available only for payments made to scientific research associations or to universities, colleges or other institutions.

The weighted deduction of 150% available under Section 35(2AB) to a biotechnology company, or manufacturer of drugs, pharmaceuticals, electronic equipment, computers, telecommunication equipment, chemicals or other notified articles, for expenditure incurred on scientific research or in-house research and development facility approved by the prescribed authority, would not be available to a company approved under Section 35(1)(iia).

6. AMORTISATION OF CERTAIN EXPENSES FOR NON-INDUSTRIAL ENTITIES – SECTION 35D

So far, certain types of expenditure, such as expenditure on increase of capital, public issue expenses, feasibility/project reports, etc. were in the context of extension of existing business allowed to be amortised over a period of five years only if such expenses were in connection with the extension of an industrial undertaking or in connection with setting up a new industrial unit. The benefit of such amortisation was therefore available only to industrial entities. The benefit of such amortisation is now being

extended to cases of extension of any undertaking, or setting up of any new unit. Therefore, all entities including service companies, would now be entitled to avail of the benefit of such amortisation.

7. SECURITIES TRANSACTION TAX (STT) AND COMMODITIES TRANSACTION TAX (CTT) – SECTION 36(1)(xv) & (xvi)

STT paid in respect of securities transactions entered into in the course of business will now be allowable as a business deduction, instead of being allowed as a rebate under Section 88E against the tax payable, if the income from such securities transactions forms part of income computed under the head 'Profits and Gains of Business or Profession'. Consequently, the provision for disallowance of such STT under Section 40(a)(ib) has been deleted. Even if the securities transactions have resulted in a loss, STT paid on such transactions will be deductible in computing the taxable income. Further, the restriction under Section 88E that the amount of STT rebate should not exceed the tax on the income arising out of the securities transactions, would no longer apply. Effectively, the tax benefit in respect of STT paid would result in a maximum saving in income tax of only 33.99% of the STT, as against the whole of the STT being a saving of the income tax payable so far.

Similarly, the new CTT would also be allowable as a business deduction if the income arising from such taxable commodities transactions entered into in the course of business is included in the computation of business profits.

8. DISALLOWANCE OF CASH PAYMENTS EXCEEDING RS. 20,000 – SECTION 40A(3) & (3A)

So far, the judicial view has been that the disallowance under Section 40A(3) in respect of payments exceeding Rs. 20,000 made otherwise than by an account payee cheque or account payee bank draft applied only if any single payment exceeded Rs. 20,000. The limit of Rs. 20,000 applied to each payment, and not to the aggregate of all the payments made in a single day to the same person. The scope of such disallowance is now extended to cases where the aggregate of such payments made otherwise than by an account payee cheque or account payee bank draft in a single day to the same person exceeds

Rs. 20,000. The disallowance will extend to all the payments, each of which may be below Rs. 20,000, if the aggregate of the payments made to the same person during a single day exceeds Rs. 20,000. Similarly, the deeming fiction of Section 40A(3A), where such payment is made in a year subsequent to the year in which the expenditure is incurred, is also being extended to situations where the aggregate of such payments otherwise than by an account payee cheque or account payee bank draft made to a single person in the same day exceeds Rs. 20,000.

9. WRITTEN DOWN VALUE – SECTION 43(6)

Where an assessee was not required to compute the total income in any of the earlier years, the written down value of assets for the purpose of depreciation would be computed after deducting the depreciation provided in the books of account in those earlier years, as if such depreciation was actually allowed to the assessee. Further, any revaluation made in those years and depreciation provided in relation to such revaluation would be ignored. Therefore, an assessee who was so far not required to compute his total income and becomes liable to income tax for the first time, and who has been maintaining books of account, would not be able to claim depreciation on the actual cost of the assets, but on the reduced figure after deducting depreciation provided in his books of account. This provision would have no impact on an assessee who did not maintain books of account in such earlier years. This provision could have consequences on the amount of capital gains taxable under Section 50, which deals with computation of capital gains on sale of depreciable assets, since the written down value is to be deducted in computing the capital gains. This amendment takes effect **retrospectively from assessment year 2003-04**.

10. REVERSE MORTGAGE – SECTIONS 10(43) & 47(xvi)

Under the Reverse Mortgage Scheme made and notified by the Central Government, senior citizens can avail of a loan against mortgage of their residential property. The loan can be availed either in lump sum or in instalments. The loan being a capital receipt is not liable to tax.

The transactions of reverse mortgage have been granted exemption from the definition of "transfer", thus not being liable to capital gains at the time of mortgage. Capital gains, if any, would

therefore arise if and when the property is sold to repay the loan under the reverse mortgage.

11. CAPITAL GAINS ON CONVERSION OF FOREIGN CURRENCY EXCHANGEABLE BONDS – SECTIONS 47(xa) & 49(2A)

A specific provision has been inserted in Section 47 with **effect from assessment year 2008-09** to exempt transfer by way of conversion of foreign currency exchangeable bonds into shares or debentures of any company. This would cover conversion of bonds of one company into shares of another company, as envisaged under the Foreign Currency Exchangeable Bonds Scheme. The cost of the shares acquired on such conversion would be the cost at which the bonds were acquired. This amendment deals only with the implications relating to the bondholder and is silent as regards the implications in the hands of the bond issuer.

12. EXPANSION OF AMBIT OF SECTION 80C

Section 80C provides for deduction in respect of life insurance premia, deferred annuity and various other payments / investments. The benefit of this deduction is extended to investment in an account under the Senior Citizen Savings Scheme Rules, 2004 and in a five year time deposit under the Post Office Time Deposit Rules, 1981. Principal amount withdrawn out of the above accounts before the expiry of five years from the date of deposit shall be liable to tax unless it is received by a legal heir/nominee on the death of the investor.

13. DEDUCTION IN RESPECT OF MEDICLAIM PREMIUM – SECTION 80D

Medical insurance premia paid by an assessee is deductible subject to certain conditions and limits. The changes made in this provision are:

- The payment can be made in respect of parents even where they are not dependant on the assessee
- Payment of premium can be made by any mode other than cash instead of only by cheque as per present provisions

- Additional deduction up to Rs. 15,000 will now be separately available for premium paid for parent(s) (Rs. 20,000 if the parent(s) is/are senior citizens)

14. REBATE UNDER SECTION 88E

Rebate under Section 88E in respect of STT has been withdrawn in view of deduction allowed as business expenditure.

15. TAX HOLIDAY TO CERTAIN HOSPITALS – SECTION 80-IB(11C)

A new section has been introduced to provide for 100% tax holiday for five years to eligible undertakings deriving profits from the business of operating and maintaining hospitals anywhere in India **except in certain specified urban areas**. The hospital should start functioning during the period from 1st April, 2008 to 31st March, 2013 and should have at least 100 beds for patients.

16. TAX HOLIDAY FOR HOTELS – SECTION 80-ID

Section 80-ID provides for a five year tax holiday in respect of profits and gains from business of 2 star, 3 star or 4 star hotels and convention centres in specified areas. The scope of this section is extended to undertakings engaged in the business of hotel located in specified districts having a World Heritage Site if such hotel is constructed and starts functioning at any time during the period beginning 1st April, 2008 and ending on 31st March, 2013. The section specifies 22 different districts as specified districts spread in various states across the country.

17. MINIMUM ALTERNATE TAX (MAT) – SECTION 115JB

Section 115JB provides for tax on Book Profit in case of a company. The profit as per the profit and loss account is adjusted by certain items. In doing so, the amount of income tax debited to the profit and loss account is added to arrive at the book profit subjected to MAT. A new explanation provides that income tax will include Dividend Distribution Tax, interest under the Income Tax Act, Surcharge under the Central acts, Education Cess as well as Secondary and Higher Education Cess on Income tax.

Further, in the existing explanation (renumbered as Explanation 1) it is specifically provided that any deferred tax or

provision for the same shall also be added back to arrive at taxable book profit. The amendment reverses the ratio of the decision in the case of *ACIT vs. Balarampur Chini Mills Ltd. (2007) 111 TTJ (Kol) 230 / 14 SOT 372 (Kol)* and similar other decisions.

Both these amendments take **effect retrospectively from assessment year 2001-02**.

18. DIVIDEND DISTRIBUTION TAX (DDT) – SECTION 115-O

Under Section 115-O when a company distributes dividend to shareholders it is required to pay DDT. When a company (which is a shareholder) receiving the dividend, further distributes dividend, it again pays DDT resulting in cascading effect. To avoid this to a limited extent, Section 115-O has been amended to provide that if a holding company receiving dividend from its subsidiary company, declares/distributes/pays dividend in the same financial year, the amount of dividend received from the subsidiary company will be reduced from the distribution of dividend by the holding company for the levy of DDT. However, this benefit will not be available if the holding company itself is a subsidiary of any other company or in respect of dividend received from a company which is not a subsidiary.

The amended section defines a 'subsidiary' as a company in which the other company holds more than half in nominal value of the equity share capital of the company.

The amendment will apply to dividends declared/distributed/paid on or after 1st April, 2008.

19. FRINGE BENEFIT TAX (FBT) – SECTIONS 115WB, 115WC, 115WD, 115WE AND 115WKB

- The following expenses have been excluded from the charge of FBT:
 - Expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and fulfilling other conditions as may be prescribed.
 - Expenditure on providing crèche facilities for the children of the employees.

- c) Expenditure on sponsorship of sportsman employed with the assessee.
- d) Expenditure on organising sports event for employees.
- e) Expenditure on maintenance of any accommodation in the nature of guest house.
- ii) The value of fringe benefits on account of expenditure on festival celebration is reduced to 20% from the existing rate of 50%.
- iii) The due date for furnishing the return of fringe benefits is advanced from 31st October to 30th September **with effect from assessment year 2008-09** for companies and other assesseees whose accounts are required to be audited. For other employers, the due date for furnishing the return continues to be 31st July.
- iv) Amendments have been made to procedure for assessment. These are similar to amendments made to assessment procedure for income tax. These are considered in Para 23 below.
- v) Where an employer has paid any FBT with respect to allotment or transfer of specified security or sweat equity shares and the employer has recovered such tax subsequently from an employee, it shall be deemed that the FBT so recovered is the tax paid by such employee in relation to the value of the fringe benefit provided to him. Such deeming provision shall apply only to the extent to which the amount of tax recovery relates to the value of this fringe benefit taken into account for charge of FBT.

It is also clarified that the employee shall not be entitled to any refund out of such deemed payment of tax and shall also not be entitled to claim any credit of such payment of tax against tax liability in India on other income or against any other tax liability.

This amendment has been made **with effect from assessment year 2008-09** to enable an employee to claim tax credit for this deemed payment of FBT in a foreign country, subject to the DTAA, if any, between India and that country and the domestic tax laws of that country.

20. DUE DATE FOR FILING OF INCOME-TAX RETURN – SECTION 139

The due date for furnishing the return of income is advanced from 31st October to 30th September for companies, assesseees whose accounts are required to be audited and working partners of firms whose accounts are required to be audited.

This due date is applicable from assessment year 2008-09.

For other assesseees, the due date for furnishing the return of income continues to be 31st July.

The above due dates also apply to wealth tax return.

21. DEFECTIVE RETURN – SECTION 139(9)

Evidence of payment of advance tax/self assessment tax, certificates of TDS/TCS will have to be attached along with the return of income unless the requirement is dispensed with under the Rules prescribed under Section 139C.

This amendment applies from assessment year 2008-09 onwards.

22. AUDIT DURING ASSESSMENT PROCEEDING – SECTION 142 (2A)

The Assessing Officer can direct the assessee to get his accounts audited within a stipulated time having regard to the complexity of the accounts. Presently, he is authorised to extend the date of submitting the audit report under Section 142(2A) only if he receives an application from the assessee. The amendment now allows him to extend the time for submitting the audit report *suo moto*.

23. ASSESSMENT – SECTIONS 143 & 156

A two stage procedure for assessment is introduced **with effect from assessment year 2008-09**. In the first stage, while processing the return, following adjustments will be made without grant of an opportunity of hearing:

- i) Arithmetical errors in the return; or
- ii) Incorrect claim as is apparent from any information in the return.

It is clarified that the following claims will be considered as incorrect claims:

- i) an item which is inconsistent with another entry of the same or some other item in the return;
- ii) a claim in respect which the information required to be furnished to substantiate such claim has not been furnished;
- iii) deduction exceeding specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.

An intimation will be issued if any tax or interest is payable by or refundable to the assessee. This intimation will be treated as notice of demand under section 156.

Where no sum is payable or refundable to the assessee on processing of the return and no adjustments have been made to the return, the acknowledgement of the return shall be treated as intimation.

A scheme for centralised processing of returns without human intervention will be formulated by the CBDT for the above purpose.

At the second stage, selected cases will be subjected to detailed scrutiny.

Similar provisions have been made for the assessment of FBT.

24. SERVICE OF NOTICE FOR SCRUTINY ASSESSMENT – SECTION 143(2)

Presently, the Assessing Officer is entitled to proceed for scrutiny of return of income only if he has served the notice before the expiry of twelve months from the end of the month in which the return is submitted.

Now, **with effect from 1st April, 2008**, the Assessing Officer has to serve the notice before the expiry of six months from the end of the financial year in which the return is submitted.

25. REASSESSMENT – SECTION 147

Now, **with effect from 1st April, 2008**, the Assessing Officer will have the power to assess/reassess income which has

escaped assessment if it involves or relates to a matter which is not the subject matter of any appeal, reference or revision.

Similar amendment has also been made in the Wealth Tax Act.

26. ISSUE OF NOTICE WHERE INCOME HAS ESCAPED ASSESSMENT – SECTION 151

Presently, an Assessing Officer can issue notice under Section 148 after obtaining sanction from the Joint Commissioner, Commissioner or the Chief Commissioner. To overcome the difficulty caused by the judgement of the Allahabad High Court in the case of *Dr. Shashikant Garg vs. CIT (285 ITR 158)*, it is now provided **retrospectively from 1st October, 1998** that such notice need not be issued by the sanctioning authority.

Similar amendment has also been made in the Wealth Tax Act.

27. PROVISION FOR ASSESSMENT IN CASE OF ANNULMENT OF PROCEEDING – SECTIONS 153A TO 153D

When a search is conducted or books of account or other documents or any assets are requisitioned, assessment or reassessment of total income in respect of six assessment years preceding the assessment year relevant to the previous year in which the search is conducted or books of account, etc. are requisitioned has to be completed within the time limit provided in Section 153B. It is presently provided that the assessment for these six assessment years pending at the time of search/requisition shall abate.

It is now provided that if any proceeding initiated or any order of assessment or reassessment made under Section 153A(1) has been annulled in any appeal or other legal proceeding, the abated assessment or reassessment relating to any assessment year shall stand revived. If subsequently such order of annulment is set aside, such revival shall cease to have effect.

It is also provided that the time limit for completion of revived assessment(s) shall be one year from the end of the month in which the abated assessment revives or within the time specified in Section 153 or Section 153B(1), whichever is later.

If the order of assessment or reassessment which is annulled is subsequently set aside, the period commencing from the date of annulment of a proceeding or order of assessment or reassessment referred to in Section 153A(2) till the date of receipt of order setting aside the order of such annulments by the Commissioner, shall be excluded in computing the period of limitation for the purpose of time limit for completing assessment under Section 153B.

The above amendments take effect retrospectively from 1st June, 2003.

28. SETTLEMENT OF CASES – SECTION 153

The amendment now allows a minimum time period of one year after excluding the period mentioned in Section 245HA(4) for making an assessment/reassessment/recomputation of income if the proceeding before the Settlement Commission abates.

This amendment takes effect retrospectively from 1st June, 2003.

29. ASSESSEE IN DEFAULT – SECTIONS 191 & 201

It has been clarified that a person who was required to deduct/collect or pay tax at source but has not done so will also be considered as an assessee in default under Section 201 of the Act. **This amendment takes effect retrospectively from 1st June, 2002.** An amendment has also been made in Section 191 of the Act to cover the above cases **with effect from 1st June, 2003.**

30. INTEREST ON SECURITIES – SECTION 193

No tax is required to be deducted at source from interest on securities issued in dematerialised format by companies and which are listed on a recognised stock exchange in India. **This amendment is effective from 1st June, 2008**

31. PAYMENTS TO CONTRACTORS – SECTION 194C

Any Association of Persons or Body of Individuals whether registered or not, would now be required to deduct tax at source under the provisions of Section 194C on payments to contractors. **This amendment is effective from 1st June, 2008.**

32. CREDIT FOR TDS/TCS – SECTIONS 199 & 206C

Currently, credit for TDS/TCS is granted in the year in which the relevant income is assessable. Now, credit will be available only to the person and in the assessment year as may be determined in accordance with the rules to be framed by the CBDT

33. DEMATERIALISATION OF TDS CERTIFICATES – SECTION 203

The dematerialisation scheme for TDS/TCS has been deferred further till 1st April, 2010. Consequently, TDS/TCS certificates need to be issued in the specified format and within the specified dates to the persons concerned.

34. REMITTANCE TO NON-RESIDENTS – SUBMISSION OF DETAILS BY THE REMITTER – SECTION 195

Any person who makes a payment of any sum chargeable to tax under the Act to a non-resident, is required to deduct tax at source. The remittance can be made after obtaining a certificate from the Income-tax department for non deduction or lower deduction of tax. Alternatively, the payer may comply with the provision by furnishing an undertaking along with a certificate from a Chartered Accountant to the bank through which the remittance is made. The bank forwards the certificate and undertaking to the Income-tax department. Now, the remitter is required to furnish the information in the prescribed form to the tax department.

35. RATES IN FORCE FOR TDS FROM STCG IN CASE OF NON RESIDENTS – SECTION 195

The rate at which tax is to be deducted from income earned by non residents by way of STCG on transfer of listed shares and units of equity oriented mutual funds on which STT is chargeable is increased from 10% to 15% in view of the increase in the tax rate on STCG.

36. STAY BY TRIBUNAL – SECTION 254(2A)

Currently, in case of stay granted matters before the Appellate Tribunal, if appeals are not disposed of within a period of 180 days from the date of the stay order, the stay order is

automatically vacated after the expiry of 180 days, unless the stay is further extended by the Tribunal for a period not exceeding 180 days at a time. It is provided that the total stay period shall not exceed 365 days cumulatively from the date on which the stay was first granted. In such cases, the judicial view was that the stay can be extended even beyond the period of 365 days if the delay in disposal of appeal is not attributable to the assessee. It is now provided that the Tribunal shall dispose of the appeal within the period of such stay (not exceeding 365 days in aggregate), failing which the order of stay shall stand vacated at the expiry of the stay period, even if the delay in disposing of the appeal is not attributable to the assessee. **The said amendment takes effect from 1st October, 2008.**

37. CONSEQUENCES OF NON-FILING OF APPEAL BY DEPARTMENT – SECTION 268A

Presently, as per the limits laid down by the CBDT, the Department is not to file appeals if the tax effect involved is less than the following:

Appeal to	Tax effect (Rs)
Appellate Tribunal	2,00,000
High Court	4,00,000
Supreme Court	10,00,000

A new Section 268A provides that in case the Department has not filed an appeal or reference on a particular issue due to the above limits, it shall not be precluded from filing an appeal or application for reference on the same issue in the case of the same assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year.

It further provides that in such cases, it shall not be lawful for an assessee to contend that the Department has acquiesced in the decision on the said issue since it has not filed an appeal. **The amendment takes effect retrospectively from 1st April, 1999** and reverses the ratio of the decision of the Supreme Court in the case of *Berger Paints India Ltd. vs. CIT* (266 ITR 99).

38. INITIATION OF PENALTY PROCEEDINGS – SECTION 271

The section provides for penalty for concealment or failing to comply with notices. The Delhi High Court in the case of *CIT vs. Ram Commercial Enterprises Ltd.* (246 ITR 568) as approved by the Supreme Court in the case of *Dilip Shroff* (291 ITR 519) held that before penalty proceedings are initiated, the Assessing Officer must record his satisfaction about the default committed. Sub-section 1B has been inserted in Section 271 to provide that when there is any addition or disallowance in the assessment order and the assessment order contains a direction to initiate penalty proceedings, it will be deemed to constitute satisfaction of the Assessing Officer. No separate recording of satisfaction would be required.

The amendment takes effect retrospectively from assessment year 1989-90.

Similar amendment has been made to Section 18 of the Wealth Tax Act.

39. AUTHENTICATION OF NOTICE – SECTION 282A

To facilitate the use of information technology, it is now provided that every notice or other document to be issued, served or given by any Income tax authority shall be deemed to be authenticated if the name and office of the designated Income tax authority is printed, stamped or written thereon. However, a notice or other document required to be issued under the Act by any Income tax authority is to be signed in manuscript by that authority. **This amendment takes effect from 1st June, 2008.**

40. CHALLENGE TO VALIDITY OF NOTICE – SECTION 292BB

A new Section 292BB provides that in case an assessee has appeared in any assessment proceeding or co-operated in any inquiry it shall be deemed that any notice required to be served under the Act has been duly served upon him in time and such assessee shall be precluded from taking any objection that the notice was not served upon him or not served in time or was served in an improper manner.

Similar amendment has also been made to Section 42 of the Wealth Tax Act.

41. PRESUMPTION IN RESPECT OF SEIZED BOOKS OF ACCOUNT, DOCUMENTS, ETC. – SECTION 292C

Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing is found in possession of any person during a search, it is presumed under Section 132(4A) that (a) such books of account etc. belong to such person (b) the contents of such books of account are true (c) the document is signed by and is in that person's handwriting and (d) in case of documents stamped, executed or attested that it has been properly stamped, executed or attested. However, such presumption is rebuttable.

It is now provided that the said presumption will also apply in respect of books of account, documents, etc. found in the possession or control of any person in the course of a survey operation. **This amendment takes effect retrospectively from 1st June, 2002.**

The above presumption has also been extended to books of account, documents, etc. delivered to the requisition officer under Section 132A. **The amendment takes effect retrospectively from 1st October, 1975.**

Similar amendment has also been made to Section 42D of the Wealth Tax Act.

42. SETTLEMENT OF CASES – SECTIONS 153, 273AA, 278AB

Where an application for settlement made before the Settlement Commission has been rejected or has not been allowed to be proceeded with or has been declared as invalid or the order has not been passed within the specified time, then the proceedings before the Commission abate and the proceedings pending at the time of making the application get revived. The Assessing Officer is then to dispose of the cases as if no application for settlement was made. In such a case, if the period of limitation available to the Assessing Officer for making an order of assessment or re-assessment is less than one year, after excluding the period referred to in Section 245HA(4), it shall stand extended to one year.

Two new sections viz., 273AA and 278AB provide that a person can make an application to the Commissioner for granting

immunity from penalty in respect of penalty proceedings initiated and from prosecution where he had made an application for settlement and the proceedings for settlement have abated.

The said application cannot be made after the imposition of penalty after abatement or institution of prosecution proceedings after abatement.

The Commissioner may grant immunity from imposition of any penalty and from prosecution for any offence if he is satisfied that the person has co-operated with the Department in the proceedings after abatement and has made true and full disclosure of his income and the manner in which such income has been derived. The said immunity may be subject to such conditions as the Commissioner may think fit to impose.

The immunity granted to a person shall stand withdrawn if he fails to comply with any of the prescribed conditions. The immunity may also be withdrawn by the Commissioner if he is satisfied that such person has, after abatement, concealed any particulars material to his assessment or has given false evidence. On such withdrawal, the provisions of the Act shall apply as if such immunity had not been granted.

Similar amendments have also been made to Sections **17A, 18BA, 35GA** of the Wealth Tax Act.

43. RECOGNISED PROVIDENT FUND – SCHEDULE IV

The Finance Act, 2006 had provided that for provident funds to continue to enjoy recognition and for assessees to continue to get deduction in respect of contribution to such funds, the provident funds had to comply with certain conditions by 31st March, 2007 which was extended to 31st March, 2008. This deadline has now been further extended to 31st March, 2009.

44. COMMODITIES TRANSACTION TAX

Commodities Transaction Tax [CTT] is introduced on dealings in certain commodities transactions. The provisions relating to the same are contained in Chapter VII of the Finance Bill. These are on the same lines as Securities Transaction Tax.

45. SECURITIES TRANSACTION TAX

The incidence of STT in respect of options has been reduced to the premium amount for the sale of option. When the option is exercised (which is not possible under the existing regulations), STT would also be payable by the purchaser of the option on the strike price. This would be in addition to the STT paid by the seller of the option on the premium.

46. BANKING CASH TRANSACTION TAX (BCTT)

BCTT will not be charged in respect of any taxable banking transaction entered into on or after 1st April, 2009.

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INDIRECT TAXES

SERVICE TAX

The amendments proposed in the Finance Bill, 2008 are of Chapters V and VI of the Finance Act, 1994, (The Act), Notifications issued and the following Rules framed there under are discussed below:

- Service Tax Rules, 1994,
- CENVAT Credit Rules, 2004,
- Export of Services Rules, 2005,
- Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, and
- Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007
- The amendments come into effect from the date of enactment; meaning the date on which the President of India gives assent to the Finance Bill unless specifically mentioned otherwise. Introduction of new services and changes in existing services come into effect from the date to be notified by the Government.

1. RATE OF TAX

Rate of service tax remains unchanged at 12% and that of education cess and secondary and higher education cess remain unchanged at 2% and 1% respectively.

Rate in respect of composition scheme for payment of service tax under Works Contract service is increased from 2% to 4% with effect from 1st March, 2008. Accordingly effective rate in respect thereof along with education cess and secondary and higher education cess will be 4.12%. (*Refer Notification No. 7/2008-ST dated 1st March, 2008*)

2. INCREASE IN THE THRESHOLD LIMIT

The threshold limit for service providers is increased from rupees eight lakh to rupees ten lakh. Consequently, the limit for obtaining registration is increased from rupees seven lakh to rupees nine lakh. (*Refer Notification Nos.8/2008-ST read with Notifications 9/2008 and 10/2008 all dated 1st March, 2008 – effective from 1st April, 2008*).

3. INTRODUCTION OF NEW SERVICES

i) **Information Technology Software Services: Section 65(105)(zzzze)**

Information Technology Software is defined to mean any representation of instructions, data, sound or image including source code and object code, recorded in a machine readable form and capable of being manipulated or providing interactivity to a user by means of a computer or an automatic data processing machine or any other device or equipment.

The following services provided in relation to Information Technology Software used in the course of or furtherance of business or commerce are covered under this category:

- a) development
- b) study, analysis, design and programming
- c) adaption, upgradation, enhancement, implementation and other similar services
- d) advice, consultancy, assistance including conducting of feasibility studies on implementation of software, specification for database, design and security, guidance and assistance during the start up phase of a new system and advice on proprietary
- e) acquiring the right to use, reproduce, distribute and sell for commercial exploitation including right to use the components for creation of and inclusion in other information technology products.
- f) right to use information technology software supplied electronically.

Information Technology Software Services provided to individuals for personal uses are not liable to service tax.

A number of information technology related services are already leviable to service tax under various heads. Consequential amendments made in the coverage under other services are provided with reference to the respective services.

ii) **Stock Exchange, Commodities Exchange and Processing and Clearing House Services: Sections 65(105)(zzzzg), 65(105)(zzzzh), 65(105)(zzzzi)**

Services provided by a recognised stock exchange or a commodity exchange or a clearing corporation, recognised or

authorized by a recognised stock exchange, or a recognized or a registered association, to perform the duties and functions of a clearing house in relation to assisting, regulating or controlling the business of buying and selling of securities including services in relation to processing, clearing and periodical settlement of transactions for or relating to, sale and purchase of securities, goods or forward contracts, delivery and payment thereof or any other incidental or connected services are covered under this category.

iii) **Transfer of right to use tangible goods : Section 65(105)(zzzzj)**

Hiring or leasing of tangible goods including machinery, equipment or appliances provided for use without transferring the right of possession and effective control of such tangible goods are covered under this category.

The legislative intent in this case is to cover the transactions of hiring or leasing of tangible goods where VAT is not chargeable. However, the statutory provisions do not reflect this intent specifically.

iv) **Management of Investment under Unit Linked Insurance Plan (ULIP) Scheme : Section 65(105)(zzzzf)**

Services provided to a policy holder by a life insurer in relation to the management of investment portion of the ULIP Scheme also known as segregated fund is covered under this category.

The gross amount charged by the insurance companies in addition to the amount of investment and the premium allocable to the insurance cover, by whatever name called, is liable to service tax as and when the same is charged to the policy holder.

It may be noted that the risk cover premium is already chargeable under the category of Life Insurance Services.

v) **Internet Telecommunication Services : Section 65(105)(zzzu)**

The Finance Act, 2007 consolidated six different taxable services provided by telegraph authority related to telecommunication under the category of Telecommunication Services.

A separate category of service has been introduced to cover telecommunication through internet which includes the following services:

- a) internet backbone services including carrier services of internet traffic by one internet service provider to another internet service provider.
- b) internet access services including provision of direct connection and space for the customer's web page.
- c) providing telecommunication services over the internet viz., fax, telephony, audio and/or video conferencing.

Existing category of Internet telephony service is now merged under this category .

4. CHANGES IN EXISTING SERVICES

i) Expansion in the scope of existing services

In the definition of thirty nine taxable services, the term "client" or "customer" is replaced by the term "any person" resulting in expansion of the scope of such services.

ii) Banking and other Financial Services / Foreign Exchange Broker's Services : [Sections 65(105)(zm), 65(105)(zzk)]

The scope of this service is expanded to cover purchase or sale of foreign currency including money changing by an authorised dealer or an authorized money changer or a foreign exchange broker. According to the Government clarification, the service provider will be liable to service tax at a presumptive rate of 0.25% of the gross amount of currency bought or sold by him.

iii) Business Auxiliary Services [Section 65(105)(zzb)]

- a) An explanation is inserted in Section 65(19) clarifying that any service provided in relation to promotion or marketing of games of chance including lottery etc. organised, conducted or promoted by a client is covered under Business Auxiliary Services. The amendment is made to override Sikkim High Court ruling in the case of *Martin Lottery Agencies Ltd vs. UOI (2007) 8 STR 561*.
- b) IT software service is now covered under the new category "Information technology software service" and

hence the specific exclusion of the same from the definition of Business Auxiliary Services is deleted.

iv) Cargo Handling Services [Section 65(105)(zr)]

The definition of cargo handling services under Section 65(23) is expanded to include packing with transportation of cargo or goods, with or without one or more other services like loading, unloading, unpacking etc. The services of packers and movers will now be covered under this category.

v) Internet Telephony Services [Section 65(105)(zzzu)]

This service category has been merged with the new category "Internet Telecommunication services".

vi) Management, Maintenance or Repairs Services [Section 65(105)(zzg)]

An explanation is inserted in Section 65(64) clarifying that "properties" includes information technology software. The intention is to levy service tax on the management, maintenance or repair of customised software.

vii) Renting of Immovable Property [Section 65(105)(zzzz)]

An explanation is inserted in Section 65(90a) clarifying that renting of immovable property includes allowing and permitting use of space in immovable property, irrespective of transfer of possession or control of immovable property. Allowing the use of space for placing vending machines, dispensing machines etc. or erection of communication towers etc. on buildings is covered under this category.

viii) Consulting Engineer's Services [Section 65(105)(g)]

An explanation is inserted in Section 65(105)(g) clarifying that advice, consultancy or technical assistance in the discipline of computer hardware engineering and computer software engineering is covered under this category.

ix) Technical Testing and Analysis Services [Section 65(105)(zzh)]

Section 65(106) defining technical testing and analysis services is amended to include technical testing and analysis

of IT software. Consequently, the same is covered under this category.

x) Technical inspection and Certification Services [Section 65(105)(zzi)]

Section 65(108) defining technical inspection and certification services is amended to include technical inspection and certification of IT software. Consequently the same is covered under this category.

xi) Tour Operator's Services [Section 65(105)(n)]

The definition of tour operator under section 65(115) is amended to include services provided in relation to journey from one place to another, generally known as point-to-point tour in a vehicle having contract carriage permit, even if the vehicle does not meet the criteria specified for tourist vehicle. Services provided to educational bodies other than commercial training or coaching centres shall be excluded from the scope of taxable services. Services rendered by stage carriages (i.e., passengers paying their individual fares and having right to board or alight from such carriage according to their choice and convenience) are not covered under this category.

5. VALUATION OF TRANSACTIONS BETWEEN ASSOCIATED ENTERPRISES

An explanation to Section 67 is amended to provide that when any transaction of a taxable service is with an associated enterprise, the amount credited or debited to any account which may be called suspense account or by any other name in the books of a person liable to pay service tax, it would form part of the gross value of taxable services liable for service tax.

For this purpose, the term, "associated enterprise" is assigned the same meaning as provided in Section 92A of the Income-tax Act, 1961 dealing with transfer pricing provisions.

It may be noted that in case of transactions occurring between associated enterprises, service tax would be payable after receipt of payment or crediting/debiting of the amount in the books of account whichever is earlier. It will also apply to service tax payable under reverse charge/section 66A.

6. AMENDMENTS IN THE ACT

- i) Section 71 is inserted whereby CBEC is empowered to notify a scheme enabling specified class or classes of persons to prepare and furnish returns of service tax through a Service Tax Return Preparer on the lines it is done under the Income-tax Act 1961.
- ii) Section 72 is inserted to empower Central Excise Officer to make Best Judgement assessment after allowing assessee to represent his case where an assessee has failed to furnish service tax return under section 70 or the return furnished is not in accordance with the provisions of the Act or rules made thereunder.
- iii) Section 77 is substituted to provide penalty for specific contraventions as follows:

Nature of contravention	Penalty
Failure to obtain registration under Section 69 of the Act or rules made thereunder	To the extent of Rs. 5000 or Rs. 200 for every day after the due date till the actual date of compliance, whichever is higher
Failure to keep, maintain or retain books of account and documents as required under the law	Maximum of Rs. 5,000
Failure to furnish information, produce documents called for by the Central Excise Officer or to appear in pursuance of summons	To the extent of Rs.5000 or Rs.200 for every day after the due date till the actual date of compliance, whichever is higher.
Failure to pay tax electronically where applicable	Maximum of Rs. 5,000
Failure to issue invoice in accordance with the provisions of the law or failure to account for an invoice in the books of account	Maximum of Rs. 5,000
Any other contravention under the law for which no separate penalty is provided	Maximum of Rs. 5,000

- iv) Section 78 is amended to provide that where penalty for failure to pay tax on account of fraud, wilful misstatement, suppression of facts, etc. is levied, the penalty for failure to pay service tax under section 76 shall not be imposed.

7. AMENDMENTS IN THE RULES

- i) Rule 6(1A) is introduced to extend the facility to pay tax in advance and adjust the same against the subsequent period's service tax liability. The same shall be intimated to the jurisdiction Superintendent of Central Excise within 15 days from the date of such payment and details thereof and its adjustment shall be indicated in the half yearly return.
- ii) The monetary limit for self adjustment of service tax in certain cases is increased from Rs. 50,000 to Rs. 1,00,000.
- iii) The time limit for revision of return is extended from 60 days to 90 days.
- iv) Under Rule 7C, Central Excise Officer is empowered to reduce or waive the penalty for delayed filing of half yearly return, if the gross amount of service tax payable is Nil.

(These amendments are effective from 1st March, 2008. Refer Notification No. 4/2008-ST, dated 1st March, 2008)

8. SERVICES IN RELATION TO TANGIBLE GOODS PROVIDED FROM DISTANT LOCATION IN THE COURSE OF EXPORT AND IMPORT OF SERVICES

Rule 3(1)(ii) of the Export of Services Rules, 2005 and Rule 3(ii) of Taxation of Services (Provided from Outside India and Received in India) Rules 2006 apply to all those services where the place of performance is the applicable criterion. Insertion of proviso in both the above rules has enabled to determine taxing jurisdiction in respect of the following categories of services:

- Management, maintenance or repairs
- Technical testing and analysis
- Technical inspection and certification

Services under any of the above categories shall be treated as export if they are provided in relation to goods, material or immovable property situated outside India at the time of provision of service, even though the service is provided through internet or electronic network including computer network or such other means; i.e., provided remotely and not physically performed outside India.

Similarly, in a converse situation of import, it is provided that where any of these services is provided by a person from outside India, and the services are in relation to any goods or material or any immovable property situated in India at the time of provision of service, through internet or an electronic network including computer network, then such taxable services whether or not physically performed in India shall be treated as performed in India and shall be treated as import and shall attract service tax under reverse charge. *(Refer Notifications No. 5 / 2008-ST and No. 6/2008-ST both dated and effective from 1st March, 2008).*

9. EXEMPTIONS

- i) Taxable service provided by a person located outside India in relation to booking of an accommodation in a hotel located in India for a customer located outside India is exempted. *(Refer Notification No. 14/ 2008 ST dated 1st March, 2008)*
- ii) In case of Goods Transport Agency Services (GTA), an abatement of 75% can now be availed without fulfilment of the following conditions:
 - non availment of CENVAT Credit by the provider of GTA service and
 - non availment of benefit under Notification No. 12/2003 ST dated 20th June, 2003.

As a consequence, Notification No 1/2006- ST dated 1st March 2006 is suitably amended *(Refer Notification No. 12/ 2008 read with Notification No. 13/ 2008 both dated and effective from 1st March, 2008)*

10. CENVAT CREDIT RULES 2004

- i) Definition of "input service" is amended in the context of a manufacturer whereby in Rule 2(i)(ii) the words "...clearance of final products from the place of removal" have been substituted by "clearance of final products, up to the place of removal". This amendment is made to overcome the controversy generated due to conflicting Tribunal decisions in respect of CENVAT Credit on outward transportation.
- ii) As a consequence of unconditional abatement of 75% being granted in regard to services of transportation of goods by road, the said service category is excluded from the definition of "output service" in Rule 2(p) [This amendment is effective from 1st March, 2008]

iii) First Proviso to Rule 3 is amended to permit removal of capital goods outside the premises of the output service provider for providing output service without any time restriction.

iv) Rule 6(1) is amended whereby the words "exempted goods or exempted services" are substituted by "exempted goods or for provision of exempted services"

v) a) The existing Rule 6(3) has been revamped to provide the following options as applicable to a manufacturer or output service provider using common inputs / input services for providing taxable as well as exempted goods / taxable as well as exempted services but not maintaining separate account of receipt, consumption and inventory of inputs or input services:

- manufacturer shall pay an amount equal to 10% of the value of exempted goods and the output service provider shall pay an amount equal to 8% of the value of exempted services.
- manufacturer or output service provider shall pay an amount equivalent to the CENVAT Credit attributable to inputs and input services used in or in relation to manufacture of exempted goods/provision of exempted services subject to compliance of detailed procedure prescribed in Rule 6(3A).

The options stated above are required to be exercised for all exempted goods manufactured by a manufacturer or all exempted services provided by an output service provider. An option once exercised cannot be withdrawn during any financial year.

b) The procedure prescribed requires the manufacturer/output service provider to:

- intimate in writing to the Superintendent of Central Excise, giving the specified particulars;
- determine and pay provisionally every month, an amount equivalent to CENVAT Credit attributable to manufacture of exempted goods / provision of exempted services in accordance with the formula prescribed in Rule 6(3A)(b);
- determine finally, the amount of CENVAT Credit attributable to exempted goods / exempted services

for the whole financial year, in accordance with the formula prescribed in Rule 6(3A)(c);

- determine shortfall/surplus in payment of CENVAT Credit;
- pay the shortfall by 30th June. In case of delay, interest would be payable at the rate of 24% per annum;
- adjust the excess amount on his own by taking credit of such amount; and
- intimate in either case to the jurisdictional Superintendent of Central Excise, within 15 days from the date of payment/date of adjustment giving the specified particulars.

vi) Rule 7A is inserted to prescribe a procedure to enable the output service provider to take credit on inputs and capital goods on the basis of invoice, bill or challan issued by its other offices or premises.

Rules relating to Registered Dealer Mechanism under Central Excise shall apply *mutatis mutandis* to such offices or premises of the output service provider.

vii) Rule 15A is inserted to provide for a general penalty up to Rs. 5,000 in case of contravention of any of the provisions of the Rules for which no specific penalty is provided.

(Refer Notification No. 10/2008-CE(N.T.) dated 1st March 2008)

11. SERVICE TAX DISPUTE RESOLUTION SCHEME, 2008

The salient features of the scheme are as follows:

- i) The scheme is operative between 1st July, 2008 and 30th September, 2008.
- ii) It is offered to persons in dispute for service tax, cess, interest or penalty as on 1st March, 2008 in respect of which –
 - a) an order has been passed;
 - b) a demand notice or a show cause notice has been issued prior to 1st March, 2008.
- iii) The scheme shall not apply to cases where
 - a) The service tax amount in dispute exceeds Rs. 25,000 or
 - b) The order is made or notice is issued under section 73A.

- iv) A person opting for the scheme is required to make a declaration in the form to be prescribed.
- v) A designated authority to issue an order within 15 days of the receipt of declaration.
- vi) Settlement mechanism:
 Tax arrear on account of determination / assessment / order of an adjudicating authority or on account of show cause notice or demand notice:
 @50% of the service tax amount
 @25% of interest/penalty/interest plus penalty
 If penalty exceeds service tax to which it relates, the amount of service tax shall be considered to be the amount of penalty.
- vii) The declarant to pay the amount determined within 30 days of the date of the order of the authority. On submission of the proof of payment of the tax, the declarant to receive the certificate as conclusive evidence, based on which, any appeal filed or reply made to show cause notice would stand withdrawn and the matter involved cannot be reopened in any other proceeding.
- viii) The amount paid by the declarant under the scheme is non-refundable.
- ix) In case of a writ petition filed by the declarant before any High Court or the Supreme Court, furnishing of proof of withdrawal of the writ would be required.

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CENTRAL EXCISE

(All amendments are effective from 1st March, 2008 unless specifically mentioned otherwise)

1. CHANGES IN CENTRAL EXCISE ACT, RULES AND TARIFF ACT

- i) The definition of "excisable goods" is expanded to provide that "goods" include any article, material or substance which is capable of being bought and sold for a consideration and that such goods shall be deemed to be marketable.*
- ii) The Government is empowered to prescribe charging of duty on the basis of capacity of production of goods which may be notified and the procedure to be followed in case such levy is notified.*
- iii) Manufacturers are entitled to the refund of interest, if any, paid on any duty of excise in case such duty is refunded for any reason.*
- iv) An amount collected by any person as representing excise duty in excess of duty assessed on any excisable goods or any amount collected as excise duty on exempted goods will be recovered by the Central Government from such person. Interest will also be recovered in case such person has not voluntarily deposited such amount within the prescribed time.*
- v) The rate of duty applicable to clearances of goods to domestic tariff area from EOU, STP, Electronic Hardware Technology Parks etc. has been revised from 25% of the basic custom duty + excise duty payable on like goods to 50% of the basic custom duty + excise duty payable on like goods.
- vi) Interest will be paid to an Appellant on amount pre-deposited by him in case he succeeds in Appeal and the amount of pre-deposit is not refunded by the Department within three months of the communication of the order of Appellate Authority.*
- vii) In order to align the definition of processes amounting to manufacture with the definition of manufacture in Section 2 (f) (iii) of the Central Excise Act, 1944, notes in certain chapters of Central Excise Tariff Act is amended to provide that words "labelling or relabelling of containers and repacking" shall be substituted by the words "labelling or relabelling of containers or repacking". Note 16 to Chapter 39

of the Central Excise Tariff Act is also amended to specify that the process of lamination or of lacquering shall also amount to manufacturer in addition to the process of metallisation.

- viii) Manufacturers of strips of plastics intended for weaving fabrics/sacks are allowed the exemption under SSI Notification. (Effective 1st April, 2008)
- ix) Exemption is not available to goods supplied to projects financed by United Nations or other international organisations if use of such goods for the projects is temporary.
- x) Excise duty exemption on shuttle-less looms is withdrawn and excise duty/ CVD of 8% is levied.

** (Effective from the date of President's assent)*

2. CHANGES IN THE CENTRAL EXCISE RATES

- i) The general rate of excise duty (CENVAT) is reduced from 16% *ad valorem* to 14 % *ad valorem*. This reduction in rate is applicable to all goods where the Tariff rate was 16% and duty payable was also at 16%. While tariff rate on such goods has remained the same, the reduction in general rate is carried out by way of Notification. If on a particular product or goods the duty is payable at a rate higher or lower than 16% either under the tariff or under a Notification, the duty will be payable at a rate prescribed under relevant tariff or Notification and not at revised general rate of 14%.
- ii) Consequent upon the reduction in the general rate of CENVAT from 16% to 14%, rates of abatement on all items under the MRP based assessment on which the excise duty rate has been reduced are reduced suitably.
- iii) National Calamity Contingent Duty (NCCD) of excise of 1% is imposed on all mobile phones.
- iv) Substantial duty reduction from 16% to 8% is done for certain pharmaceutical products.
- v) In case of packaged software along the lines of service tax on information technology software, the rate is rationalised at 12% from 8%.
- vi) Other Changes in the Central Excise rate
Refer comparative chart showing Excise rates on the BCAS website.

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CUSTOMS

(All amendments are effective from 1st March, 2008 unless specifically mentioned otherwise)

1. PEAK CUSTOMS DUTY RATE

No change in peak customs duty rate of 10%.

2. REDUCTION IN CUSTOMS DUTY RATE

In pursuit of correction of inverted duty structure and provide fillip to selected industries/customs duty has been reduced on selected commodities by change in tariff rate/by issue of exemption notifications. These changes are effective from 1st March, 2008. For details refer BCAS website .

3. INCREASE IN CUSTOMS DUTY RATES

To protect domestic industry, restrict import of selected commodities and augment revenue collections, customs duty has been increased on various items/exemptions have been withdrawn/ amended. These changes are effective from 1st March, 2008. For details refer BCAS website.

4. INCREASE IN EXPORT DUTY

Export duty on chromium ores and concentrates has been increased from Rs. 2,000 per tonne to Rs. 3,000 per tonne

5. PROJECT IMPORTS

Basic Customs Duty on import of goods under project imports has been reduced from 7.5% to 5%.

6. CUSTOMS DUTY REFUND ON RE EXPORT OF LEASED MACHINERIES, EQUIPMENTS AND TOOLS

Customs duty is charged at reduced rates for leased machineries, equipments and tools imported for use in construction of projects and re exported within specified period. To allow benefit to such importers, the re export period has been

increased from 12 months to 18 months and customs duty exemption is revised. For details refer BCAS website.

7. REDUCTION OF TIME LIMIT FOR GRANT OF DUTY DRAW BACK ON RE EXPORT OF IMPORTED GOODS AFTER THEIR USE IN INDIA

Under Section 74(2), duty drawback is given on re export of imported goods. For details refer BCAS website.

8. OTHER AMENDMENTS (EFFECTIVE FROM THE DATE OF PRESIDENT'S ASSENT)

i) Interest on pre deposit

A new Section 129EE is inserted to provide for payment of interest on refund of pre deposit (made during pendency of appeal) as per order passed by Commissioner (Appeals)/ Tribunal, if such pre deposit is not paid within 3 months from date of communication of order.

ii) Amendment to Section 28B relating to unjust enrichment

A sub-section is inserted to provide for deposit of amount with Government collected as customs duty and is in excess of assessed duty or is collected where no import duty is payable by way of exemption/nil rate of duty.

iii) The maximum amount of penalty leviable under Section 117 has been increased from Rs. 10,000 to Rs. 1,00,000.

iv) The maximum amount of penalty leviable under Section 158 has been increased from Rs. 200/500 to Rs. 50,000.

v) The Government had amended notification No. 54/2003 to provide for credit of duty debited against certificates issued under Served from India scheme from 17 November, 2005. As per the amendment CENVAT credit/ duty drawback will be allowed with effect from 4th June, 2005.

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CENTRAL SALES TAX

As promised by the Finance Minister the rate of Central Sales Tax (against declaration in Form C) is reduced from 3% to 2% . The reduced rate will be effective only after the issue of notification by the Central Government.

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GOODS AND SERVICES TAX

The Finance Minister in his Budget speech stated that the progress to the road map to Goods and Services Tax to be introduced from 1st April 2010 is satisfactory.

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