

## Finance Act 2005

### Section 37 - Insertion of New Chapter Xii-h

---

After Chapter XIIG of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of April, 2006, namely:--

#### **CHAPTER XII-H**

##### **income-tax on fringe benefits**

###### A.-Meaning of certain expressions

###### 115W. Definitions:--

In this Chapter, unless the context otherwise requires,--

(a) "employer" means,-

(i) a company;

(ii) a firm;

(iii) an association of persons or a body of individuals, whether incorporated or not, but excluding any fund or trust or institution eligible for exemption under clause (23C) of section 10 or registered under section 12AA

(iv) a local authority; and

(v) every artificial juridical person, not falling within any of the preceding sub-clauses;

(b) "fringe benefit tax" or "tax" means the tax chargeable under section 115WA.

###### B.-Basis of charge

###### 115WA. Charge of fringe benefit tax:--

(1) In addition to the income-tax charged under this Act, there shall be charged for every assessment year commencing on or after the 1st day of April, 2006, additional income-tax (in this Act referred to as fringe benefit tax) in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year at the rate of thirty per cent. on the value of such fringe benefits.

(2) Notwithstanding that no income-tax is payable by an employer on his total income computed in accordance with the provisions of this Act, the tax on fringe benefits shall be payable by such employer.

###### 115WB. Fringe benefits:--

(1) For the purposes of this Chapter, "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 employee or employees):

(b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members; and

(c) any contribution by the employer to an approved superannuation fund for employees;

(2) 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:-

(A) entertainment;

(B) provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade but does not include -

(i) any expenditure on, or payment for, food or beverages provided by the employer to his employees in office or factory;

(ii) any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets;

(C) conference (other than fee for participation by the employees in any conference).

Explanation.- for the purposes of this clause. any expenditure on conveyance, tour and travel (including foreign travel). on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference:

(D) sales promotion including publicity:

Provided that any expenditure on advertisement -

(i) being the expenditure (including rental) on advertisement of any form in any print (including journals. catalogues or price lists) or electronic media or transport system;

(ii) being the expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition;

(iii) being the expenditure on sponsorship of any sports event or any other event organized by any Government agency or trade association or body;

(iv) being the expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court of tribunal:

(v) being the expenditure of advertisement by way of signs, art work, painting, banners, awnings, direct mail, electric spectaculars, kiosks, hoardings, bill boards or by way of such other medium of advertisement; and

(vi) being the expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above, shall not be considered as expenditure on sales promotion including publicity:

(E) employees' welfare.

Explanation.- For the purposes of this clause. any expenditure incurred or payment made to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employees' welfare;

(F) conveyance, tour and travel (including foreign travel);

(G) use of hotel, boarding and lodging facilities;

(H) repair, running (including fuel), maintenance of motorcars and the amount of depreciation thereon;

(I) repair, running (including fuel) and maintenance of aircrafts and the amount of depreciation thereon;

(J) use of telephone (including mobile phone) other than expenditure on leased telephone lines;

(K) maintenance of any accommodation in the nature of guest house other than accommodation used for training purposes;

(L) festival celebrations;

(M) use of health club and similar facilities;

(N) use of any other club facilities;

(O) gifts; and

(P) scholarships.

#### 115WC. Value of fringe benefits:--

(1) For the purpose of this Chapter, the value of fringe benefits shall be the aggregate of the following, namely:-

(a) cost at which the benefits referred to in clause (b) of sub-section (1) of section 115WB, is provided by the employer to the general public as reduced by the amount, if any, paid by, or recovered from, his employee or employees:

Provided that in a case where the expenses of the nature referred to in clause (b) of sub-section (1) of section 115WB are included in any other clause of sub-section (2) of the said section, the total expenses included under such other clause shall be reduced by the amount of expenditure referred to in the said clause (b) for computing the value of fringe benefit.

(b) actual amount of contribution referred to in clause (c) of subsection (1) of section 115WB;

(c) twenty per cent. of the expenses referred to in clauses (A) to (K) of sub-section (2) of section 115WB;

(d) fifty per cent. of the expenses referred to in clauses (L) to (P) of sub-section (2) of section 115WB.

(2) Notwithstanding anything contained in sub-section (1), -

(a) in the case of an employer engaged in the business of hotel, the value of fringe benefits for the purposes referred to in clause (B) of sub-section (2) of section 115WB shall be "five per cent." instead of "twenty per cent." referred to in clause (c) of sub-section (1);

(b) in the case of an employer engaged in the business of construction, the value of fringe benefits for the purposes referred to in clause (F) of sub-section (2) of section 115WB shall be "five per cent." instead of "twenty per cent." referred to in clause (c) of subsection (1);

(c) in the case of an employer engaged in the business of manufacture or production of pharmaceuticals, the value of fringe benefits for the purposes referred to in clauses (F) and (G) of subsection (2) of section 115WB shall be "five per cent." instead of "twenty per cent." referred to in clause (c) of sub-section (1);

(d) in the case of an employer engaged in the business of manufacture or production of computer software, the value of fringe benefits for the purposes referred to in clauses (F) and (G) of subsection (2) of section 115WB shall be. "five per cent." instead of "twenty per cent."

referred to in clause (c) of sub-section (1)

(e) in the case of an employer engaged in the business of carriage of passengers or goods by motor car, the value of fringe benefits for the purposes referred to in clause (H) of sub-section (2) of section 115WB shall be "five per cent." instead of "twenty per cent." referred to in clause (c) of sub-section (1)

(f) in the case of an employer engaged in the business of carriage of passengers or goods by aircraft, the value of fringe benefits for the purposes referred to in clause (I) of sub-section (2) of section 115WB shall be taken as Nil.

C- Procedure for filing of return in respect of fringe benefits, assessment and payment of tax in respect thereof

115WD. Return of fringe benefits:--

(1) Without prejudice to the provisions contained in section 139, every employer who during a previous year has paid or made provision for payment of fringe benefits to his employees, shall, on or before the due date, furnish or cause to be furnished a return of fringe benefits to the Assessing Officer in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, in respect of the previous year.

Explanation.--In this sub-section, "due date" means,--

(a) where the employer is--

(i) a company; or

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force,

the 31st day of October of the assessment year;

(b) in the case of any other employer, the 31st day of July of the assessment year.

(2) In the case of any employer who, in the opinion of the Assessing Officer, is responsible for paying fringe benefit tax under this Act and who has not furnished a return under sub-section (1), the Assessing Officer may, after the due date, issue a notice to him and serve the same upon him, requiring him to furnish within thirty days from the date of service of the notice, the return in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(3) Any employer responsible for paying fringe benefit tax who has not furnished a return within the time allowed under sub-section (1) or within the time allowed under a notice issued under sub-section (2), may furnish the return for any previous year, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

(4) If any employer, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

115WE. Assessment:--

(1) Where a return has been made under section 115WD,--

(i) if any tax or interest is found due on the basis of such return, after adjustment of any advance tax paid, any tax paid on self-assessment and any amount paid otherwise by way of tax or interest, then without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee and an intimation to this effect shall be sent to the assessee:

Provided that except as otherwise provided in this sub-section, the acknowledgment of the return shall be deemed to be an intimation under this sub-section where either no sum is payable by the assessee or no refund is due to him:

Provided further that no intimation under this sub-section shall be sent after the expiry of one year from the end of the financial year in which the return is made.

(2) Where a return has been furnished under section 115WD, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the value of fringe benefits or has not underpaid the tax in any manner, serve on the assessee a notice requiring him on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the value of the fringe benefits paid or payable by the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

(4) Where a regular assessment under sub-section (3) or section 115WF is made,--

(a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment;

(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

115WF. Best judgment assessment:--

(1) If any person, being an employer--

(a) fails to make the return required under sub-section (1) of section 115WD and has not made a return under sub-section (3) or a revised return under subsection (4) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (2) of section 115WD or fails to comply with a direction issued under sub-section (2A) of section 142, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 115WE,

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the fringe benefits to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice as to why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (2) of section 115WD has been issued prior to the making of an assessment under this section.

115WG. Fringe benefits escaping assessment:--

If the Assessing Officer has reason to believe that any fringe benefits chargeable to tax have escaped assessment for any assessment year, he may, subject to the provisions of sections 115WH, 150 and 153, assess or reassess such fringe benefits and also any other fringe benefits chargeable to tax which have escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, for the assessment year concerned (hereafter referred to as the relevant assessment year).

Explanation.--For the purposes of this section, the following shall also be deemed to be cases where fringe benefits chargeable to tax has escaped assessment, namely:--

- (a) where no return of fringe benefits has been furnished by the assessee;
- (b) where a return of fringe benefit has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the value of fringe benefit in the return;
- (c) where an assessment has been made, but the fringe benefits chargeable to tax have been under-assessed.

115WH. Issue of notice where fringe benefits have escaped assessment:--

(1) Before making the assessment or reassessment under section 115WG, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of the fringe benefits in respect of which he is assessable under this Chapter during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, and the provisions of this Chapter shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 115WD.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so:

(3) No notice under sub-section (1) shall be issued for the relevant assessment year after the expiry of six years from the end of the relevant assessment year.

Explanation.--In determining fringe benefits chargeable to tax which have escaped assessment for the purposes of this sub-section, the provisions of the Explanation to section 115WG shall apply as they apply for the purposes of that section.

(4) In a case where an assessment under sub-section (3) of section 115WE or section 115WG has been made for the relevant assessment year, no notice shall be issued under sub-section (1) by an Assessing Officer, after the expiry of four years from the end of the relevant assessment year, unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

115WI. Payment of fringe benefit tax:--

Notwithstanding that the regular assessment in respect of any fringe benefits is to be made in a later assessment year, the tax on such fringe benefits shall be payable in advance during any financial year, in accordance with the provisions of section 115WJ, in respect of the fringe benefits which would be chargeable to tax for the assessment year immediately following that financial year, such fringe benefits being hereafter in this Chapter referred to as the "current fringe benefits".

115WJ. Advance tax in respect of fringe benefits:--

(1) Every assessee who is liable to pay advance tax under section 115WI, shall on his own accord, pay advance tax on his current fringe benefits calculated in the manner laid down in sub-section (2).

(2) The amount of advance tax payable by an assessee in the financial year shall be thirty per cent. of the value of the fringe benefits referred to in section 115WC, paid or payable in each quarter

and shall be payable on or before the 15th day of the month following such quarter:

Provided that the advance tax payable for the quarter ending on the 31st day of March of the financial year shall be payable on or before the 15th day of March of the said financial year.

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

115WK. Interest for default in furnishing return of fringe benefits:--

(1) Where the return of fringe benefits for any assessment year under sub-section (1) or sub-section (3) of section 115WD or in response to a notice under sub-section (2) of that section, is furnished after the due date, or is not furnished, the employer shall be liable to pay simple interest at the rate of one per cent. for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,--

(a) where the return is furnished after the due date, ending on the date of furnishing of the return; or

(b) where no return has been furnished, ending on the date of completion of the assessment under section 115WF,

on the amount of the tax on the value of fringe benefits as determined under sub-section (1) of section 115WE or regular assessment as reduced by the advance tax paid under section 115WJ.

Explanation 1.--In this section, "due date" means the date specified in the Explanation to sub-section (1) of section 115WD as applicable in the case of the employer.

Explanation 2.--Where, in relation to an assessment year, an assessment is made for the first time under section 115WG, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

(2) The provisions contained in sub-section (2) to sub-section (4) of section 234A shall, so far as may be, apply to this section.

115WL. Application of other provisions of this Act:--

Save as otherwise provided in this Chapter, all other provisions of this Act shall, as far as may be, apply in relation to fringe benefits also.'