Amendments by Finance Act 2007 for AY 2008-09

Direct Tax -

Business Profession

Section 36(1)(ib) : Employees Health Insurance

Premium paid (by any mode of payment other than cash) by assessee for insurance on the health of his employees as per scheme of G.I.C. of India, approved by Central Govt. or any scheme of other Insurer approved by IRDA, is allowable.

Section 36(1)(viia) – Deduction for Bad and Doubtful Debts

Co-operative banks to be allowed deduction in respect of provision for bad and doubtful debts, alongwith scheduled banks.

The deduction earlier allowable under section 80P in the case of a cooperative society engaged in carrying on the business of banking (i.e. cooperative banks) has been withdrawn from A.Y. 2007-08, except in the case of a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

This is for the purpose of treating the co-operative banks at par with other commercial banks, which do not enjoy similar benefits.

Since profits of co-operative banks are now taxable, the deduction in respect of any provision for bad and doubtful debts allowable to other banks under section 36(1)(viia) has been extended to co-operative banks also. However, this deduction is not available to primary agricultural credit societies and primary co-operative agricultural and rural development banks, since they are still eligible for deduction under section 80P.

Section 43D – Taxation of Interest on Bad and Doubtful Debts

The section provides that in the case of a scheduled bank, the interest on bad and doubtful debts as per the guidelines of the RBI shall be chargeable to tax in the year in which it is credited to the profit and loss account or in the year in which it is actually received, whichever is earlier. This provision would now be applicable to co-operative banks also.

Section 36(1)(x)

The deduction in respect of contribution towards Exchange Risk Administration Fund by public financial institutions has been withdrawn w.e.f. AY 2008-09.

Section 36(1)(viii) - Special Reserve Created by Financial Corp

(i) Financial corporations [1] engaged in the business of providing long term finance [2] for industrial or agricultural development or development of infrastructure facility in India or Public company formed and registered in India for carrying on the business of providing long term finance for construction or purchase of house in India for residential purposes, are eligible for deduction for special reserve created and maintained by them. An amount not exceeding 20% of the profits derived from such business (computed under the head "Profits & Gains from Business & profession before considering this deduction) shall be allowed as deduction, provided it is transferred to such special reserve.

Section 36(1)(xii) – Miscellaneous expenditure by Corporations

Any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act for the objects and purposes authorised by the Act under which such corporation or body corporate was constituted or established. The corporation or the body corporate should have been notified by the Central Government for the purpose[3].

Section 36(1)(xiv) – Contribution to credit guarantee fund

Any sum paid by a public financial institution by way of contribution to credit guarantee fund trust for small industries as notified by the Central Government[4].

Section 40A(3) - Payment in cash exceeding Rs. 20,000

(i) Section 40A(3) provides for 20% disallowance of any expenditure in respect of which payment is made of a sum exceeding Rs.20,000 otherwise than by of a an account payee cheque drawn on a bank or account payee bank draft.

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[1]
(*i*) a financial corporation specified in section 4A of the Companies Act, 1956 (1 of 1956);
(*ii*) a financial corporation which is a public sector company;
(*iii*) a banking company;
(*iv*) a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank;
(*v*) a housing finance company; and
(*vi*) any other financial corporation including a public company

[2] Long-term finance means loan or advances which is repayable along with interest during a period of not less than 5 years.

[3] Amended by Finance Act 2007 w.e.f. AY 2008-09

[4] Inserted by Finance Act 2007 w.e.f. AY 2008-09

If a deduction has been allowed in an assessment in any A.Y. in respect of any liability for any expense and subsequently during any P.Y. the assessee makes any payment therefore of a sum exceeding Rs. 20,000 otherwise than by way of a cheque/DD the payment so made shall be deemed to be the business income of the subsequent year[5].

However, no disallowance shall be made and no payment shall be deemed business income where any payment exceeding Rs. 20,000 is made otherwise than by an account payee cheque drawn on a bank or account payee bank draft, in the undermentioned cases.

(ii) According to **Rule 6DD** of IT Rules no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession where any payment in made in cash in the cases and circumstances specified hereunder, namely:-

(a) Where the payment is made to RBI or SBI or any co-operative bank or land mortgage bank, or any primary agricultural credit society or the LIC;
(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:
  - any letter of credit arrangements through a bank;
  - a mail or telegraphic transfer through a bank;
  - a book adjustment from any account in a bank to any other account in that or any other bank;
  - a bill of exchange made payable only to a bank;
  - the use of electronic clearing system through a bank account;
  - a credit card;
  - 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:
  - agricultural or forest produce; or
  - the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
  - fish or fish products; or
  - 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;

[5] Amended by Finance Act 2007 w.e.f. AY 2008-09

(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-

- 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
- 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.

Section 44DB - Deduction in the case of business reorganization of co-operative banks[6]

(i) The deduction under section 32, section 35D, section 35DD or section 35DDA shall, in a case where business reorganization of a co-operative bank has taken place during the financial year, be allowed in accordance with the provisions of this section.

(ii) The amount of deduction allowable to the predecessor co-operative bank under section 32, section 35D, section 35DD or section 35DDA shall be determined in accordance with the formula:

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

A = The amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;

B = The number of days comprised in the period beginning with the 1st day of the financial year and ending on the day immediately preceding the date of business reorganisation; and

C = The total number of days in the financial year in which the business reorganisation has taken place.

(iii) The amount of deduction allowable to the successor co-operative bank under section 32, section 35D, section 35DD or section 35DDA shall be determined in accordance with the formula:

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

[6] Inserted by Finance Act 2007 w.e.f. AY 2008-09

A = The amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;

B = The number of days comprised in the period beginning with the date of business reorganisation and ending on the last day of the financial year; and

C = The total number of days in the financial year in which the business reorganisation has taken place.

(iv) The provisions of section 35D, section 35DD or section 35DDA shall, in a case where an undertaking of the predecessor co-operative bank entitled to the deduction under the said section is transferred before the expiry of the period specified therein to a successor co-operative bank on account of business reorganisation, apply to the successor co-operative bank in the financial years subsequent to the year of business reorganisation as they would have applied to the predecessor co-operative bank, as if the business reorganisation had not taken place.

(v) For the purposes of this section,—

Amalgamation means the merger of an amalgamating co-operative bank or banks with an amalgamated co-operative bank, in such manner that—

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

(b) the members holding 75% or more voting rights in the amalgamating co-operative bank become members of the amalgamated co-operative bank; and

(c) the shareholders holding 75% or more in value of the shares in the amalgamating co-operative bank (other than the shares held by the amalgamated co-operative bank or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative bank;

Demerger means the transfer by a demerged co-operative bank of one or more of its undertakings to any resulting co-operative bank, in such manner that—

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

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

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

(d) the shareholders holding 75% or more in value of the shares in the demerged co-operative bank (other than shares already held by the resulting bank or its nominee or its subsidiary immediately before the transfer), become shareholders of the resulting co-operative bank, otherwise than as a result of the acquisition of the assets of the demerged co-operative bank or any undertaking thereof by the resulting co-operative bank;

(e) the transfer of the undertaking is on a going concern basis; and

(f) the transfer is in accordance with the conditions specified by the Central Government, by notification in the Official Gazette, having regard to the necessity to ensure that the transfer is for genuine business purposes.

Section 172 - Shipping Business of Non-Residents

(vi) The AO shall pass an order within 9 months from the end of the financial year in which the return is furnished.

Transfer Pricing

Section 92CA - Reference to Transfer Pricing Officer

(iii) After hearing such evidence as the assessee may produce and after considering such evidence as the Transfer Pricing Officer may require on any specific point and after taking into account all relevant material the Transfer Pricing Officer shall, by written order, determine the arm's length price of the international transaction and send a copy of his order to the AO and to the assessee. The Transfer Pricing Officer may for determining the arm's length price exercise the powers granted under section 131 and 133.

The TPO shall pass the order before 60 days prior to the date on which the period of limitation referred to in section 153, or as the case may be, in section 153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires.

Capital Gains

Section 2(14) - Capital Assets.

Capital Asset means property of any kind held by an assessee, whether or not connected with his business or profession, other than following items:

(i) Stock in trade, consumable stores or raw materials held for the purpose of business or profession.

(ii) personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him, but excludes:

- (a) jewellery; It includes precious stones in any form and ornaments made of precious metals.
- (b) archaeological collections;
- (c) drawings;
- (d) paintings;
- (e) sculptures; or
- (f) any work of art.

Period of Holding

In determining the nature of Capital Assets, period of holding is relevant. According to the explanation given to this Section following cases are relevant:

(x) In the case of a capital asset, being any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees), the period shall be reckoned from the date of allotment or transfer of such specified security or sweat equity shares[7].

Section 46(1)/47 - Transactions not regarded as transfers

(xxi) Any transfer in a business reorganisation, of a capital asset by the predecessor co-operative bank to the successor co-operative bank [Clause vica][8].

(xxii) Any transfer by a shareholder, in a business reorganisation, of a capital asset being a share or shares held by him in the predecessor co-operative bank if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank [Clause vicb]8.

Cost Inflation Index for PY 2007-08

2007-088
551

[7] Applicable w.e.f AY 2008-09, inserted by Finance Act 2007
[8] Applicable w.e.f A.Y. 2008-09

Section 49(1) - Cost in case of Previous Owner

Assets received by the successor cooperative bank from the predecessor cooperative bank pursuant to business reorganization of the cooperative bank[9].
Shares in the successor cooperative bank received by the shareholder pursuant to transfer of shares in the predecessor cooperative bank in course of business reorganization of the cooperative bank[10].

Section 49(2) - Cost in case of Amalgamation

If shares of the amalgamated Indian Company are allotted to the shareholders of the amalgamating company cost of shares in the amalgamated company will be deemed to be the cost of shares in amalgamating company. [Being the transfer referred to in Section 47(iii)].
This provision shall equally apply to shares acquired by shareholders in the successor co-operative bank pursuant to business reorganization of the predecessor cooperative bank.

Section 49(2AB) – Cost of shares acquired under ESOP where earlier taxed as FBT[11]

The cost of acquisition of specified security or sweat equity shares shall be the fair market value which has been taken into account while computing the value of fringe benefits under section 115WC(1)(ba).

Section 49(2C) - Cost in case of shares in Resulting Company

Cost of acquisition of shares in the Resulting Company shall be:

$$\frac{\text{Net Book Value of Assets transferred to the Resulting Company}}{\text{Net Worth of Demerged Company immediately before such transfer}} \times \text{Cost of Acquisition of shares in the Demerged Company.}$$

Further, according to section 49(2D), the original cost of acquisition of the shares in the demerged company shall be deemed to have been reduced by the above computed figure.
Net Worth = Paid up Capital + General Reserves (being balances immediately before demerger).
This provision shall equally apply to shares acquired by shareholders in the successor co-operative bank pursuant to business reorganization of the predecessor cooperative bank[12].

Section 54EC - Capital Gains on transfer of any Long Term Asset exempted on investment in certain bonds[13]

The total investment in the specified assets during any financial year shall not exceed Rs. 50,00,000.

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[9] Applicable w.e.f AY 2008-09, inserted by Finance Act 2007
[10] Applicable w.e.f AY 2008-09, inserted by Finance Act 2007
[11] Applicable w.e.f AY 2008-09, inserted by Finance Act 2007
[12] Applicable w.e.f AY 2008-09, inserted by Finance Act 2007
[13] Applicable w.e.f. A.Y. 2001-02.

Assessment Procedure

Section 139C - Power of Board to dispense with furnishing documents, etc. with the return[14]

The Board may make rules providing for a class or classes of persons who may not be required to furnish documents, statements, receipts, certificates, reports of audit or any other documents, which are otherwise under any other provisions of this Act, except section 139D, required to be furnished, along with the return but on demand to be produced before the Assessing Officer.

Section 139D - Filing of return in electronic form[15]

The Board may make rules for:

(i) the class or classes of persons who shall be required to furnish the return in electronic form;

(ii) the form and the manner in which the return in electronic form may be furnished;

(iii) documents, statements, receipts, certificates or audited reports which may not be furnished along with the return in electronic form but shall be produced before the Assessing Officer on demand;

(iv) the computer resource or the electronic record to which the return in electronic form may be transmitted.

Section 142 - Enquiry before assessment

(iv) The power u/s 142(2A) is to be exercised by the AO when he is satisfied that the accounts of the assessee are of a complex nature and the accounts should be audited by a special auditor in the interest of the Revenue. However, the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard[16].

(v) U/s 142(2A) the AO is empowered to direct an assessee to get his accounts audited by a C.A. nominated by the CCIT or CIT. Such power can be exercised only with the prior approval of CCIT or CIT. The fact that accounts of the assessee is already been audited, shall not stand in the way of making such order. [Section 142(2B)]

The expenses of, and incidental to, such audit (including the remuneration of the Accountant) shall be determined by the CCIT in accordance with such guidelines as may be prescribed and the expenses so determined shall be paid by the Central Government. The report of such audit shall be furnished by the assessee to the AO in Form 6B within the period specified or extended.

However, the total period taken should not exceed 180 days from the date of order. Failure to comply with direction u/s 142(2A) may result in best judgement assessment u/s 144, penalty u/s 271(1)(b) and or prosecution u/s 276D[17].

[14] Inserted by Finance Act 2007 w.e.f. AY 2008-09
[15] Inserted by Finance Act 2007 w.e.f. AY 2008-09
[16] Inserted by Finance Act 2007 w.e.f. AY 2008-09
[17] Inserted by Finance Act 2007 w.e.f. AY 2008-09

Section 153 - Time Limit for completion of assessments/reassessments

(i) U/s 153(1) an assessment made u/s 143(3)/144 is to be completed within 21 months from the end of the AY in which the income was first assessable.

Where during the course of the assessment proceeding reference has been made to the TPO under section 92CA(1), the assessment is to be completed within 33 months from the end of the AY in which the income was first assessable[18].

(ii) U/s 153(1A) an assessment made u/s 115WE/115 WF is to be completed within 21 months from the end of the AY in which the fringe benefits were first assessable.

(iii) U/s 153(1B) an order of assessment, reassessment or recomputation made u/s 115WG is to be completed within 9 months from the end of the financial year in which notice u/s 115WH was served.

(iv) U/s 153(2) an order of assessment, reassessment or recomputation made u/s 147 is to be completed within 9 months from the end of the financial year in which notice u/s 148 was served.

Where during the course of the assessment, reassessment or recomputation proceeding reference has been made to the TPO under section 92CA(1), the assessment reassessment or recomputation is to be completed within 21 months from the end of the financial year in which notice under section 148 was served.[19].

(v) Section 153(2A) overrides section 153(1)/153(1A)/153(1B)/153(2). U/s 153(2A) an order of fresh assessment in pursuance of an order u/s 254, 263/264 setting aside or canceling an assessment may be made at any time before the expiry of 9 months from the end of the financial year in which the order u/s 254 is received by the CCIT /CIT or order u/s 263/264 is passed by the Commissioner.

Where during the course of fresh assessment proceeding reference has been made to the TPO under section 92CA(1), the fresh is to be completed within 21 months from the end of the financial year in which the order u/s 254 is received by the CCIT /CIT or order u/s 263/264 is passed by the Commissioner[20]

[18] Inserted by Finance Act 2007 w.e.f AY 2008-09
[19] Inserted by Finance Act 2007 w.e.f AY 2008-09
[20] Inserted by Finance Act 2007 w.e.f AY 2008-09

Section 248. Appeal by person denying liability to deduct tax in certain cases

If under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the payer and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income.

Section 249 - Time Limit for presenting an appeal

Appeals should be presented within 30 days of the following date:

(i) Where an appeal relates to any tax deducted u/s 195(1), the date of payment of the tax.

(ii) Where the appeal relates to any assessment or penalty the date of service of notice of demand.

(iii) Where the appeal is under section 248, the date of payment of the tax.

(iv) In any other case the date on which intimation of the order sought to be appealed against is served.

The CIT(A) may admit belated appeal on sufficient cause being shown.

Orders of ITAT

(i) The ITAT after giving both the parties reasonable opportunity of being heard shall pass such order u/S 254 as it thinks fit. On all questions of facts, the order passed u/s 254 by the ITAT on appeal shall be final and binding on the assessee and the department.

(ii) Where a stay order has been passed, the ITAT shall dispose off the appeal within 180 days from the date of such order.

If such appeal is not so disposed of within 180 days, the Appellate Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit. However, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the Appellate Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed.

If such appeal is not so disposed of within the period allowed or extended, the order of stay shall stand vacated after the expiry of such period or periods[21].

[21] Inserted by Finance Act 2007 w.e.f. AY 2008-09

Deductions

Deposits qualifying for deductions under 80C

As subscription to such bonds issued by the National Bank for Agriculture and Rural Development, as the Central Government may notify.

Section 80CCD - Deductions in respect of Contribution to pension scheme of Central Government

(i) The benefit is available to any individual who is employed by the Central Government or any other employer on or after the 1.1.2004.

Section 80D - Deduction in respect of medical insurance premium

The benefit is available to an individual or a HUF. Under this section where an individual or a HUF has paid any sum by paid by him by any mode of payment other than cash in the P.Y. out of his taxable income to effect or to keep in force an insurance, in case of individual either on himself or on the health of the spouse or dependent parent/children and in case of a HUF on the health of any member of such family, shall be eligible for deduction.

Amount actually paid, subject to the limit of Rs. 15,000 in aggregate shall be allowed as deduction. However, the limit shall stand increased to Rs. 20,000 where insurance is taken on lives of senior citizens.

Section 80E - Deduction in respect of payment of interest on loan for Higher Studies

(i) Where an individual has in the previous year paid any amount out of his taxable income, by way of interest on loan taken from any financial institution or any approved charitable institution for the purpose of pursuing his higher education or for the purpose of higher education[22] of his relative[23].

(ii) Deduction shall be allowable from the first year when repayment of interest starts and it will be allowed for 7 successive AY's or till the interest is paid in full, whichever is earlier.

[22] higher education means full-time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics.

[23] Relative, in relation to an individual, means the spouse and children of that individual.

Section 80IA

Works contractor not entitled to benefit of deduction under section 80-IA

The benefit provided under section 80-IA to an undertaking engaged in development of infrastructure facility like highways and ports, industrial parks etc. would not be available to a person who merely executes a works contract entered into with the undertaking or enterprise referred to in that section.

New Business qualifying for deduction under section 80IA - Laying and operating a cross-country natural gas distribution network

Any undertaking carrying on the business of laying and operating a cross-country natural gas distribution network, including pipelines and storage facilities being an integral part of such network, which fulfils the following conditions, namely:

(i) It is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;

(ii) It has been approved by the Petroleum and Natural Gas Regulatory Board;

(iii) one-third of its total pipeline capacity is available for use on common carrier basis by any person other than the assessee or an associated person[24];

(iv) it has started or starts operating on or after the 1st day of April, 2007; and

(v) any other condition which may be prescribed.

Quantum of Deduction

Other assesses

The deduction of an amount equal to 100% of the profits and gains derived from such business, shall be allowed for ten consecutive A.Y. The assessee has an option to choose ten such A.Y.'s out fifteen consecutive years - first year beginning from the year in which the undertaking or the enterprise develops an Industrial Park or generates Power or commences transmission or distribution of power or lays and begins to operate a cross-country natural gas distribution network, in other words starts providing the service. However, in case of BOLT the period of fifteen years shall stand increased to twenty years.

No deduction shall be available to a person who executes a works contract entered into with the undertaking or enterprise, as the case may be.

[24] Associated person in relation to the assessee means a person:

(i) who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee;

(ii) who holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the assessee;

(iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or

(iv) who guarantees not less than ten per cent of the total borrowings of the assessee

Common provisions

(iv) Where any undertaking of an Indian Company, entitled to deduction u/s 80IB/80IAB/80IC is transferred, to another Indian Company in a scheme of Amalgamation or Demerger, before expiry of the period during which deduction is allowable, the benefits of this section shall apply to the Amalgamated or Resulting Company as if the Amalgamation or Demerger had not taken place. The provisions of this section shall not apply to an eligible undertaking falling under section 80IA.

(vii) As per section 80AC deduction admissible under section 80IA / 80IAB / 80IB / 80IC / 80ID / 80IE, shall not be allowed unless the return of income for the relevant assessment year has been furnished on or before the due date mentioned under section 139(1).

Section 80ID Deduction in respect of profits and gains from business of hotels and convention centres in specified area[25].

(i) The deduction under this section is available to an assessee:

(a) engaged in the business of hotel [26] located in the specified area[27], if such hotel is constructed and starts functioning at any time during 1.4.2007 and 31.3.2010; or

(b) engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during 1.4.2007 and 31.3.2010.

(ii) The conditions regarding formation and acquisition of second hand assets are the same as discussed in 80IB. Further, the eligible business is not formed by the transfer to a new business of a building previously used as a hotel or a convention centre, as the case may be;

(iii) Amount of deduction shall be 100% of the profits or gains from such activities, deductible for a period of five consecutive A.Y. beginning with the A.Y. relevant to the P.Y. in which such business commences.

Section 80IE - Special provisions in respect of certain undertakings in North-Eastern States.

(i) The deduction under this section is available to any undertaking which has, during 1.4.2007 to 31.3.2012 begins, in any of the North-Eastern States:

(a) To manufacture or produce any eligible article or thing;

(b) To undertake substantial expansion[28] to manufacture or produce any eligible article or thing;

(c) To carry on any eligible business.

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[25] Inserted by Finance Act 2007 w.e.f. AY 2008-09

[26] Hotel means a hotel of two-star, three-star or four-star category as classified by the Central Government;

[27] Specified area means the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad

[28] Substantial expansion means increase in the investment in the plant and machinery by at least twenty-five per cent of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken

(ii) The conditions regarding formation and acquisition of second hand assets are the same as discussed in 80IB.

(iii) Amount of deduction shall be 100% of the profits or gains from such activities, deductible for a period of ten consecutive A.Y. beginning with the A.Y. relevant to the P.Y. in which such business commences. The aggregate period of deduction under this section or 80IB or 80IC or 10C shall not exceed 10 assessment years.

Addendum to Deductions

Section 10AA – Exemption of income of a SEZ

(i) This section applies to any I.U. which fulfils the following conditions :

(a) it has begun or begins to manufacture or produce articles or things or provide services during the previous year commencing on or after the 1.4.2005 in any Special Economic Zone;

(b) The Industrial Undertaking should not be formed by splitting up or reconstruction of a business already in existence. However, this provision shall not apply where re-establishment, re-construction or revival of business of an Industrial Undertaking as referred to and in accordance with section 33B.

(c) It is not formed by the transfer to a new business, of machinery or plant, previously used for any purpose.

- Where any machinery or plant or any part thereof previously used for any purpose, is transferred to a new business and the total value of the plant or machinery or part thereof, so transferred does not exceed 20% of the total value of the Machinery or Plant used in the business, then, it shall be deemed as if the Industrial Undertaking is not formed by transfer of Plant and Machinery used for any other purpose.
- Any plant or Machinery which was used outside India by any person other than the assessee, shall not be regarded as plant or Machinery previously used for any purpose, if the following conditions are fulfilled:

  (a) Such Plant or Machinery was not used in India at any time previous to the date of the installation by the assessee.

  (b) Such Plant or Machinery is imported into India from any Country outside India;

  (c) No deduction on account of depreciation in respect of such plant and machinery has been allowed or allowable under I.T. Act for any period prior to the date of installation by the assessee.

Section 10 B - Special Provisions for 100% EOU

(x) The return of income should have been furnished on or before the due date prescribed in section 139(1) for filing of return of income.

Section 115 R - Tax on distributed income to unit holders.

(i) This section overrides all other provisions of the Act. A Mutual Fund or a specified company as case may be shall pay an additional income-tax (being called the Income Distribution Tax) on the income distributed to its unit holders by such a Mutual Fund or specified company, at the rate of:
   (a) 25% on income distributed by a money market mutual fund or a liquid fund;
   (b) 12.5% on income distributed to any person being an individual or a Hindu undivided family by a fund other than a money market mutual fund or a liquid fund; and
   (c) 20% on income distributed to any other person by a fund other than a money market mutual fund or a liquid fund.

Section 10(23FB)[29] - Income of VCC or VCF

Any income of a VCC or VCF from investment in a VCU shall be fully exempt from tax.

<u>Venture Capital Company</u>
Such company, which has been granted a certificate of registration under the SEBI regulations made thereunder and satisfies such other conditions that, may be prescribed;

<u>Venture Capital Fund</u>
Any fund, operating under a trust deed registered under the provisions of the Registration Act, 1908 or operating as a venture capital scheme made by UTI and which has been granted a certificate of registration under the SEBI regulations made thereunder;

<u>Venture Capital Undertaking</u>
VCU means a venture capital undertaking referred to in the SEBI (Venture Capital Funds) Regulations, 1996 and notified as such by the Board. As per the SEBI regulations a VCU means a domestic company:
(i) whose shares are not listed on a recognized stock exchange in India;
(ii) which is engaged in the business of providing services, production or manufacture of articles or things,or does not include such activities which are specified in the negative list by the Board.

The VCU should not be listed either at the time of making investment by VCC or at any time thereafter.

[29] Applicable w.e.f A.Y. 2001-02.

Non Residents

Section 9

Clarification

It is clarified that, where income being Interest, Royalty and FTS is deemed to accrue or arise in India, such income shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

MAT

Determination of Book Profits

Explanation to section 115JB(2) lays down the method of computation of book profit.
Book profit means the net profit (subject to adjustments as below) as shown in the P.L. Account for the relevant P.Y. prepared according to the provisions of Part II and III of the Schedule VI of the Companies Act.

Net Profit shall be increased by the following, if these have been debited to the P.L. Account :

(vi) Expenditure relatable to any income which is exempt under section 10 or section 11 or section 12 of the Income Tax Act[30].

Thereafter the following amounts shall be reduced from the net profit to arrive at the book profit :

(ii) Income which is exempt under section 10 or section 11 or section 12 of the Income Tax Act, and is credited to the P.L. Account. However, the exemption under section 10(38), for LTCG income on shares which have suffered STT, shall not be available income.

[30] Amended by Finance Act 2007 w.e.f. AY 2008-09

Set off

Section 72A - In case of Amalgamation

(i) The provision of section shall apply in case of amalgamation :

(a) Of a company, owning an industrial undertaking[31] or ship or hotel, with another Company; or

(b) An amalgamation of a banking company with a specified bank; or

(c) One or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business,

Section 72AB - Carry forward and set off of accumulated loss and unabsorbed depreciation allowance in business reorganisation of co-operative banks[32]

In case of Amalgamation

(i) The assessee, being a successor co-operative bank, shall, in a case where the amalgamation has taken place during the previous year, be allowed to set off the accumulated business loss (other than speculative loss) and the unabsorbed depreciation, if any, of the predecessor co-operative bank as if the amalgamation had not taken place, and all the other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

(ii) The accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the successor co-operative bank unless the following conditions are fulfilled by the predecessor co-operative bank and the successor co-operative bank.

(iii) Conditions to be fulfilled by the predecessor co-operative bank

(a) It has been engaged in the business of banking for three or more years;

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

(iv) Conditions to be fulfilled by the successor co-operative bank.

(a) It holds continuously for a minimum period of five years from the date of business reorganization at least three-fourths of the book value of fixed assets of the predecessor co-operative bank acquired in a scheme of business reorganization;

(b) It continues the business of the predecessor co-operative bank for a minimum period of five years from the date of business reorganization;

It fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor co-operative bank or to ensure that the business reorganisation is for genuine business purpose.

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[31] Industrial undertaking means any undertaking which is engaged in-
(i) the manufacture of processing of goods; or
(ii) the manufacture of computer software; or
(iii) the business of generation or distribution of electricity or any other form of power; or
(iv) the business of providing telecommunication services.

[32] Inserted by Finance Act 2007 w.e.f. AY 2008-09

In case of Demerger

(i) The amount of set-off of the accumulated loss and unabsorbed depreciation, if any, allowable to the assessee being a resulting co-operative bank shall be:

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

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

Common provisions

(i) The period commencing from the beginning of the previous year and ending on the date immediately preceding the date of business reorganisation, and the period commencing from the date of such business reorganisation and ending with the previous year shall be deemed to be two different previous years for the purposes of set off and carry forward of loss and allowance for depreciation.

(ii) In case where any of the conditions laid down are not complied with, the set-off of loss or allowance of depreciation made in any P.Y. to the successor co-operative bank shall be deemed to be the income of the successor co-operative bank chargeable to tax for the year in which the conditions are not complied with.

TDS

Section 200 - Duty of person deducting tax

Any person (including the employer paying tax on behalf of the employee u/s 192(1A)) deducting tax shall pay within the prescribed time, the sum so deducted to the credit of Central Government.

Any person (including the employer paying tax on behalf of the employee u/s 192(1A)) deducting tax, after paying the tax deducted to the credit of the Central Government, shall prepare quarterly statements for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver to NSDL such statement in Form 24Q / 26Q within 15 July / 15 October / 15 January / 15 June respectively.

If the deductor is an office of Government, or the deductor is a company, the deductor is a person required to get his accounts audited under section 44AB in the immediately preceding financial year or the number of deductees' records in a quarterly statement for any quarter of the immediately preceding financial year is equal to or more than fifty, the person responsible for deducting tax at source, and the principal officer in the case of a company shall deliver such quarterly statements on computer media.

Section 201 : Consequence of failure to deduct or pay tax

Where any person referred to in section 200, including the principal and the company of which he is the principal officer, is required to deduct tax under the provisions of this Chapter fails to do so or after deducting fails to pay the tax as required shall, without prejudice to any other consequences shall be deemed to be an assessee in default in respect of the tax.

However, where such person or the principal officer or the company proves to the satisfaction of the AO that there were good and sufficient reasons for the default, no penalty shall be charged for default in payment of tax u/s 221.

In addition, simple interest is required to be paid @ 1% every month or part of a month on the amount of such tax beginning from the date on which such tax was deductible to the date on which such tax is actually paid. This interest shall be paid before furnishing the quarterly statement for each quarter. [Section 201(1A)].

Section 206A - Quarterly return in respect of payment of interest to residents without TDS

(i) Any banking company or co-operative society or public company responsible for paying to a resident any income not exceeding Rs. 10,000 if the payer is a banking company or a co-operative society, and Rs. 5,000 in any other case, by way of interest (other than interest on securities), shall keep and maintain the particulars of such time deposits in Form No. 26QA and shall prepare quarterly returns for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver to the NSDL in form 27 QAA on or before the 31st July, the 31st October, the 31st January and the 30th June respectively, following the respective quarter of the financial year on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

(ii) If there is a failure to deliver the quarterly return, penalty of Rs. 100 is leviable for every day during which the default continues.

Section 193 - Interest on Securities

(ii) No tax shall be deducted from any interest payable on / to:

Any security of the Central Government or State Government. However, TDS would be effected on interest exceeding Rs. 10,000 payable on 8% Savings (Taxable) Bonds, 2003 during the financial year.

Section 194A - Interest other than "Interest on Securities

(iii) No tax shall be deducted from any interest payable on/to :

- (a) The amount paid or likely to be paid or credited during the financial year does not exceed Rs. 10,000, where the payer is a Bank or is a co-operative society engaged in carrying on the business of banking or on any deposit with post office under any scheme framed by the Central Government; and
- (b) Rs. 5,000 in any other case.

However, in case of under mentioned payments the limits of Rs. 10,000 / 5,000 shall be computed with reference to, the payments made by the branches of the respective payers:

- (a) On Time Deposits[33] with a Banking company;
- (b) On Time Deposits with a co-operative society engaged in carrying on the business of banking;
- (c) Deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction/purchase of house in India for residential purpose

[33] Time deposits mean deposits (excluding recurring deposits) repayable on the expiry of fixed periods.

Section 194C - Payment to Contractors and sub-contractors

(i) Any person responsible for paying any sum to any resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the contractee (Central/State Government, local authority, company, firm, corporation under any Act, or co-operative society, trust, society, university, individual, HUF etc.) shall, deduct tax either at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode whichever is earlier.

(iv) In case of an individual or a HUF, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed Rs. 40,00,000 or Rs. 10,00,000 respectively, during the financial year immediately preceding the financial year in which such sum is credited or paid, shall be liable to deduct tax.

However, no individual or a HUF shall effect TDS if the amount is credited or paid exclusively for personal purposes of such individual or any member of HUF.

Section 194 H - Commission or brokerage

(i) Any person who is responsible for paying to a resident any income exceeding Rs. 2,500 by way of commission (other than insurance commission referred to in section 194D) or brokerage, shall, at the time of giving credit or payment to the payee whichever is earlier, in any mode deduct tax at the rate of 10%.

(iv) TDS shall not made on any commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.

Section 194-I - Rent

(i) Any person who is responsible for paying to a resident any income exceeding Rs. 1,20,000 p.a. by way of rent, shall, at the time of giving credit or payment of such income to the payee, in any mode deduct tax at the rate of :

(a) 10% for the use of any machinery or plant or equipment;

(b) 15% for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings where the payee is an individual or a HUF; and

(c) 20% for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings where the payee is a person other than an individual or a HUF.

(iii) Rent means any payment, by whatever name called, under any lease, sublease, tenancy or any other agreement or arrangement for the use of (either separately or together) any, land or building (including factory building), land appurtenant to a building (including factory building), machinery, plant, equipment, furniture, fittings whether or not any or all of the above are owned by the payee.

Section 194J - Fees For professional or technical services

(i) Any person who is responsible for paying to a resident any sum by way of fees for professional or technical services or royalty or non-compete fees or exclusivity fees would be liable to deduct tax at source @ 10% at the time of giving credit, or actual payment whichever is earlier. Further according to circular no.714, dt.3.8.1995, where the advertising agency makes payment for professional services to a film artist, tax is to be deducted @ 10%.

TCS

(iv) Every person, who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest either in whole or in part in any parking lot or toll plaza or mine or quarry, to another person, other than a public sector company (being the licensee or lessee) for the use of such parking lot or toll plaza or mine or quarry for the purpose of business shall, at the time of debiting or at the time of receipt in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier of the amount payable by the licensee or lessee, collect from the licensee or lessee of any such licence, contract or lease, tax at the prescribed rates:

Nature of contract or licence or lease, etc.	**%age**
Parking lot	2
Toll plaza	2
Mining and quarrying (It shall not include mining and quarrying of mineral oil petroleum and natural gas).	2

(vi) Any person collecting tax, after paying the tax collected to the credit of the Central Government, shall prepare quarterly statements in from 2EQ for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year and deliver to NSDL such statement on or before 15 July / 15 October / 15 January / 30 April respectively.

If the Collector is an office of Government, or the Collector is a company, or the Collector is a person required to get his accounts audited under section 44AB in the immediately preceding financial year or the number of collectees' records in a quarterly statement for any quarter of the immediately preceding financial year is equal to or more than fifty, the person responsible for deducting tax at source, and the principal officer in the case of a company shall deliver such quarterly statements on computer media.

Search & Seizure

Section 292C - Presumption as to assets, books of account, etc

If any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132, it may, in any proceeding under this Act, be presumed:

(i) That such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) That the contents of such books of account and other documents are true; and

(iii) That the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Section 132B – Application of seized assets

(vi) According to section 132B(4), the government shall pay simple interest at the rate of 0.5% per month or part of a month on the excess of the money seized or the sale proceeds arising on the sale of assets seized, after adjusting the liability to the government. Such interest is payable from the expiry of 120 days from the date of execution of search warrant u/s 132 or requisition u/s. 132A to the date of completion of assessment under section 153A.

Section 153D

Assessment or reassessment of search cases shall not be made by an AO below the rank of JCIT without the previous approval of the JCIT.

Section 153B - Time-limit for completion of assessment

(i) This section overrides the provisions of section 153. The AO shall make an order of assessment or reassessment under section 153A within the following time period:

  (a) in respect of each assessment year falling within six assessment years, within a period of 21 months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;

  Where during the course of the proceedings for assessment or reassessment of total income reference has been made to the TPO under section 92CA(1), the assessment or reassessment is to be completed within 33 months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed [34].

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of 21 months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.

Where during the course of the proceedings for assessment or reassessment of total income reference has been made to the TPO under section 92CA(1), the assessment or reassessment is to be completed within 33 months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed [35].

(c) In case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to above or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

Where during the course of the proceedings for assessment or reassessment of total income reference has been made to the TPO under section 92CA(1), the assessment or reassessment of total income on such other person shall be completed within 33 months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or 21 months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later [36].

[34] Inserted by Finance Act 2007 w.e.f AY 2008-09
[35] Inserted by Finance Act 2007 w.e.f AY 2008-09
[36] Inserted by Finance Act 2007 w.e.f AY 2008-09

Fringe Benefit Tax

Section 115WB - Fringe benefits

(i) Fringe benefits means any consideration for employment provided by way of:
   (a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employees);
   (b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members;
   (c) any contribution by the employer to an approved superannuation fund for employees; and
   (d) any specified security or sweat[37] equity shares allotted or transferred, directly or indirectly,
   (e) by the employer free of cost or at concessional rate to his employees (including former employee or employees).

(ii) The fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has, in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains) incurred any expense on, or made any payment for, the following purposes, namely:
sales promotion including publicity. However, the following expenditure on advertisement shall not be considered as expenditure on sales promotion including publicity:
being the expenditure on distribution of samples either free of cost or at concessional rate;and

Section 115WC - Value of fringe benefits

(i) The value of fringe benefits shall be the aggregate of the following:

Sl No.	**Expenditure on**	**Value of Fringe benefits**
2	Specified security and sweat equity	The fair market value of the specified security or sweat equity shares, on the date on which the option [38] vests with the employee as reduced by the amount actually paid by, or recovered from, the employee in respect of such security or shares.

[37] Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called

[38] Otion means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price

Rule 40C - Valuation of specified security or sweat equity share being a share in the company.

(i) The fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option vests with the employee, shall be determined in accordance with the provisions of sub-rule (ii) or sub-rule (iii).

(ii) In a case where, on the date of the vesting of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening[39] price and closing price[40] of the share on that date on the said stock exchange:

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

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

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

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

(iii) In a case where, on the date of vesting of the option, the share in the company is not listed on a recognized stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date[41].

Section 115WJ - Advance tax in respect of fringe benefits

(i) Every assessee who is liable to pay advance tax under section 115WI, shall on his own, pay advance tax on his current fringe benefits.

(ii) Dates for payment of Advance Tax on the current fringe benefits shall be payable by:

In case of Companies

Due date	Amount of advance tax
On or before the 15th June of PY	15% or more of such advance tax
On or before the 15th September of PY	30% or more of such advance tax
On or before the 15th December of PY	30% or more of such advance tax
On or before the 15th March of the PY	100% or the balance

[39] Opening price of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange. If the stock exchange quotes both buy and sell prices, the opening price shall be the sell price of the first settlement.

[40] Closing price of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange. If the stock exchange quotes both buy and sell prices, the closing price shall be the sell price of the last settlement.

[41] Specified date means the date of vesting of the option or any date earlier than the date of the vesting of the option, not being a date which is more than 180 days earlier than the date of the vesting.

In any other case

Due date	Amount of advance tax
On or before the 15th September of PY	30% or more of such advance tax
On or before the 15th December of PY	30% or more of such advance tax
On or before the 15th March of the PY	100% or the balance

(iii) Where an assessee, being a company, has failed to pay the advance tax payable by him on or before the due date for any instalment or where the advance tax paid by him is less than the amount payable by the due date, he shall be liable to pay simple interest calculated @:

(a) 1% per month, for three months on an amount by which the advance tax paid on or before the 15th June of the financial year falls short of fifteen per cent of the advance tax payable;

(b) 1% per month, for three months on an amount by which the advance tax paid on or before the 15th September of the financial year falls short of forty-five per cent of the advance tax payable;

(c) 1% per month, for three months on an amount by which the advance tax paid on or before the 15th December of the financial year falls short of seventy-five per cent of the advance tax payable; and

(d) 1% on an amount by which the advance tax paid on or before the 15th March of the financial year falls short of the hundred per cent of the advance tax payable.

(iv) If a non company assessee, has failed to pay the advance tax payable by him on or before the due date for any instalment or where the advance tax paid by him is less than the amount payable by the due date, he shall be liable to pay simple interest calculated at the rate of:

- 1% per month, for three months on an amount by which the advance tax paid on or before the 15th September of the financial year falls short of forty-five per cent of the advance tax payable;
- 1% per month, for three months on an amount by which the advance tax paid on or before the 15th December of the financial year falls short of seventy-five per cent of the advance tax payable; and
- 1% on an amount by which the advance tax paid on or before the 15th March of the financial year falls short of the hundred per cent of the advance tax payable.

(v) If an assessee has failed to pay the advance tax payable by him during a financial year or where the advance tax paid by him is less than 90% of the tax assessed, the assessee shall be liable to pay simple interest at the rate of 1% per month, for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of assessment of tax under section 115WE or section 115WF or section 115WG.

Section 115WKA - Recovery of fringe benefit tax by the employer from the employee

Notwithstanding anything contained in any agreement or scheme under which any specified security or sweat equity shares has been allotted or transferred, directly or indirectly, it shall be lawful for the employer to vary the agreement or scheme under which such specified security or sweat equity shares has been allotted or transferred so as to recover from the employee the fringe benefit tax to the extent to which such employer is liable to pay the fringe benefit tax in relation to the value of fringe benefits provided to the employee.

Settlement Commission

Section 245B – Composition of Settlement Commission

Settlement Commission constituted by the central Government consists of a Chairman and as many Vice-chairman and other members as the Central Government may consider desirable. Settlement commission is a part of the Department of Revenue, Ministry of Finance, Govt. of India. The chairman and other members are appointed by the central Government from amongst the persons of integrity and outstanding ability who have specialised knowledge and experience in issue relating to direct taxes and business accounts.

Section245C – Application for Settlement

(i) An application u/s 245C for settlement of a case can be made at any stage of a case, when proceeding is pending by way of assessment, reassessment, appeal or revision in respect of any year or years before the I.T. Authority/W.T. Authority in relation to years for which settlement is to be sought. An application for settlement cannot be made when the case is pending before ITAT because ITAT is not an I.T. authority.

(ii) Case means any proceeding for assessment under this Act, of any person in respect of any assessment year or assessment years which may be pending before an AO on the date on which an application is made. However, a proceeding for assessment or reassessment or recomputation under section 147 (proceeding shall be deemed to have commenced from the date on which a notice under section 148 is issued), or a proceeding for assessment or reassessment for any of the assessment years referred to section 153A or 153C (proceeding shall be deemed to have commenced on the date of initiation of the search under section 132 or requisition under section 132A) or a proceeding for making fresh assessment in pursuance of an order under section 254 /263/264 (proceeding shall be deemed to have commenced from the date on which the order under section 254 /263 /264 setting aside or cancelling an assessment was passed) setting aside or cancelling an assessment, shall not be a proceeding for assessment.

In respect of other assessments, the proceedings shall be deemed to have commenced from the 1st day of the assessment year and concluded on the date on which the assessment is made.

(iii) In case the appeal or revision is barred by time and the delay is not condoned by the authority, such appeal/revision is not admitted. In such case, the case cannot be deemed as proceeding pending.

When ITAT sets aside the case on one point and decides on another point, the case can be treated as proceeding pending before the AO or the first appellate authority, as the case may be.

(iv) Apart from the condition regarding pendency of any proceeding, the following conditions are also to be fulfilled for filing an application to Settlement Commission :

The assessee should have furnished I.T. return or W.T. Return, which is required to be filed under any provision of the I.T. Act W.T. Act;

The additional amount of income tax on the income disclosed in the application for all the years, in aggregate must exceed 3,00,000. No limit is provided when application is filed in connection with settlement of Wealth Tax liabilities;

Calculation of additional income tax :

(i) Where the income disclosed in the application relates to only one previous year:

  (a) If the applicant has not furnished a return in respect of the total income of that year, then, tax shall be calculated on the income disclosed in the application as if such income were the total income;

  (b) If the applicant has furnished a return in respect of the total income of that year, tax shall be calculated on the aggregate of the total income returned and the income disclosed in the application as if such aggregate were the total income.

Such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application.

Fee of Rs. 500 is deposited.

Procedure for Application

(i) An application for the settlement should be made in Form No. 34B verified by the assessee and four copies of the same should be filed with the Secretary of the Settlement Commission at New Delhi or at the Bench having jurisdiction. An assessee shall, on the date on which he makes an application to the Settlement Commission, also intimate the Assessing Officer in Form 34BA of having made such application to the said Commission. The following particulars are to be given in the application :

Full and true disclosure of income or wealth not disclosed before the AO.

The manner of deriving such income/wealth.

The additional income tax/wealth tax payable on such income/wealth.

Name and status of the assessee.

Assessment year.

Date of filing Returns.

Commissioner having jurisdiction.

Authorities before whom the proceedings like assessment, first appeal, revision, etc. are pending.

Particulars of the issues to be settled.

Complexities of the investigation involved.

Such other particulars as may be required in Form No.34B

(ii) If application is sought to be made for more than one assessment year, only one application has to be filed for all the years.

Section 245D – Procedure for receipt of application

(i) On receipt of an application, the Settlement Commission shall, within 7 days from the date of receipt of the application, issue a notice to the applicant requiring him to explain as to why the application made by him be allowed to be proceeded with, and on hearing the applicant, it shall, within a period of 14 days from the date of the application, by an order in writing, reject the application or allow the application to be proceeded with. If no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.]

(ii) A copy of the order shall be sent to the applicant and to the Commissioner.

(iii) The Settlement Commission shall in respect of an application which is allowed to be proceeded with, within thirty days from the date on which the application was made call for a report from the Commissioner, and the Commissioner shall furnish the report within a period of thirty days of the receipt of communication from the Settlement Commission.

Where a report of the Commissioner has been furnished within the period specified therein, the Settlement Commission may, on the basis of the report and within a period of fifteen days of the receipt of the report, by an order in writing, declare the application in question as invalid, and shall send the copy of such order to the applicant and the Commissioner. However, an application shall not be declared invalid unless an opportunity has been given to the applicant of being heard.

If the Commissioner has not furnished the report within the prescribed period, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(iv) After admission of the application, a copy of the "Annexure" to the settlement application together with a copy each of the statements and other documents accompanying such annexures are forwarded to the Commissioner and his report is called for by the Settlement Commission. If the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case. The Commissioner shall furnish the report within a period of ninety days of the receipt of communication from the Settlement Commission. However, if the Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order under without such report.

(v) On obtaining all the relevant records and report the Commission shall fix a date and place for hearing the parties in terms of Rule 9 of the Settlement Commission Rules. The notice is sent both to assessee and the Commissioner. The parties are entitled to plead additional facts in the course of hearing before the Settlement Commission. Such additional facts must be in writing signed and verified.

(vi) On examination of the records and the report of the Commissioner, if any, and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner.

(vii) The Settlement Commission shall pass an order within twelve months from the end of the month in which the application was made. The final order of the Settlement Commission is conclusive as to the matters stated therein and is binding on the assessee and the department.

(vi) According to Section 245-I an order made by the Settlement Commission will not be called into any question in any proceeding under the I.T. Act or under any other law.

The Supreme Court in **CIT v Express Newspapers**[42] has held, the order of the Commission are final and conclusive as to the matters stated therein, however, they are subject to constitutional remedies.

(vii) The order of the Settlement commission shall contain the following :

Terms of settlement;

Any demand by way of tax, penalty or interest payable by the assessee;

The manner in which the sum due under Settlement is to be paid;

Other matters to make the settlement effective.

(viii) No time limit for completion of assessment/reassessment shall apply to any final order passed by the Settlement Commission or to any order of assessment, reassessment or recomputation directed to be made by the AO in pursuance of any direction contained in the order of Settlement Commission.

(ix) If subsequently, it is found by the Settlement Commission that the order was obtained by fraud or misrepresentation of facts, the order becomes void and the proceedings shall revive from the stage at which the application was made proceeded with by the Settlement Commission. Department may complete such proceeding at any time before expiry of two years from the end of the financial year in which settlement becomes void.

Section 245F - Powers of Settlement Commission

(i) The Commission has all the powers that are available to an I.T. Authority under the I.T. Act. Settlement Commission shall have such exclusive jurisdiction from the date on which the application was made. However, where an application, is rejected or an application is not allowed to be proceeded with or as the case may be is declared invalid or an application is not allowed to be further proceeded with the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared invalid, or, not allowed to be further proceeded with, as the case may be.

[42] [1994] 206 ITR 443

(ii) After the admission of the application the assessee has to pay additional amount of income tax/wealth tax within 35 days of receipt of the copy of the order and has to furnish the proof of such payment to the Settlement Commission. The Settlement Commission is empowered to extend the time for good and sufficient reasons. It can also allow the payment in installments in genuine cases. However, interest @1.25% per month or part of a month is payable after the expiry of 35 days.

Section 245DD – Provisional attachment

If the Settlement Commission is of the opinion that for the purpose of protecting the interests of the revenue it is necessary to do so, it may, by order, attach any property belonging to the applicant. Every provisional attachment shall cease to have effect after the expiry of a period of 6 months.

Section 245HA - Abatement of proceeding before Settlement Commission

(i) If an application is rejected or an application is not allowed to be proceeded with or as the case may be is declared invalid or an application is not allowed to be further proceeded with the Settlement Commission, or in respect of any other application made, an order under section 245D(4) has not been passed within the specified time the proceedings before the Settlement Commission shall abate on the specified date[43].

(ii) If the proceeding before the Settlement Commission abates, the AO, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.

(iii) The AO, or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it.

(iv) For the purposes of the time-limit under sections 149, 153, 153B, 154, and 155 and for the purposes of payment of interest under section 244A, for making the assessment or reassessment, the period commencing on and from the date of the application to the Settlement Commission and ending with specified date43 shall be excluded. If the assessee is a firm, for the purposes of the time-limit for cancellation of registration of the firm under section 186(1), the period aforesaid shall, likewise, be excluded.

[43] Specified date means:
(i) in respect of an application rejected, the day on which the application was rejected;
(ii) in respect of an application declared invalid the last day of the month in which the application was declared invalid;
(iv) in respect of an application the period of limitation to pass the final order has expired, on the date on which the time of 12 months expired

Section 245HAA - Credit for tax paid in case of abatement of proceedings

If an application, is rejected or an application is not allowed to be proceeded with or as the case may be is declared invalid or an application is not allowed to be further proceeded with the Settlement Commission, in respect of such application shall have such exclusive jurisdiction upto the date on which the application is rejected, or, not allowed to be proceeded with, or, declared invalid, or, not allowed to be further proceeded with, as the case may be the AO shall allow the credit for the tax and interest paid on or before the date of making the application or during the pendency of the case before the Settlement Commission.

Section 245H – Power to grant immunity

(i) The Settlement Commission has been given the power to grant immunity to the applicant from prosecution as also either wholly or partly from imposition of penalty. The immunity can be granted from penalties and prosecution only with respect to A.Y.'s covered by the Settlement. The penalty can be waived/reduced. The Settlement Commission can grant immunity under I.T. Act and the W.T. Act.

(ii) The following conditions are to be satisfied to get immunity from penalty and prosecution :
   (a) The applicant has co-operated with the Settlement Commission in the proceeding before it.
   (b) The applicant has made full and true disclosure of his income and wealth and the manner of deriving the same.

(iii) Granting immunity is the discretion of the Settlement Commission and for this no separate application is required. Further, no immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution of any such offence have been instituted before the date of the receipt of the application u/s 245C.

(iv) In the following cases immunities granted can be withdrawn :
   (a) The taxes are not paid within the time allowed;
   (b) Failure to comply with any other condition, subject to which the immunity has been granted;
   (c) In the course of settlement proceedings, the person had concealed any particular material fact;
   (d) The person has given false evidence.

Section 245K – Bar on subsequent application

In the following cases a person cannot apply for settlement in relation to any other matter :

(i) Where an order of settlement passed u/s 245D(4), provides for imposition of a penalty on the person who has made the application for settlement, on the ground of concealment of particulars of his income; or

(ii) Where after the passing of an order of settlement, such person is convicted of any offence under the I.T. Act in relation to that case;

(iii) The case of such person was sent back to the Assessing Officer by the Settlement Commission on or before the 1st day of June, 2002

Where a person has made an application under section 245C and if such application has been allowed to be proceeded with, such person shall not be subsequently entitled to make an application under section 245C.

Charitable Trusts – Relevant provisions

In order to avail the exemption under section 11 and section 12, the person in receipt of the income shall make an application for registration of the trust or institution to the Commissioner and such trust or institution is registered under section 12AA.

Related amendment in section: 12AA

(i) Section 12A(a) requires a charitable or religious trust or institution to make an application for registration within one year from the date of creation of the trust or establishment of the institution. The Commissioner is empowered to condone the delay in making the application for registration if he is satisfied that there were sufficient reasons for such delay. In such cases, the exemption provisions of section 11 and 12 would apply from the date of creation of the trust or establishment of the institution.

Finance Act 2007 w.e.f. AY 2008-09 - the requirement of filing an application for registration under section 12A within one year of creation of the religious or charitable trust or institution has been removed. Therefore a relaxation has been made whereby the application can be filed at any time now.

Further, the power of the Commissioner to grant registration for past years, by condoning the delay in filing such application, has been removed.

(ii) Accordingly, in respect of applications filed on or after 1st June, 2007, the provisions of sections 11 and 12 shall apply from the assessment year relevant to the financial year in which the application is made i.e. the exemption would be available only with effect from the assessment year relevant to the previous year in which the application is filed. It would not be available in respect of any earlier assessment year.

Section 13 – Permitted Investments by Charitable Trusts

(i) Section 13 provides that the exemption provisions contained in sections 11 and 12 shall not apply to a charitable or religious trust or institution if any shares in a company, other than a Government company or a corporation established by or under a Central, State or Provincial Act.

(ii) This condition has now been relaxed to permit the charitable or religious trusts and institutions to invest in shares in a public sector company and shares prescribed as a form or mode of investment.

Section 17 – Perquisites - Deemed concession in the matter of rent

Under section 17(2)(ii), the value of any concession in the matter of rent arising to an employee in respect of any accommodation provided by his employer is considered as perquisite chargeable to tax in the hands of the employee. Rule 3(1) provides the basis of valuation of perquisites in respect of accommodation provided to an employee.

This method of perquisite valuation resulted in genuine hardship to employees availing facility of residential accommodation in remote areas, as the value of perquisite was determined as a percentage of salary of the employee, irrespective of the fair rental value of the property (which may be much lower than 10%/7.5%/20%/15% of salary in such cases).

Explanations to Section 17(s)(ii) have been inserted in to provide that the difference between the specified rate and the amount of rent recoverable/recovered from the employee would be deemed to be the concession in the matter of rent in case of accommodation owned by the employer.
Once there is a deemed concession, the provisions of Rule 3(1) would be applicable in computing the taxable perquisite.

Type of Accommodation	Deemed Concession in matter of Rent
Accommodation owned by the employer	
In cities having a population exceeding 4 lakh	10% of salary minus rent recoverable from the employee.
In other cities	7.5% of salary minus rent recoverable from the employee.
Accommodation taken on lease by the employer	Rent paid by the employer or 10% of salary, whichever is lower, minus rent recoverable from the employee.

This deeming provision is applicable to employees other than Government employees.
In case of furnished accommodation provided to such employees, the excess of hire charges paid or 10% p.a. of cost of furniture, as the case may be, over and above the charges paid or payable by the employee would be added to the value determined above for determining whether there is a concessionin the matter of rent.

Salary includes pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from one or more employers, as the case may be. However, it does not include the following, namely:

(1) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;

(2) employer's contribution to the provident fund account of the employee;
(3) allowances which are exempted from the payment of tax;
(4) value of the perquisites specified in section 17(2);
(5) any payment or expenditure specifically excluded under the proviso to section 17(2) i.e., medical expenditure/payment of medical insurance premium specified therein.

In case of Government employees, the excess of license fees determined by the employer as increased by the value of furniture and fixture over and above the rent recovered/recoverable from the employee and the charges paid or payable for furniture by the employee would be deemed to be the concession in the matter of rent.

The perquisite valuation Rules (Rule 3) has been amended vide notification no 271 dated 7 November 2007. As the amendment has been carried out after 31 October 2007, the same is not applicable for May 2008 exams. However, the amended would be applicable for November 2008 exams onward. In such circumstances the following provisions of Section 17(2)(ii) would be applicable instead of the above table:

Type of Accommodation	**Deemed Concession in matter of Rent**
Accommodation owned by the employer	
In cities having a population exceeding 25 lakh	12% of salary minus rent recoverable from the employee.
In cities having a population exceeding 10 lakh but not exceeding 25 lakh	15% of salary minus rent recoverable from the employee.
In other cities	7.5% of salary minus rent recoverable from the employee.
Accommodation taken on lease by the employer	Rent paid by the employer or 15% of salary, whichever is lower, minus rent recoverable from the employee.

Miscellaneous

Section 2(25A) – Definition of India

India to mean –

(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

(iv) any other specified maritime zone and the air space above its territory and territorial waters.

Section 10(10BC) - Exemption of compensation received on account of disaster

(i) This clause exempts any amount received or receivable as compensation by an individual or his legal heir on account of any disaster.

(ii) Such compensation should be granted by the Central Government or a State Government or a local authority.

(iii) The exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.

(iv) Disaster means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man made causes, or by accident or negligence. It should have the effect of causing -

(1) substantial loss of life or human suffering; or

(2) damage to, and destruction of, property; or

(3) damage to, or degradation of, environment.

It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

Tax rates

Resident woman (who is below 65 years at any time during the previous year)

Net income range	**Income tax rates**	**Surcharge**	**Education Cess**
Upto Rs. 1,45,000	Nil	Nil	Nil
Rs. 1,45,000 – 1,50,000	10% of (total income minus Rs. 1,45,000)	Nil	3% of income tax
Rs. 1,50,000 – 2,50,000	Rs. 500 + 20% of (total income minus Rs. 1,50,000)	Nil	3% of income tax
Rs. 2,50,000 – 10,00,000	Rs. 20,500 +30% of (total income minus Rs. 2,50,000)	Nil	3% of income tax
Above Rs. 10,00,000	Rs. 2,45,500 + 30% of (total income minus Rs. 10,00,000)	10% of income tax	3% of income tax and surcharge

Resident senior citizen (who is 65 years or more at any time during the previous year)

Net income range	**Income tax rates**	**Surcharge**	**Education Cess**
Upto Rs. 1,95,000	Nil	Nil	Nil
Rs. 1,95,000 – 2,50,000	Rs. 20% of (total income minus Rs. 1,95,000)	Nil	3% of income tax
Rs. 2,50,000 – 10,00,000	Rs. 11,000 +30% of (total income minus Rs. 2,50,000)	Nil	3% of income tax
Above Rs. 10,00,000	Rs. 2,36,000 + 30% of (total income minus Rs. 10,00,000)	10% of income tax	3% of income tax and surcharge

For any other Individual, every HUF/AOP/BOI/artificial juridical person

Net income range	**Income tax rates**	**Surcharge**	**Education Cess**
Upto Rs. 1,00,000	Nil	Nil	Nil
Rs. 1,10,000 – 1,50,000	10% of (total income minus Rs. 1,00,000)	Nil	3% of income tax
Rs. 1,50,000 – 2,50,000	Rs. 4,000 + 20% of (total income minus Rs. 1,50,000)	Nil	3% of income tax
Rs. 2,50,000 – 10,00,000	Rs. 24,000 +30% of (total income minus Rs. 2,50,000)	Nil	3% of income tax
Above Rs. 10,00,000	Rs. 2,49,000 + 30% of (total income minus Rs. 10,00,000)	10% of income tax	3% of income tax and surcharge

(i) Surcharge is 10% of income tax if net income of an individual, HUF/AOP/BOI, exceeds Rs. 10,00,000. If a person, having taxable income exceeding Rs. 10,00,000, is eligible for tax rebate under section 88E, then first calculate income tax on his income, from the tax so calculated deduct tax rebate under section 88E, 10% of the balancing amount is surcharge. In case of a artificial juridical person, surcharge is 10% of income tax (i.e. income tax minus rebate under section 88E), even if net income is less than Rs. 10,00,000.

(ii) In case of the aforesaid person having a net income exceeding Rs. 10,00,000, the net amount payable as income tax and surcharge shall not exceed the total amount payable as income tax on total income of Rs. 10,00,000 by more than the amount of income that exceeds Rs. 10,00,000.

(iii) Education cess is 3% of income tax (after rebate under section 88E) and surcharge.

Partnership firms

A firm is liable to tax @ 30%. If the total income > Rs. 1 crore, surcharge shall be levied @ 10% on income tax (i.e. income tax minus rebate under section 88E). Education cess is 3% of income tax and surcharge.

Companies

Company	Income tax rates	Surcharge	Education Cess
Domestic Company	30%	10% (If income > 1 crore)	3%
Foreign Company	40%	2.5% (If income > 1 crore)	3%

(i) Surcharge is applicable at the rate given above on income tax (i.e. income tax minus rebate under section 88E).

(ii) Education cess is 3% of income tax and surcharge.

Co-operative Societies

Upto Rs. 10,000	10%
Rs. 10,000 – Rs. 20,000	20%
Rs. 20,000 and above	30%

Surcharge is not applicable. Education cess is 3% of income tax.

Local authorities

Local authorities are taxable @ 30%. Surcharge is not applicable. Education cess is 3% of income tax.

Indirect Tax -

Excise

Rule 8 - Manner of payment of duty

(i) The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 6th day of the following month, if the duty is paid electronically through internet banking and by the 5th day of the following month, in any other case. However, in case of goods removed during the month of March, the duty shall be paid by the 31st day of March.

(ii) A SSI assessee, the duty on goods cleared during a calendar month shall be paid by the 16th day of the following month, if the duty is paid electronically through internet banking and by the 15th day of the following month, in any other case. However, in case of goods removed during the month of March, the duty shall be paid by the 31st day of March.

(iii) Duty liability shall be deemed to have been discharged only if the amount payable is credited to the account of the Central Government by the specified date. If the assessee deposits the duty by cheque, the date of presentation of the cheque in the bank for this purpose shall be deemed to be the date on which the duty has been paid subject to realization of that cheque. However, in case of an assessee, who has paid duty of Rs. 50 lakhs or more in cash, in the preceding financial year, shall deposit the duty electronically through internet banking.

For the purposes of this rule excise duty shall include the amount payable in terms of the CENVAT Credit Rules, 2004.

(iv) If the assessee fails to pay the amount of duty by due date, he shall be liable to pay the outstanding amount along with interest @ 13% on the outstanding amount, for the period starting with the first day after due date till the date of actual payment of the outstanding amount.

(v) If the assessee defaults in payment of duty beyond 30 days from the due date, the assessee shall, pay excise duty for each consignment at the time of removal, without utilizing the CENVAT credit till the date the assessee pays the outstanding amount including interest thereon.

(vi) Further, that till the duty outstanding and the interest thereon are not paid, it shall be deemed that the goods in question in respect of which the duty and interest are outstanding, have been cleared without payment of duty. Accordingly the consequences and the penalties as provided in these rules for non payment of duty shall apply where such duty and interest are not paid within a period of one month from the due date. For the purpose the provisions of section 11 of the Act shall be applicable for recovery.

Section 5B - Non-reversal of CENVAT credit

(i) Where an assessee has paid duty of excise on a final product and has been allowed CENVAT of corresponding inputs, capital goods or services, but subsequently the process of making the said product is held by the court as not chargeable to excise duty, the Central Government may, by notification, order for non-reversal of such credit allowed to the assessee subject to such conditions as may be specified in the said notification.

(ii) The order for non-reversal of credit shall not apply where an assessee has preferred a claim for refund of excise duty paid by him.

(iii) The Central Government may also specify in the notification referred to above for non-reversal of credit, if any, taken by the buyer of the said product.

CENVAT CREDIT RULES

Rule 3 - CENVAT credit

(ii) Following duties paid on inputs are eligible for CENVAT credit:

The Secondary and Higher Education Cess on excisable goods;
To be utilised only towards payment of Secondary and Higher Education Cess on excisable goods or service tax. Further, if the goods are imported, corresponding Secondary and Higher Education on CVD paid is also eligible for credit but again shall be utilised only towards payment of Secondary and Higher Education Cess on excisable goods or service tax.

The Secondary and Higher Education Cess on taxable services;
To be utilised only towards payment of the Secondary and Higher Education Cess on taxable services or on excisable goods.

(ix) If the value of any, input or capital goods before being put to use, on which CENVAT Credit has been taken is written off fully or where any provision to write off fully has been made in the books of account, then the manufacturer shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

However, if the said input or capital goods is subsequently used in the manufacture of final products, the manufacturer shall be entitled to take the credit of the amount equivalent to the CENVAT Credit paid earlier subject to the other provisions of these rules [sub rule 5B].

(x) Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the CER, the CENVAT credit taken on the inputs used in the manufacture or production of said goods shall be reversed [sub rule 5C].
CBEC[44] had earlier clarified that, CENVAT credit of the excise duty paid on inputs is not permissible where the excise duty on such finished goods has been remitted due to damage or destruction etc.

[44] Circular no. 800/33/2004-CX dated 1 October 2004

Other Rules

Rule 11 - Goods to be removed on invoice

(ii) The invoice shall be serially numbered and shall contain the registration number, address of the concerned Central Excise division, name of the consignee, description, classification, time and date of removal, mode of transport and vehicle registration number, rate of duty, quantity and value, of goods and the duty payable thereon. Before making use of the invoice book, the serial numbers of the same shall be intimated to the Superintendent of Central Excise having jurisdiction.

(v) The aforesaid provision shall equally apply to the first stage and second stage dealer.
Where the first /second stage dealer receiving imported goods under an invoice bearing an indication that the credit of CVD shall not be admissible, the said dealer shall on the resale of the said imported goods, indicate on the invoice issued by him that no credit of the CVD shall be admissible.

Rule 12 - Filing of return

(i) Every assessee being a manufacturer shall submit to the Superintendent a monthly return, of production and removal of goods and other relevant particulars, within ten days after the close of the month to which the return relates. However, where an assessee is availing of the exemption under a notification based on the value of clearances in a financial year or is a manufacturer of yarns or fabrics or readymade garments, shall file a quarterly return, within twenty days after the close of the quarter to which the return relates.

In case of an assessee, manufacturing pan masala, shall also file, along with the return, a statement summarizing:

(a) the purchase invoices for the month with the names and addresses of the suppliers of betel nut, tobacco and packing material along with the quantity of the said goods purchased; and

(b) the sales invoices for the month with the names and addresses of the buyers, description, quantity and value of goods sold by the assessee.
When the goods are not sold from the factory, the address of the premises to which the goods are dispatched from the factory shall also be provided.

The proper officer may on the basis of information contained in the return filed by the assessee, and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed. Every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer.

(ii) In addition to the monthly or quarterly return, every assessee shall submit to the Superintendent, an Annual Financial Information Statement for the preceding financial year to which the statement relates in duplicate in form ER 4 by 30th day of November of the succeeding year.

However, the Central Government has notified that following assessee shall be exempt from filing Annual Financial Information Statement:

- (i) Indian Ordnance Factories, Department of Defence Production, Ministry of Defence;
- (ii) Assessee who paid excise duty less than Rs. 100 lakhs from PLA during the financial year.

Rule 21 - Remission of duty

Where it is shown to the satisfaction of the Commissioner that goods have been lost or destroyed by natural causes or by unavoidable accident or are claimed by the manufacturer as unfit for consumption or marketing, at any time before removal, he may remit the duty payable on such goods, subject to such conditions as may be imposed by him.

Procedure for application to the commissioner[45]. The application should be accompanied with:

1. Copy of FIR filed within 24 hours of accident with range office alongwith panchnama drawn by excise authorities.
2. Copy of FIR filed with police alongwith police panchnama.
3. Details of precautions taken by the owner to safeguard and his intentions.
4. Worksheet giving details of particulars of loss, quantity of goods and duty involved.
5. Particulars of goods saved or salvaged and now disposed.
6. If the goods were insured, a declaration that the duty remitted has not been claimed from the Insurance company.
7. Proof that CENVAT on inputs have been reversed

Rule 21 has been amended to increase the power of remission given to various officers of central excise.

(a) The Superintendent is now empowered to remit the duty payable up to Rs.10,000. Earlier this limit was Rs.1,000.

(b) The Deputy/Assistant Commissioner is now empowered to remit the duty payable between Rs.10,000 to Rs.1,00,000. Earlier this range was Rs.1,000 to Rs.2,500.

(c) The Additional/Joint Commissioner is now empowered to remit the duty payable between Rs.1,00,000 to Rs.5,00,000. Earlier this range was Rs.2,500 to Rs.5,000

[45] CCE, Ahmedabad III Trade Notice No. 36/2005 dt 15/4/05 – 2005 [183] ELT T22

Rule 25 - Confiscation and penalty

Subject to the provisions of section 11 AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer engages in the following acts then, the involved goods shall be liable to confiscation. The producer or manufacturer or registered person of the warehouse or a registered dealer, shall be liable to a penalty upto 100% of the excise duty on such goods or Rs. 2,000 whichever is greater.

(a) removes any excisable goods in contravention of any of the provisions of these rules or the notifications issued under these rules; or
(b) does not account for any excisable goods produced or manufactured or stored by him; or
(c) engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate; or
(d) contravenes any of the provisions of these rules or the notifications issued under these rules with intent to evade payment of duty;

Rule 26 – Penalty for certain offences

Any person who acquires possession of, or in any way is concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing excisable goods which he knows are liable to confiscation shall be liable to a penalty equal to 100% of duty or Rs. 2,000 whichever is greater.

Any person, who issues:

(a) an excise duty invoice without delivery of the goods specified therein or abets in making such invoice; or
(b) any other document or abets in making such document, on the basis of which the user of said invoice or document is likely to take or has taken any ineligible benefit under the Act or the rules made thereunder like claiming of CENVAT credit or refund, shall be liable to a penalty not exceeding the amount of such benefit or Rs. 5,000, whichever is greater”.

Section 11A - Recovery of duties not levied / not paid / short-levied / short-paid / erroneously refunded

(vi) Relevant date for section 11A means:

In case where the duty becomes refundable due to a judgment, the date of such judgment.

Advance Ruling

Section 23C - Application for advance ruling

determination of the liability to pay duties of excise on any goods under this Act.

Section 23A – Definitions

(ii) applicant means persons as mentioned hereunder who makes application for advance ruling:

(a) Persons as mentioned hereunder who or which, as the case may be, proposes to undertake any business activity in India
(b) a non-resident setting up a joint venture[46] in India in collaboration with a non-resident or a resident; or
(c) a resident setting up a joint venture in India in collaboration with a non-resident; or
(d) a wholly owned subsidiary Indian company, of which the holding company is a foreign company;
(e) a joint venture in India; or
(f) a resident falling within any such class or category of persons, as the Central Government may, by notification in the Official Gazette, specify in this behalf,

Section 35E - Powers of CBEC or Commissioner to pass certain orders

(iii) The CCC or the Commissioner, shall make order within a period of 3 months from the date of communication of the decision or order of the adjudicating authority.

(iv) The Commissioner or the other officer as the case may be, shall make an application to the Appellate Tribunal or the Commissioner (Appeals) within 3 months or 60 days respectively from the date of communication of the order of CCC or the Commissioner.

[46] Joint venture in India means a contractual arrangement whereby two or more persons undertake an economic activity which is subject to joint control and one or more of the participants or partners or equity holders is a non-resident having substantial interest in such arrangement.

Section 35F - PreDeposit of Duty

(i) Where an order pertains to any duty demanded[47] or penalty, then the person desirous of appealing, shall deposit with the adjudicating authority such amount.

(ii) However, Commissioner(A) / Appellate Tribunal on application is authorised, to waive such condition of pre-deposit, if it is satisfied that such a deposit would result in undue hardship. On receipt of a stay petition the Commissioner(A) / Appellate Tribunal shall, where it is possible to do so pass an order within 30 days from the date of filing of stay petition.

Penalty

Section 37(4) provides that if any manufacturer, producer or licensee of a warehouse contravenes any of the provisions stipulated therein, then such person, inter alia, will be liable to a penalty not exceeding duty leviable on such goods or Rs.2,000 whichever is higher.

Section 37(5) has also been amended to reduce the minimum penalty from Rs.10000 to Rs.2000 for possessing, transporting, removing, depositing, keeping, concealing, selling or purchasing any excisable goods which are liable to confiscation.

Settlement Commission

Section 31 - Definitions

(i) assessee means any person who is liable for payment of excise duty and includes any producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored;

(ii) *case means any proceeding under this Act or any other Act for the levy, assessment and collection of excise duty, pending before an adjudicating authority on the date on which an application is made. However, when any proceeding is referred back in any appeal or revision, as the case may be, by any court, Appellate Tribunal or any other authority, to the adjudicating authority for a fresh adjudication or decision, as the case may be, then such proceeding shall not be deemed to be a proceeding pending*.

Section 32E - Application for settlement of cases

(i) An assessee may, in respect of a case relating to him, make an application in quintuplicate along with a fee of Rs. 1,000, before adjudication, to the Settlement Commission. The application shall contain full and true disclosure of his duty liability which has not been disclosed before the CEO, the manner in which such liability has been derived, the additional amount of excise duty accepted to be payable by him and

[47] Duty Demanded shall include:
(i) amount determined under section 11D;
(ii) amount of erroneous CENVAT credit taken;
(iii) amount payable under rule 6 of CENVAT Credit Rules, 2004;
(iv) interest payable under the provisions of this Act or the rules made thereunder.

other particulars as prescribed including the particulars of such excisable goods in respect of which he admits short levy on account of misclassification, under-valuation, inapplicability of exemption notification or CENVAT credit but excluding the goods in respect of which no proper record has been maintained by the assessee in his daily stock register.

(ii) Where any excisable goods, books of account, other documents have been seized, the application shall be made not before the expiry of 180 days from the date of the seizure.

(iii) Persons authorised to sign the application are similar to the provision of section 140 of the I.T. Act.

(iv) An application for settlement shall be accepted only if the following conditions are satisfied:

(a) the applicant has filed returns showing production, clearance and central excise duty paid in the prescribed manner;

(b) a show cause notice for recovery of duty issued by the CEO has been received by the applicant;

(c) the additional amount of duty accepted by the applicant in his application exceeds Rs. 3 lakhs; and

(d) the applicant has paid the additional amount of excise duty accepted by him along with interest due under section 11AB;

(v) No application shall be made:

(a) Where a case is pending with the Appellate Tribunal or any Court;

(b) Where the settlement commissions order is sought for the interpretation of the classification of excisable goods under the CETA.

(vi) An application made, shall not be allowed to be withdrawn.

Section 32F - Procedure on receipt of an application under section 32E

(i) On receipt of an application the Settlement Commission shall, within 7 days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with. On receipt explanation from the applicant, the Settlement Commission, shall, within a period of 14 days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application. If the application is rejected the proceedings before the Settlement Commission shall abate on the date of rejection. A copy of every order, shall be sent to the applicant and to the Commissioner

(ii) If no notice has been issued or no order has been passed within the aforesaid time period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

(iii) Where an application is allowed or deemed to have been allowed to be proceeded, the Settlement Commission shall, within 7 days from the date of order, call for a report along with the relevant records from the Commissioner having jurisdiction. The Commissioner shall furnish the report within a period of 30 days of the receipt of communication from the Settlement Commissioner. If the Commissioner does not furnish the report within the aforesaid period of 30 days, the Settlement Commission shall proceed further in the matter without the report of the Commissioner.

(iv) Where a report of the Commissioner called for has been furnished within the period specified, the Settlement Commission may, after examination of such report, if it is of the opinion that any further enquiry or investigation in the matter is necessary, direct, the Commissioner (Investigation) within 15 days

of the receipt of the report, to make such further enquiry or investigation and furnish a report within a period of 90 days of the receipt of the communication from the Settlement Commission. If the Commissioner (Investigation) does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order without such report.

(v) *After examination of the records, the report of the Commissioner and the report of the Commissioner (Investigation) the Settlement Commission and after giving an opportunity to the applicant and to the Commissioner pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner and Commissioner (Investigation).*

(vi) *An order should be passed within 9 months from the last day of the month in which the application was made. If an order is not passed within the aforesaid period the settlement proceedings shall abate, and the adjudicating authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 32E had been made.*

(vii) *The order passed shall provide for the terms of settlement including any demand by way of duty, penalty or interest, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective. It shall also provide that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.*

(viii) *Where a settlement becomes void, the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission. The CEO having jurisdiction may, notwithstanding anything contained in any other provision of this Act, complete such proceedings at any time before the expiry of 2 years from the date of the receipt of communication that the settlement became void.*

(ix) *The amount of settlement ordered by the Settlement Commission shall not be less than the duty liability admitted by the applicant under section 32E.*

(x) *The duty, interest, fine and penalty payable pursuant the order is not paid by the assessee within 30 days of receipt of a copy of the order by him, the amount which remains unpaid, shall be recovered along with interest in accordance with the provisions of section 11.*

Section 320 - Bar on subsequent application for settlement in certain cases

Where an application of an assessee has been allowed to be proceeded with, such assessee shall not be entitled to apply for settlement in relation to any other matter. However, if the issue in the subsequent application is, but for the period of dispute and amount, identical to the issue in respect of which the earlier application is pending before the Settlement Commission then a subsequent application may be made.

Section 3(1) - Chargeability

(i) Excise Duty to be called CENVAT shall be levied and collected on all excisable goods (excluding goods produced or manufactured in SEZ) which are produced or manufactured in India, at the rates set forth in First Schedule to Central Excise Tariff Act.

In addition to this special excise duty shall be levied and collected on all excisable goods (excluding goods produced or manufactured in SEZ) specified in the Second Schedule to CETA at the rates set forth in the said Second Schedule.

(ii) In case of excisable goods which are produced or manufactured by 100% EOU and are brought to any other place in India, excise duty to be levied and collected shall be an amount equal to the aggregate of Customs Duty which would be leviable under the Customs Act, on like goods produced or manufactured outside India if imported into India. Where Customs Duty is chargeable by reference to the value of goods, the value shall be determined as per Customs Act. If the Customs Duty is leviable at different rates, then highest rate of duty shall be considered.

The provision has been amended to delete the applicability to FTZ.

Customs

Section 135 - Evasion of duty or prohibitions and imprisonment thereof

(i) A person shall be subject to imprisonment if the person -

- *(a) in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or*
- *(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or*
- *(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or*
- *(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods;*

The punishment may extend to 7 years alongwith fine in the following cases

- *(i) an offence relating to any goods the market price of which exceeds one crore of rupees; or*
- *(ii) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or*
- *(iii) such categories of prohibited goods as the Central Government may, by notify; or*
- *(iv) fraudulently availing of or attempting to avail of drawback or any exemption from duty, if the*
- *(v) amount of drawback or exemption from duty exceeds thirty lakh of rupees.*

In any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

Section 75A - Interest on Drawback

(i) Where any drawback payable is not paid within a period of 1 month from the date of filing a claim for payment of such drawback, interest @ 8% in addition to the amount of drawback shall be payable. Interest shall be payable from the date after expiry of 1 month till the date of payment of such drawback.

(ii) Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under this Act or the rules made thereunder, the claimant shall, within a period of 2 months from the date of demand, pay interest @ 13% and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback.

Section 129 - President, Vice-President and members of CESTAT prohibited from appearing/acting/pleading before the CESTAT when no longer in office

President, Vice-President or other Member of the Customs, Excise and Service Tax Appellate Tribunal are debarred from appearing, acting or pleading before the said Tribunal on ceasing to hold office.

Additional Customs Duty (CVD)

The Central Government has exempted[48] the goods falling within the First Schedule to the CTA, when imported into India for subsequent sale, from the whole of this CVD. The exemption shall be available if the following conditions are fulfilled:

(a) the importer of the said goods shall pay all duties, including the said additional duty of customs leviable thereon, as applicable, at the time of importation of the goods;
(b) the importer, while issuing the invoice for sale of the said goods, shall specifically indicate in the invoice that in respect of the goods covered therein, no credit of the CVD leviable under section 3(5) of the CTA shall be admissible;
(c) the importer shall file a claim for refund of the said additional duty of customs paid on the imported goods with the jurisdictional customs officer;
(d) the importer shall pay on sale of the said goods, appropriate sales tax or value added tax, as the case may be;
(e) the importer shall, inter alia, provide copies of the following documents alongwith the refund claim:
    (a) document evidencing payment of the said additional duty;
    (b) invoices of sale of the imported goods in respect of which refund of the said additional duty is claimed;
    (c) documents evidencing payment of appropriate sales tax or value added tax, as the case may be, by the importer, on sale of such imported goods.

Valuation

(i) For the purposes of the CTA, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods. The price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation, or as the case may be, for export from India for delivery at the time and place of exportation, where the buyer and seller of the goods are not related and price is the sole consideration for the sale subject to such other conditions as may be specified in the valuation rules.

Such price shall be calculated with reference to the rate of exchange[49] as in force on the date on which a bill of entry is presented, or a shipping bill of export is presented.

(ii) Such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the valuation rules.

[48] Notification No. 102/2007-Customs dated 14th September, 2007

[49] Rate of exchange means the rate of exchange determined by the Board, or ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency.

(iii) Section 14(2) empowers the CBEC may, by notification fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods. Where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

Valuation Rules

Rule 1

These Rules apply to imported goods where Customs Duty is levied by reference to their value.

(i) This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 9.

(ii) The declared value shall be accepted where the proper officer is satisfied about the truth and accuracy of the declared value after the said enquiry in consultation with the importers.

(iii) The proper officer shall have the powers to raise doubts on the truth or accuracy of the declared value based on certain reasons which may include:

(a) the significantly higher value at which identical or similar goods imported at or about the same time in comparable quantities in a comparable commercial transaction were assessed;

(b) the sale involves an abnormal discount or abnormal reduction from the ordinary competitive price;

(c) the sale involves special discounts limited to exclusive agents;

(d) the misdeclaration of goods in parameters such as description, quality, quantity, country of origin, year of manufacture or production;

(e) the non declaration of parameters such as brand, grade, specifications that have relevance to value;

(f) the fraudulent or manipulated documents.

Rule 2 - Basic Definitions -

(i) Goods of the same class or kind means imported goods that are within a group or range of imported goods produced by a particular industry or industrial sector and includes identical goods or similar goods.

(ii) Identical goods means imported goods -

(a) Which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods.

(b) Produced in the country in which the goods being valued were produced; and

(c) Produced by the same person who produced the goods, or, where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at reduced cost for use in connection with the production and sale for export of these imported goods;

(iii) Similar goods means imported goods -

(a) Which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and existence of trademark

(b) Produced in the country in which the goods being valued were produced; and

(c) Produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at reduced cost for use in connection with the production and sale for export of these imported goods;

(iv) Produced includes grown, manufactured and mined;

(v) Persons shall be deemed to be related only if -

(a) They are officers or directors of one another's business;

(b) They are legally recognised partners in business;

(c) They are employer and employee;

(d) Any person directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them;

(e) One of them directly or indirectly controls the other;

(f) Both of them are directly or indirectly controlled by a third person;

(g) Together they directly or indirectly control a third person; or

(h) They are members of the same family.

For this purpose person also includes legal person.

A sole agent or sole distributor shall be deemed to be related person, if they fall within the criteria of this sub-rule.

According to the interpretative notes, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Rule 3 - Determination of the method of valuation

(i) Subject to rule 12, the value of imported goods shall be the transaction value adjusted in accordance with provisions of rule 10.

The Interpretative notes provides that:

(a) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods. The payment need not necessarily take the form of a transfer of money. Payment may be made by way of letters of credit or negotiable instruments. Payment may be made directly or indirectly.

(b) *Activities undertaken by the buyer on his own account, other than those for which an adjustment is provided in rule 10, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods*

(c) *The value of imported goods shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable for the imported goods:*

(d) *Charges for construction, erection, assembly, maintenance or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;*

(e) *The cost of transport after importation;*

(f) *Duties and taxes in India.*

(g) *The price actually paid or payable refers to the price for the imported goods. Thus the flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.*

(ii) *The value of the imported goods shall be accepted subject to the following*

(i) *There are no restrictions as to the disposal, disposition or use of the goods by the buyer other than restrictions which :*

(a) *Are imposed or required by law or by the public authorities in India; or*

(b) *Limit the geographical area in which the goods may be resold; or*

(c) *Do not substantially affect the value of the goods.*

Example : A seller requires a buyer of automobiles not to sell or exhibit them prior to a fixed date which represents the beginning of a model year.

(ii) *The sale or price is not subject to some condition or consideration for which a value cannot be determined in respect of the goods being valued;*

(iii) *As per the Interpretative notes, conditions or considerations relating to the production or marketing of the imported goods shall not result in rejection of the transaction value*

(iv) *No part of the proceeds or any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Rule 10 of these Rules; and*

(v) *The buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (iii).*

(iii) *Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.*

As per the Interpretative notes it is not intended that there should be an examination of the circumstances in all cases where the buyer and the seller are related. Such examination will only be required where there are doubts about the acceptability of the price. Where the proper officer of customs has no doubts about the acceptability of the price, it should be accepted without requesting further information from the importer.

In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time -

(a) The transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India;

(b) The deductive value for identical goods or similar goods;

(c) The computed value for identical goods or similar goods;

However, that in applying the values used for comparison, due account shall be taken of demonstrated difference in commercial levels, quantity levels, adjustments in accordance with the provisions of Rule 10 and cost incurred by seller in sales in which he and the buyer are not related.

(v) If the value cannot be determined under this sub rule, the value shall be determined by proceeding sequentially through rule 4 to 9

Rule 10 - Cost and services

(i) In determining the transaction value, there shall be added to the price actually paid or payable for the imported goods -

The following cost and services, to the extent they are incurred by the buyer but are not included in the price actually paid or payable for the imported goods, namely :

A. Commissions and brokerage, except buying commissions;

(a) According to the interpretative notes, buying commissions means fees paid by an importer to his agent for service of representing him abroad in the purchase of the goods being valued. In the case of Apollo tyres Ltd. v CC[50] held, charges paid to purchasing agents abroad are not includible.

(b) However, charges payable to canalizing agency are includible, irrespective of the fact that the sale might have been effected in High Seas.

B. The cost of containers which are treated as being one for customs purposes with the goods in question;

However, cost of durable and returnable containers are not to be added, provided the importer agrees to execute a bond to re-export the containers within six months.

C. The cost of packing whether for labour or materials;

According to the interpretative notes, activities undertaken by the buyer on his own, other than those provided above, are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore be added to the price actually paid or payable in determining the value of imported goods.

[50] 1997 (89) ELT 7 (SC)

(ii) *The value, apportioned as appropriate, of the following goods or services where supplied directly or indirectly by the buyer free of charge or at reduced costs for use in connection with the production and sale for export of imported goods, to the extent that such value has not been included in the price actually paid or payable, namely :*

A. materials, components, parts and similar items incorporated in the imported goods;

B. tools, dies, moulds and similar items used in the production of the imported goods;

(a) According to the interpretative notes, if the importer acquires the element from a seller not related to him at a given cost, the value of the element is that cost. If the element was produced by the importer or by a person related to him, its value would be the cost of producing it. If the element had been previously used by the importer, regardless of whether it had been acquired or produced by such importer, the original cost of acquisition or production would have to be adjusted downward to reflect its use in order to arrive at the value of the element.

(b) Once a value has been determined for the element it is necessary to apportion that value to the imported goods. For example, the value might be apportioned to the first shipment if the importer wishes to pay duty on entire value at one time. As another example, the importer may request that the value be apportioned over the number of units produced upto the time of first shipment. As a further example, he may request that the value be apportioned over the entire anticipated production where contracts or firm commitments exist for that production. However, the method of apportionment used will depend upon the documentation provided by the importer.

C. materials consumed in the production of the imported goods.

D. engineering, development, art work, design work and plans and sketches undertaken elsewhere than in India and necessary for the production of the imported goods;

(a) In the case of Andhra Petrochemicals Ltd. v CC[51] *held, pre-manufacturing research planning and designing are a part of a manufacturing activity itself and their cost would form cost of the machine produced.*

(b) According to the interpretative notes, for those elements supplied by the buyer which were purchased or leased by the buyer, the addition would be the cost of the purchase or the lease. No addition shall be made for those elements available in the public domain, other than the cost of obtaining copies of them.

E. royalties and license fees related to the imported goods that the buyer is required to pay, directly or indirectly, as a condition of the sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable.

Where the royalty, licence fee or any other payment for a process, whether patented or otherwise, is includible, such charges shall be added to the price actually paid or payable for the imported

[51] 1997 (90) ELT 275 (SC)

goods, notwithstanding the fact that such goods may be subjected to the said process after importation of such goods.

According to the interpretative notes, royalties/license fees may include among other things, payments in respect to patents, trademarks and copyrights. However, the charges for right to reproduce the imported goods in the country of importation shall not be added to the price actually paid or payable for the imported goods in determining the customs value.

In the case of UOI v Mahindra and Mahindra Ltd.[52] held, there is no nexus between know-how transfer fees and import of CKD packs, These are independent transactions.

In the case of CC v Essar Gujarat Ltd.[53] held, that payment of license fees and transfer of technology, without which the imported plant could not function, will have to added to the value of imported plant.

F. the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues, directly or indirectly, to the seller;

G. all other payments actually made or to be made as a condition of sale of the imported goods, by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller to the extent that such payments are not included in the price actually paid or payable.

(ii) The value of the imported goods shall be the value of such goods, for delivery at the time and place of importation and shall include -

A. The cost of transport of the imported goods to the place of importation. In case of goods imported by sea stuffed in a container for clearance at an Inland Container Depot or Container Freight Station, the cost of freight incurred in the movement of container from the port of entry to the Inland Container Depot or Container freight Station shall not be included in the cost of transport.

The cost of transport of the imported goods includes the ship demurrage charges on charted vessels, lighterage or barge charges.

In case the goods are imported by air and the said cost is ascertainable, such cost shall not exceed 20% of FOB value of goods.

B. Loading, unloading and handling charges associated with the delivery of the imported goods at the place of importation; and

[52] 1995 (76) ELT 481 (SC)
[53] 1996 (88) ELT 609

C. Cost of insurance; However,

Where the cost of transport referred above is not ascertainable, such cost shall be 20% of the FOB value of the goods;

A Loading and unloading charges shall be 1%, of the FOB value of the goods plus the cost of transport and the cost of insurance;

CBEC has clarified that MFCA (D.R.) Circular no. 80/2002 dated 29 Nov. 2002) stevedoring charges shall not be included in the AV of the imported goods, as they are adequately covered by 1% FOB value levied as above.

B. Where the cost of insurance is not ascertainable, such cost shall be 1.125% of FOB value of the goods

C. In the above cases where FOB value of the goods is not ascertainable the cost referred in clause (i) shall be 20% of the FOB value of the goods, plus cost of insurance, for clause (a) above, and the cost referred to in clause (iii) shall be 1.125% of the FOB value of the goods, plus the cost of transport, for clause (c) above.

According to the interpretative Rules, the value of imported goods shall not include the following charges or costs, provided they are distinguished from the price actually paid or payable for the imported goods :

(i) Charges for construction, erection, assembly, maintenance, or technical assistance, undertaken after importation on imported goods such as industrial plant, machinery or equipment;

(ii) The cost of transportation after importation;

(iii) Duties and taxes in India.

Moreover, the price actually paid or payable refers to the price for the imported goods. Thus, flow of dividends or other payments from the buyer to the seller that do not relate to the imported goods are not part of the customs value.

CBEC vide its circular No. 20/97 dt. 17.6.1997 has clarified, that interest on deferred payment, if shown separately in the Invoice cannot be added. However, interest can be added if there is evidence to indicate a nexus between the price of the goods and interest element, and where circumstances also indicate that this element has also influenced selling price.

Additions to the price actually paid or payable shall be made under this Rule on the basis of objective and quantifiable data.

According to the interpretative notes, where the objective and quantifiable data do not exist with regard to the additions required to be made under this Rule, transaction value cannot be determined under the provisions of Rule 4.

No addition shall be made to the price actually paid or payable in determining the value of the imported goods except as provided for this rule.

Rule 4 -Transaction value of identical goods

(i) *Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. However, such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act.*

(ii) *In applying this Rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.*

(iii) *Where no sale as referred above is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustment shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustments leads to an increase or decrease in the value.*

(iv) *Where the cost and charges referred to in sub-rule (2) of Rule 10, are included in the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.*

(v) *In applying this Rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.*

Rule 5 - Transaction value of similar goods

(i) *Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. However, such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act.*

(ii) *Other points (Provisions) of Rule 4 above equally apply.*

Rule 6 - Determination of value where value cannot be determined under rules 3, 4 and 5

If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8. However, at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.

Rule 7 - Deductive Value

(i) *Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions*

(a) either the commission usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in India of imported goods of the same class or kind;

According to the interpretative notes, general expenses includes direct and indirect cost of marketing the goods in question.

(b) the usual costs of transport and insurance and associated costs incurred within India;

(c) the customs duties and other taxes payable in India by reason of importation or sale of the goods.

According to the interpretative notes, any sale in India to a person who supplies directly or indirectly free of charge or at reduced cost for use in the connection with the production and sale for export of the imported goods any of the elements specified in Rule 9(1)(b), should not be taken into account in establishing the unit price.

(ii) If neither the imported goods nor identical or similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject to clause 1 above, be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of 90 days after such importation.

According to the interpretative notes, earliest date, shall be the date by which the sales of the imported goods or of identical or similar imported, goods are made in sufficient quantity to establish the unit price.

(iii) If neither the imported goods nor identical nor similar imported goods are sold in India, in the condition as imported, then, the value shall be based on the unit price at which the imported goods after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India.

In such determination, due allowance shall be made for the value added by processing and the deductions provided above.

According to the interpretative notes, goods of the same class or kind includes goods imported from the same country as the goods being valued as well as goods imported from other countries.

Rule 8 - Computed Value

Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:

(i) The cost or value of materials and fabrication or other processing employed in producing the imported goods;

(ii) An amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India;

(iii) The cost or value of all other expenses under Rule 10(2).

According to the interpretative notes, cost or value shall include the cost of elements specified in 10(1)(a)(ii) and 10(1)(a)(iii). It shall also include the value apportioned of any element specified in Rule 10(1)(b) which has been supplied directly or indirectly by the buyer for use in connection with the *production of the imported goods. The value of the elements specified in Rule 10(1)(b)(iv) which are undertaken in India shall be included only to the extent that such elements are charged to the producer.*

Rule 9 - Residual Rule or Fall Back Method

(i) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India.

The value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale.

(ii) No value shall be determined under the provisions of these Rules on basis of :

- *(a) The selling price in India of the goods produced in India;*
- *(b) A system which provides for the acceptance for customs purposes of the highest of the two alternative values;*
- *(c) The price of the goods in the domestic market of the country of exportation;*
- *(d) The price of the goods for the export to a country other than India;*
- *(e) Minimum customs value; or*
- *(f) Arbitrary of fictitious values.*

According to the interpretative notes, value of imported goods determined under the provisions of this rule should to the greatest extent possible, be based on previously determined customs value.

Rule 11 - Declaration by the Importer

The importer or his agent shall furnish -

(i) A declaration disclosing full and accurate details relating to the value of the imported goods; and

(ii) Any other statement, information or document including an invoice of the manufacturer or producer of the imported goods, where the goods are imported from or through a person other than the manufacturer or producer as considered necessary, by the proper officer of customs for determination of the value of imported goods under these Rules.

(iii) Nothing contained in these rules shall be construed as restricting or calling into question the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes.

(iv) The provisions of the Customs Act relating to confiscation, penalty and prosecution shall apply to cases where wrong declaration, information, statement or documents are furnished under these rules.

Rule 12 - Rejection of declared value

(i) *When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence. After receiving such further information, or in the absence of a response of such importer, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such imported goods cannot be determined under the provisions of Rule 3(1).*

(ii) *At the request of an importer, the proper officer, shall intimate the importer in writing the grounds for doubting the truth or accuracy of the value declared in relation to goods imported by such importer and provide a reasonable opportunity of being heard.*

Rule 11

In case of dispute between the importer and the proper officer of the Customs valuing the goods, the same shall be resolved consistent with the provisions of Section 14(1) of the Customs Act.

Valuation of Export Goods

Valuation shall be done under the provisions of Section 14(1). Normally, FOB value of goods will be the basis. If export sale contract is a CIF contract, post exportation element, will have to be deducted.

Export Valuation Rules

(i) *This rule by itself does not provide a method for determination of value, it provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value; where the declared value is rejected, the value shall be determined by proceeding sequentially in accordance with rules 4 to 6.*

(ii) *The declared value shall be accepted where the proper officer is satisfied about the truth or accuracy of the declared value after the said enquiry in consultation with the exporter.*

(iii) *The proper officer shall have the powers to raise doubts on the declared value based on certain reasons which may include:*

- *(a)* *the significant variation in value at which goods of like kind and quality exported at or about the same time in comparable quantities in a comparable commercial transaction were assessed.*
- *(b)* *the significantly higher value compared to the market value of goods of like kind and quality at the time of export.*
- *(c)* *the misdeclaration of goods in parameters such as description, quality, quantity, year of manufacture or production.*

Rule 2 – Definition

(i) *Goods of like kind and quality means export goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued, produced by the same person or a different person;*

(ii) *Transaction value means the value of export goods within the meaning of section 14(1).*

(iii) *Persons shall be deemed to be related only if:*

(a) *they are officers or directors of one another's businesses;*
(b) *they are legally recognised partners in business;*
(c) *they are employer and employee;*
(d) *any person directly or indirectly owns, controls or holds five per cent or more of the outstanding voting stock or shares of both of them;*
(e) *one of them directly or indirectly controls the other;*
(f) *both of them are directly or indirectly controlled by a third person;*
(g) *together they directly or indirectly control a third person; or*
(h) *they are members of the same family.*

Person also includes legal persons.

Persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other shall be deemed to be related for the purpose of these rules, if they fall within the criteria of this sub-rule.

Rule 3 - Determination of the method of valuation

(i) *Subject to Rule 8, the value of export goods shall be the transaction value.*

(ii) *The transaction value shall be accepted even where the buyer and seller are related, provided that the relationship has not influenced the price.*

(iii) *If the value cannot be determined as above, the value shall be determined by proceeding sequentially through Rules 4 to 6.*

Rule 4 - Determination of export value by comparison

(i) *The value of the export goods shall be based on the transaction value of goods of like kind and quality exported at or about the same time to other buyers in the same destination country of importation or in its absence another destination country of importation adjusted in accordance with the following provision.*

(ii) *In determining the value of export goods as above, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-*

(a) *difference in the dates of exportation,*
(b) *difference in commercial levels and quantity levels,*
(c) *difference in composition, quality and design between the goods to be assessed and the goods with which they are being compared,*
(d) *difference in domestic freight and insurance charges depending on the place of exportation.*

Rule 5 - Computed value method

If the value cannot be determined under rule 4, it shall be based on a computed value, which shall include the following:

(i) cost of production, manufacture or processing of export goods;

(ii) charges, if any, for the design or brand;

(iii) an amount towards profit.

Rule 6 - Residual method

Subject to the provisions of rule 3, where the value of the export goods cannot be determined under the provisions of rules 4 and 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules. However, the local market price of the export goods may not be the only basis for determining the value of export goods.

Rule 7 - Declaration by the exporter

The exporter shall furnish a declaration relating to the value of export goods in the manner specified.

Rule 8 - Rejection of declared value

(i) When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any export goods, he may ask the exporter of such goods to furnish further information including documents or other evidence. After receiving such further information, or in the absence of a response of such exporter, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, the transaction value shall be deemed to have not been determined in accordance with Rule 3(1).

(ii) At the request of an exporter, the proper officer shall intimate the exporter in writing the ground for doubting the truth or accuracy of the value declared in relation to the export goods by such exporter. He shall also provide a reasonable opportunity of being heard, before taking a final decision.

Secondary and Higher Education Cess

A seconday and higher education cess @ 1% has been imposed on imported goods. The proceeds from this cess will be utilized to finance secondary and higher education. It shall be chargeable on the aggregate duties of customs. However, following duties shall be excluded for computing this cess:–

(a) the additional duty leviable under section 3(5) of the Customs Tariff Act, 1975;

(b) the safeguard duty referred to in sections 8B and 8C of the Customs Tariff Act, 1975;

(c) the countervailing duty leviable under section 9 of the Customs Tariff Act, 1975;

(d) the anti-dumping duty leviable under section 9A of the Customs Tariff Act, 1975; and

(e) the education cess and

(f) secondary and higher education cess on imported goods.

The provisions of the Customs Act, 1962 and the rules and the regulations including those relating to refunds and exemptions from duties and imposition of penalty shall apply in relation to the levy and collection of the secondary and higher education cess on imported goods as they apply in relation to the levy and collection of the duties of customs on such goods

Time Limit for filing claim for refund

(i) In the case of any import made by any individual for his personal use or by Government or by any educational, research or charitable institution or hospital, within 1 year from the date of payment of duty/interest;

(ii) In any other case, within six months from the date of payment of duty/interest.
Where the duty becomes refundable as a consequence of judgment, the limitation of 1 year or 6 months, as the case may be, shall be computed from the date of such judgment, decree, order or direction.

(iii) Where duty has been paid in accordance with the provisions of Section 28B, application shall be made within 6 months from the date of the public notice to be issued by the A.C./D.C.

(iv) In case of exported goods which are re-imported, an application shall be made within 6 months from the date on which the proper officer, makes an order for the clearance of goods.

(v) Where any duty is paid provisionally, the period of limitation of one year or six months, as the case may be, shall be computed from the date of adjustment of duty after final assessment thereof.

(vi) The period of limitation of one year/six months as the case may be, shall not apply where duty or interest has been paid under protest.

(vii) Where application for refund is made by a person other than the importer, the period of limitation shall begin from the "date of purchase of goods" by such person.

Service Tax

General

(xiv) *Central Government has exempted[54] the following taxable services received by an exporter and used for export of goods, from the whole of the service tax*

Services under clause (zn), to any person by a port or any person authorised by the port for export of said goods;

Services under clause (zzl) to any person by other port for export of said goods;

Services under clause (zzp) to a customer, by a goods transport agency for transport of said goods from the inland container depot to the port of export;

Services under clause (zzzp) to any person in relation to support services of business or commerce for transport of said goods from the inland container depot to the port of export

However, the exemption would be available subject to the following conditions:

- *(i) 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;*
- *(ii) 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;*
- *(iii) the exporter claiming the exemption has actually paid the service tax on the specified services;*
- *(iv) the 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.*
- *(xv) Central Government has exempted[55] all taxable services 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.*
- *(xvi) Central Government has exempted[56] all taxable services provided by any person, for the official use of a foreign diplomatic mission or consular post in India, from whole of the service tax.*

Clause (n) - To any person by a tour operator

Services in relation to a tour. Tour operator means any person engaged in the business of planning, scheduling, organizing or arranging tours (which may include arrangements for accommodation, sightseeing or other similar services) by any mode of transport, and includes any person engaged in the business of operating tours in a tourist vehicle covered by a permit granted under the Motor Vehicles Act.

(i) Service tax will be chargeable on all domestic and inbound tourist services provided by a tour operator holding a tourist permit. Service tax will also be chargeable on journeys/tours undertaken by tourist taxis (which also hold tourist permits) within and outside the state where they have been registered as tourist vehicles.

[54] Notification No.40/2007-Service Tax dated 17 September 2007

[55] **Notification no. 34 /2007 dated 23 May 2007**

[56] **Notification no. 33 /2007 dated 23 May 2007**

(ii) *Taxable service provided by a tour operator shall be exempt from so much of the service tax leviable on such operator, as in excess of the amount of service tax calculated on 25% of the gross amount charged from any person by such operator for the services provided in relation to a tour, where the tour operator provides a package tour to any person and the bill issued for this purpose indicates that it is inclusive of charges for such a tour.*

Where the services provided are other than in relation to a package tour. The bill issued indicates that the amount charged in the bill is the gross amount charged for such a tour and that it is inclusive of charges for such a tour.

However, the exemption shall be available only if the following conditions are met:

(a) no credit of duty paid on inputs or capital goods or credit of service tax on inputs services has been taken under the provisions of the Cenvat Credit Rules; and

(b) such tour operator has not availed exemption for value of goods supplied under other exemption notification.

Clause (r) - To a client by a management consultant

Services provided in connection with the management of any organisation, to a client, by a management or business consultant in connection with the management of any organisation or business, in any manner.

(i) *Management or business consultant means any person who is engaged in providing any service, either directly or indirectly, in connection with the management of any organisation or business in any manner and includes any person who renders any advice, consultancy or technical assistance, in relation to financial management, human resources management, marketing management, production management, logistics management, procurement and management of information technology resources or other similar areas of management*.

Clause (o) - To any person by a rent-a-cab scheme operator

Services in relation to the renting of a cab[57].

CBEC has notified[58] that taxable service provided by a cab scheme operator shall be exempt from so much of the service tax leviable on such service, as in excess of the amount of service tax calculated on 40% of the gross amount charged from any person by such operator for the services provided in relation to renting of cab.

However, the exemption shall be available only if the following conditions are met:

(i) no credit of duty paid on inputs or capital goods or credit of service tax on inputs services has been taken under the provisions of the Cenvat Credit Rules; and

(ii) such rent a cab scheme operator has not availed exemption for value of goods supplied under other exemption notification.

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[57] Cab means a motorcab, or a maxicab, or any motor vehicle constructed or adapted to carry more than twelve passengers, excluding the driver, for hire or reward.
However, maxicab or motor vehicle which is rented for use by an educational body imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre, shall not be included within the meaning of cab.

[58] Notification 1/2006 dt 1 March 2006

Clause (m) - To a client by a mandap keeper

Services in relation to the use of Mandap in any manner including the facilities provided or to be provided to the client in relation to such use and also the services, if any, provided or to be provided as a caterer.

(i) Caterer means any person who supplies, either directly or indirectly, any food, edible preparations, alcoholic or non-alcoholic beverages or crockery and similar articles or accoutrements for any purpose or occasion;

(ii) Mandap means any immovable property as defined in section 3 of the Transfer of Property Act and includes any furniture, fixtures, light fittings and floor coverings therein let out for consideration for organizing any official, social or business function (social function includes marriage);

Similar amendment in Pandal and Shamiana services and Event Management services.

Clause (g) - To a client by a consulting engineer

Services in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineer but excluding the discipline of computer hardware engineering or computer software engineering.

Clause (zm) - To a customer by a banking company or a financial institution including a NBFC

Services to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services.

(i) Banking and other financial services means-

The following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely:

(a) financial leasing services[59] including equipment leasing and hire- purchase;
(b) merchant banking services;
(c) securities and foreign exchange (forex) broking;
(d) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services;
(e) advisory and other auxiliary financial services including investment and portfolio research and advice, on mergers and acquisitions and advice on corporate restructuring and strategy;
(f) provision and transfer of information and data processing and
(g) banker to an issue services. Banker to an issue means a bank included in the Second Schedule to the RBI carrying on the activities relating to an issue including acceptance of application, application money, allotment money and call money, refund of application money, payment of dividend and interest warrants;
(h) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts.

[59] financial leasing means a lease transaction where -
(i) contract for lease is entered into between two parties for leasing of a specific asset;
(ii) such contract is for use and occupation of the asset by the lessee;
(iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and
(iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment

Clause (k) - To a client by a manpower recruitment or supply agency

Services in relation to the recruitment or supply of manpower, temporarily or otherwise, in any manner. Manpower recruitment or supply agency means 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. *Recruitment or supply of manpower includes services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate.*

Clause (zzg) – To a customer for maintenance or repair

Services in relation to maintenance or repair.

(i) Management, maintenance or repair means any service provided by:
   - (a) any person under a contract or an agreement; or
   - (b) a manufacturer or any person authorised by him; In relation to:
   - (c) management of properties, whether immovable or not;
   - (d) maintenance or repair of properties, whether immovable or not; or
   - (e) maintenance or repair including reconditioning or restoration, or servicing of any goods (includes computer software), excluding a motor vehicle.

Clause (zzze) - To its members by any club or association in relation to provision of services, facilities or advantages for a subscription or any other amount

(iv) Central Government has notified[60] that services provided or to be provided, by a resident welfare association where the sole criterion for its membership is the residential status of a person in a residential complex or locality, to its members, shall be exempt. However, the total consideration received from an individual member by the said association for providing the said services does not exceed Rs. 3,000 per month.

Clause (zm) - To a customer by a banking company or a financial institution including a NBFC

(*viii)* *CBEC has clarified[61] that entry and exit load charges are not towards fund management service provided by the AMC but to meet the initial issue expense and other specified expenses, incurred by the mutual fund. It is accordingly clarified that "entry and exit load" charged by mutual fund would not attract service tax levy under the category of fund management service*.

Clause (zzzx) - To any person, by the telegraph authority in relation to telecommunication service

Services to any person, by the telegraph authority in relation to telecommunication service.

Telecommunication service means service of any description provided by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, radio, optical, visual or other electro-magnetic means or systems, including the related transfer or assignment of the

[60] Notification no 8/2007 dated 1 March 2007
[61] Circular No. 94/5/2007-Service Tax dated 15 May 2007

right to use capacity for such transmission, emission or reception by a person who has been granted a licence and includes:

(i) voice mail, data services, audio text services, video text services, radio paging;

(ii) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;

(iii) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;

(iv) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;

(v) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic callback, call answer, voice mail, voice menus and video conferencing;

(vi) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;

(vii) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(viii) communication through facsimile, pager, telegraph and telex

It does not include service provided by:

(i) any person in relation to on-line information and database access or retrieval or both;

(ii) a broadcasting agency or organisation in relation to broadcasting; and

(iii) any person in relation to internet telephony;

Clause (zzzy) - To any person, by any other person in relation to mining of mineral, oil or gas

Service to any person, by any other person in relation to mining of mineral, oil or gas.

Clause (zzzz) - To any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce

Services to any person, by any other person in relation to renting of immovable property for use in the course or furtherance of business or commerce.

Renting of immovable property includes renting, letting, leasing, licensing or other similar arrangements of immovable property for use in the course or furtherance of business or commerce but does not include:

(i) renting of immovable property by a religious body or to a religious body; or

(ii) renting of immovable property to an educational body, imparting skill or knowledge or lessons on any subject or field, other than a commercial training or coaching centre.

For use in the course or furtherance of business or commerce includes use of immovable property as factories, office buildings, warehouses, theatres, exhibition halls and multiple-use buildings.

An immovable property partly for use in the course or furtherance of business or commerce and partly for residential or any other purposes shall be deemed to be immovable property for use in the course or furtherance of business or commerce.

(iii) The Central Government has exempted[62] the property tax levied and collected by local bodies from service tax. 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:

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.

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*

Immovable property includes:

(i) building and part of a building, and the land appurtenant thereto;
(ii) land incidental to the use of such building or part of a building;
(iii) the common or shared areas and facilities relating thereto; and
(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate, but does not include -
 (a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;
 (b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;
 (c) land used for educational, sports, circus, entertainment and parking purposes; and
 (d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

[62] **Notification No. 24/2007 – Service Tax dated 22 May 2007**

Clause (zzzza) - To any person in relation to the execution of a works contract

Services to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Works contract means a contract wherein:

(i) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out:

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

(c) construction of a new residential complex or a part thereof; or

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning (EPC) projects.

(iii) The Central Government, has exempted[63], 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.

The Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007[64] provides:

This rule overrides Rule 2A of the valuation rules. The person liable to pay service tax in relation to works contract service shall have the option to pay 2% of the gross amount charged for the works contract instead of the prescribed rate.

The gross amount charged for the works contract shall not include VAT or sales tax, paid on transfer of property in goods involved in the execution of the said works contract. However, the following conditions have to be satisfied

(i) 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;

(ii) 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.

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[63] **Notification No. 25/2007 – Service Tax dated 22 May 2007**

[64] **Notification No. 32/2007-Service Tax dated 22 May 2007**

Clause (zzzzb) - To any person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services

Services to any person, by any other person in relation to development and supply of content for use in telecommunication services, advertising agency services and on-line information and database access or retrieval services.

Development and supply of content includes development and supply of mobile value added services, music, movie clips, ring tones, wall paper, mobile games, data, whether or not aggregated, information, news and animation films.

Clause (zzzzc) - To any person in relation to asset management including portfolio management and all forms of fund management

Services o any person, by any other person, except a 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;

Clause (zzzzd) - To any person, by any other person in relation to design services

Services to any person, by any other person in relation to design services, but does not include service provided by an interior decorator and a fashion designer in relation to fashion designing.

Design services includes services provided in relation to designing of furniture, consumer products, industrial products, packages, logos, graphics, websites and corporate identity designing and production of three dimensional models.

Clause (zzzm) - To any person in relation to sale of space or time for advertisement

Services to any person by any person, in relation to sale of space or time for advertisement, in any manner; but does not include sale of space for advertisement in print media[65] and sale of time slots by a broadcasting agency or organisation.

Sale of space or time for advertisement includes:

(i) providing space or time, as the case may be, for display, advertising, showcasing of any product or service in video programmes, television programmes or motion pictures or music albums, or on billboards, public places, buildings, conveyances, cell phones, automated teller machines, internet;

(ii) selling of time slots on radio or television by a person, other than a broadcasting agency or organisation; and

(iii) aerial advertising.

[65] print media" means newspaper and book, but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes

Valuation Rules

These rules may be called the Service Tax (Determination of Value) Rules, 2006

Rule 2A – Determination of value of services involved in the execution of a works contract

Subject to the provisions of section 67, the value of taxable service in relation to services involved in the execution of a works contract shall be determined by the service provider in the following manner:

(i) *Value of works contract service determined shall be equivalent to the gross amount charged for the works contract less the value of transfer of property in goods involved in the execution of the said works contract.*
  - *(a)* *gross amount charged for the works contract shall not include VAT or sales tax, on transfer of property in goods involved in the execution of the said works contract;*
  - *(b)* *value of works contract service shall include:*
    - *(i)* *labour charges for execution of the works;*
    - *(ii)* *amount paid to a sub-contractor for labour and services;*
    - *(iii)* *charges for planning, designing and architect's fees;*
    - *(iv)* *charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;*
    - *(v)* *cost of consumables such as water, electricity, fuel, used in the execution of the works contract;*
    - *(vi)* *cost of establishment of the contractor relatable to supply of labour and services;*
    - *(vii)* *other similar expenses relatable to supply of labour and services; and*
    - *(viii)* *profit earned by the service provider relatable to supply of labour and services.*

(ii) *If VAT or sales tax, has been paid on the actual value of transfer of property in goods involved in the execution of the works contract, then such value adopted for the purposes of payment of Value Added Tax or sales tax, as the case may be, shall be taken as the value of transfer of property in goods involved in the execution of the said works contract for determining the value of works contract service under clause (i)*.

Section 68 - Payment of service tax

(i) *Every person providing taxable service to any person shall pay service tax by way of TR – 6 challan by the 6th day of the month, if the duty is deposited electronically through internet banking; and 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 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, immediately following the quarter in which the payments are received, towards the value of taxable services.

In case 5th of the relevant month is public holiday, service tax may be paid on the next working day[66].

An assessee, who has paid service tax of Rs. 50,00,000 or above in the preceding financial year or has already paid service tax of Rs. 50,00,000 in the current financial year, shall deposit the service tax liable to be paid by him electronically, through internet banking[67].

(iv) *If any 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, 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 one 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 fifteen days from the date of such adjustment*.

Section 70 - Furnishing of Returns

Every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency and with such late fee not exceeding Rs. 2,000, for delayed furnishing of return, as may be prescribed.

Rule 5(2)

Where the assessee files his return for the first time, he shall furnish to the Superintendent, a list of all accounts maintained by the assessee in relation to service tax including memoranda received from his branch offices. All such records shall be preserved at least for a period of five years immediately after the financial year to which such records pertain.

Rule 7

Every assessee shall submit a half-yearly return[68] by 25th of the month following the particular half year, alongwith a copy of the Form TR-6, in triplicate for the months covered in the half-yearly return. In case 25th of the month is a public holiday, return may be filed on the next working day.

As per Rule 9(10) of the CCR the input service distributor, shall furnish a half yearly return, giving the details of credit received and distributed during the said half year to the Superintendent of Central Excise, by the last day of the month following the half year period.

SSP

Central Government, has exempted[69] fully, the taxable services whose aggregate value does not exceed Rs. 8 lakhs in any financial year. The condtions have to be satisfied:

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[66] Circl. No. 63/12/2003 – ST dt 14/10/03

[67] Notification No. 27/2006-ST dated 21.9.2006

[68] In Form 'ST-3' or 'ST-3A'

Miscellaneous

Question: Whether the person can get refund of service tax, which is charged, in bill when the bill has been cancelled subsequently?

Answer: The person can claim refund within one year from the date of payment of service tax.

Question: Whether the service tax paid to the Central Government is allowable as deduction from business income under Income-tax Act, 1961?

Answer: Service tax will be allowed as deduction from business income under Income-tax Act, 1961, provided the collections, if any, made in this regard are included in the business profits.

Question: Who is liable to pay service tax in case service is provided by a person other than Indian resident or who does not have any establishment in India ?

Answer: In this case the services receiver in India is liable to pay service tax.

Question: Whether the payment of service tax is to be made for the billed amount or for the value received?

Answer: The service tax for a particular period is payable on the value of taxable service received in that period and not on the gross amount billed to the client.

Question: Would services provided in India for the foreign client is liable for payment of service tax?

Answer: Yes, the tax is payable on all taxable services rendered in India, whether to an Indian or foreign client.

Question: Would the service provided abroad shall liable for payment of Service Tax?

Answer: No, the services rendered abroad shall not attract service tax as the levy covers only the services provided within India.

Question: When payment is made by a client or customer to an assessee after deducting his Income Tax liability under TDS provision, whether the Service Tax liability of the assessee is only towards the amount actually received from his client or customer or tax is to be paid on the amount of income tax deducted at source also?

Answer: The service tax is to be paid on the value of taxable services, which is charged by an assessee. Any income tax deducted at source is included in the charged amount. Therefore, Service Tax is to be paid on the amount of income tax deducted at source also.

Question: Is the amount for Service tax charged from the client compulsorily to be indicated separately in the Bills/ Invoices raised on him?

Answer: Yes, it is compulsory to separately indicate the amount of Service Tax charged in the Bills/Invoices raised on clients. It is also advisable for the service providers to separately bill the amount of Service Tax in the invoice/bill on the basis of taxable value of service rendered, especially so if he requires to avail the input credit scheme.

Question: Can you adjust the tax liability to be made by an assessee on his own in cases where Service Tax has been paid in excess?

Answer: Yes. As per Rule 6(3) where an assessee has paid to the credit of the Central Government service tax in respect to a taxable service, which is not so provided by him either wholly or partially for any reason, the assessee may adjust the excess service tax paid by him (calculated on a pro rata basis) against his service tax liability for the subsequent period, if the assessee has refunded the value of taxable service and the service tax

[69] Notification No. 6/2005-ST dated 1st March 2005

thereon to the person from whom it was received. In all other cases of excess payment, the refund claims have to be filed with the department.

Question: What is to be done where no services are provided for in half-year?

Answer: If no services are provided during a half year no Service Tax is payable; the assessee may file a Nil Return within the prescribed time limit.

Question: Is the Service Tax payable by the assessee even in cases where his clients do not pay the service rendered or pay only a part of the bill raised in this regard?

Answer: The Service Tax is required to be paid only in the value of the taxable service received in a particular month or quarter as the case may be and not on the gross amount billed to the client. However, in all such cases where the amount received is less than the gross amount charges/billed to the client, the /service Tax assessee are required to amend the bills either by rectifying the existing bill or by issuing a revised bill and by properly endorsing such charge in the billed amount. In case an assessee fails to do so, his liability to pay Service Tax shall be on the amount billed by him to the client for the services rendered.

Question: What is the procedure for claiming refund?

Answer: The following procedure for claiming refund should be followed:

(i) Submission of application in prescribed Form-R in triplicate to the jurisdictional AC.

(ii) Application should be filed within prescribed period, i.e. before expiry of one year from the relevant date.

(iii) Application should be accompanied by documentary evidence to establish that the amount claimed as refund is amount paid by him in excess of the service tax due and the incidence of such tax has not been passed on to any other person.

Question: Whether service tax is applicable on maintenance and repair services provided by persons other than authorized service centres of companies?

Answer: Maintenance or repair,means any service provided by any person under a maintenance contract or agreement or a manufacturer or any person authorized by him in relation to maintenance or repair or servicing of any goods or equipments, excluding motor vehicle. Therefore, service tax is applicable on maintenance and repair services provided by all such persons.

Question: If there is a total sub-contract of the service, whether sub-contractor is supposed to take out a registration and discharge the tax liability?

Answer: The sub-contractor need not take a registration under Service Tax. In all such cases, Service Tax is to be paid by main service provider.

Question: Whether Annual Maintenance Contracts (AMC) for maintenance of roads are excluded from Service Tax?

Answer: As roads are neither goods nor equipment, the AMC for roads would not be covered under Service Tax.

Question: Whether Service Tax on maintenance and repair would be charged in cases where during the guarantee period, the services are provided to the buyer of the goods while the payments for the same are received from the supplier of the goods?

Answer: Irrespective of the fact that the receiver of the service is different from the person making payments for such services, the Service Tax is leviable on the service provided towards maintenance and repair. Therefore, for the services during the warranty period by the dealer or any other authorized person, Service Tax would also be leviable on any amount received by such dealer or such other authorized person from manufacturer of such goods.

Question: Whether Finance Companies providing banking and financial services and having proprietary/partnership status are liable to Service Tax?

Answer: The Banking and Financial services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate is chargeable to Service Tax. The term body corporate means a private limited public limited company or a Government company. Such companies should be either a banking company or a financial institution or non-banking financial company to come under the tax net. In other words individuals proprietorship or partnership firms will not come under the tax net.

Question: Whether buying and selling of foreign exchange by the authorized dealers and money changers are under Service Tax net?

Answer: Only the service of "Foreign Exchange Broking" when provided by the foreign exchange brokers, authorized dealers and money changers has been brought under tax net.

Question: Whether Vaastu/Feng Shui Consultants come under the category of Interior Decorators?

Answer: Interior Decorator means any person engaged whether directly or indirectly, in the business by way of advice, consultancy, technical assistance or in any other manner services related to planning, design or be antification of spaces, whether man-made or otherwise. Since Vaastu/ Feng Shui Consultants are offering services by way of advice relating to planning and designing of spaces, they come under the category of Interior Decorators.

Question: Whether lending/hiring of Video/Sound Recording equipment come under Service Tax?

Answer: The lending/hiring of Video/Sound Recording equipment is in the nature of sub-contracts and because the Sub-contractors are not providing the services to the customer directly, they are not required to pay the Service Tax.

Question: Can Cinema theatres be treated as advertisement agencies as they project advertisement?

Answer: The Cinema theatres cannot be treated as advertisement agencies as they project advertisements only on behest of advertising agencies. Further it has already been clarified that the amount paid by advertising agency for space and time in getting the advertisement published in print media (i.e. newspapers, periodicals etc.), pr the electronic media (Doordarshan, Private T.V. Channels, AIR, Cinema theatres etc.) will not be includible in the value of taxable service for the purpose of levy of Service Tax.

Question: Whether storage of empty containers attracts levy of Service Tax?

Answer: The handling/ storage and warehousing of empty containers would be covered within the scope of storage and warehousing services and are liable for Service Tax.

Question: Whether service tax is liable on the amount collected as surcharge for delayed payment of telephone bills?

A : 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.

Question: 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?

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.

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)].

Question: Whether such ‘Express cargo service’ is covered under courier agency service [section 65(105)(f)]?

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 delivery.

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)].

Question: Whether services provided by angadia is liable to service tax under courier agency service [section 65(105)(f)]?

“Angadia” undertakes delivery of documents, goods or articles received from a customer to another person for a consideration.

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)].

Question: 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)].

Question: Whether services provided by such institutions in relation to recruitment of manpower are liable to service tax under ‘manpower recruitment or supply agency’ service ?

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.

Educational institutes such as IITs and IIMs fall within 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).

‘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” [section65(68)].

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.

Question: 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"?

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", and such hotels and restaurants are covered within the scope of "mandap keeper".

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.

Question: 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.

Question: Whether Prasar Bharati Corporation (Doordarshan and All India Radio) are liable to pay service tax under Broadcasting Service ?

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.

Question: 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 service tax as foreign exchange broking under 'banking and other financial services ?

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.

'Asset management and all other forms of fund management' are liable to service tax under 'banking and other financial service'.

Question: 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 ?

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.

Question: Whether services provided in relation to chit fund is leviable to service tax under "banking and other financial services" or not?

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".

Question: Whether services provided by the Management Committee within the port area for a consideration is liable to service tax under Port Service?

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.

Question: 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?

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.

Question: Whether servicing / repair of heavy vehicles like trucks by authorized service station is liable to service tax under section?

Service tax is liable on services provided by an authorised service station to a customer in relation to service, repair, reconditioning or restoration of motorcars, light motor vehicles or two-wheeled motor vehicles.

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.

Question: 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?

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.

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.

Where spare parts are used by a service station for servicing of vehicles, service 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.

Question: 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”.

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 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.

Question: Whether services provided in relation to handling / storage and warehousing of empty containers is liable to service tax under storage and warehousing service ?

Empty containers are covered within the meaning of “goods”. Thus, services provided in relation to storage and warehousing of empty containers is liable to service tax under storage and warehousing service.

Question: 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.

Question: Whether maintenance or repair of software is liable to service tax?

Since, maintenance or repair of any goods is liable to service tax, services provided in relation to maintenance or repair or servicing of computer software is liable to service tax under “management, maintenance or repair service.

Question: 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?

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.

Question: 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.

Services provided by a resident welfare association to its members under club or association service is exempted from service tax, 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 Rs. 3,000 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 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.

Question: 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?

Aim of the passenger is to travel from Mumbai to New 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. 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.

Question: 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.

Question: An international journey commences from an airport outside India and 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?

In this case, the journey being a single one and the aim of the passenger is not to travel from India to a place outside India, service tax is not leviable.

Question: 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. Service tax is leviable as long as the passenger embarks in India for an international journey, in any class other than economy class.

Question: 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.

Question: 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,?

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 to take CENVAT credit of duty paid on capital goods and service tax paid on input services.

Question: 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 (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.

Question: 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.

- **Following taxable services provided to UN or an international organisation are exempted from tax**:

The Telegraph authority, Insurer including reinsurers, Advertising agencies, Courier agencies, Air travel agents, Tour operators, Security agency.