

## Finance (No. 2) Act, 2004

### Chapter 3 - Direct Taxes

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#### Section 3 - Amendment of Section 2

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In section 2 of the Income-tax Act, in clause (24), after sub-clause (xii), the following sub-clause shall be inserted with effect from the 1st day of April, 2005, namely:--

'(xiii) any sum referred to in clause (v) of sub-section (2) of section 56;'

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#### Section 4 - Amendment of Section 7

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In section 7 of the Income-tax Act, after clause (ii), the following clause shall be inserted at the end, namely:--

"(iii) the contribution made, by the Central Government in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD.".

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#### Section 5 - Amendment of Section 10

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In section 10 of the Income-tax Act,--

(a) in clause (4), in sub-clause (ii), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2006, namely:--

"Provided further that nothing contained in this sub-clause shall apply to any income by way of interest paid or credited on or after the 1st day of April, 2005 to the Non-Resident (External) Account of such individual;";

(b) in clause (6BB), for the words, figures and letters "an agreement entered after the 31st day of March, 1997 but before the 1st day of April, 1999 and approved by the Central Government in this behalf, the words, figures and letters "an agreement entered into after the 31st day of March, 1997 but before the 1st day of April, 1999, or entered into after the 31st day of March, 2005 and approved by the Central Government in this behalf shall be substituted with effect from the 1st day of April, 2006;

(c) in clause (15),--

(A) after sub-clause (iiib), the following sub-clause shall be inserted with effect from the 1st day of April, 2005, namely:--

"(iiic) Interest payable to the European Investment Bank, on a loan granted by it in pursuance of the framework-agreement for financial cooperation entered into on the 25th day of November, 1993 by the Central Government with that Bank;";

(B) in sub-clause (iv), in item (fa), after the words "by a scheduled bank", the words, figures and letters "before the 1st day of April, 2005" shall be inserted with effect from the 1st day of April, 2006;

(d) in clause (15A), before the Explanation, the following proviso shall be inserted with effect from the 1st day of April, 2006, namely:--

"Provided that nothing contained in this clause shall apply to any such agreement entered into on or after the 1st day of April, 2005.";

(e) after clause (18), the following clause shall be inserted with effect from the 1st day of April, 2005, namely:--

"(19) family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including paramilitary forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed;"

(f) in clause (23FB), with effect from the 1st day of October, 2004,--

(i) in Explanation 1, for clause (c), the following clause shall be substituted, namely:--

'(c) "venture capital undertaking" means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 199 made under the Securities and Exchange Board of India Act, 1992 and notified as such in the Official Gazette by the Board for the purposes of this clause;'

(ii) Explanation 2 shall be omitted;

(g) in clause (23G), before Explanation 1, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:--

"Provided that the income, by way of dividends, other than dividends referred to in section 115-O, interest or long-term capital gains of an infrastructure capital company, shall be taken into account in computing the book profit and income-tax payable under section 115JB.";

(h) after clause (36), the following shall be inserted with effect from the 1st day of April, 2005, namely:--

'(37) in the case of an assessee, being an individual or a Hindu undivided family, any income chargeable under the head "Capital gains" arising from the transfer of agricultural land, where--

(i) such land is situate in any area referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of section 2;

(ii) such land, during the period of two years immediately preceding the date of transfer, was being used for agricultural purposes by such Hindu undivided family or individual or a parent of his;

(iii) such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India;

(iv) such income has arisen from the compensation or consideration for such transfer received by such assessee on or after the 1st day of April, 2004.

Explanation.--For the purposes of this clause, the expression "compensation or consideration" includes the compensation or consideration enhanced or further enhanced by any court, tribunal or other authority;

(38) any income arising from the transfer of a long-term capital asset, being an equity share in a company or a unit of an equity oriented fund where--

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter.

Explanation.--for the purposes of this clause, "equity oriented fund" means a fund-

(i) where the investible funds are invested by way of equity shares in domestic companies to the extent of more than fifty per cent. of the total proceeds of such fund; and

(ii) which has been set up under a scheme of a Mutual Fund specified under clause (23D):

Provided that the percentage of equity share holding of the fund shall be computed with reference to the, annual average of the monthly averages of the opening and closing figures.'.

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### **Section 6 - Amendment of Section 12AA**

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In section 12AA of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted at the end, with effect from the 1st day of October, 2004, namely:--

"(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

Provided that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.".

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### **Section 7 - Amendment of Section 17**

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In section 17 of the Income-tax Act, in clause (1), after sub-clause (vii), the following sub-clause shall be inserted, namely:--

"(viii) the contribution made by the Central Government in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD;".

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### **Section 8 - Amendment of Section 32**

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In section 32 of the Income-tax Act, in sub-section (1), in clause (ia), in the first proviso, in clause (B), for the words "twenty-five per cent.", the words "ten per cent." shall be substituted with effect from the 1st day of April, 2005.

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### **Section 9 - Amendment of section 33AC**

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In section 33AC of the Income-tax Act, in sub-section (1), after the second proviso, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:--

"Provided also that no deduction shall be allowed under this section for any assessment year commencing on or after the 1st day of April, 2005.".

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### **Section 10 - Amendment of section 35AC**

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In section 35AC of the Income-tax Act, for sub-sections (4) and (5), the following sub-sections shall be substituted with effect from the 1st day of October, 2004, namely:--

"(4) Where an association or institution is approved by the National Committee under sub-section (1), and subsequently--

(i) that Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which approval was granted; or

(ii) such association or institution, to which approval has been granted, has not furnished to the National Committee, after the end of each financial year, a report in such form and setting forth such particulars and within such time as may be prescribed, the National Committee may, at any time, after giving a reasonable opportunity of showing cause against the proposed withdrawal to the concerned association or institution, withdraw the approval:

Provided that a copy of the order withdrawing the approval shall be forwarded by the National Committee to the Assessing Officer having jurisdiction over the concerned association or institution.

(5) Where any project or scheme has been notified as an eligible project or scheme under clause (b) of the Explanation, and subsequently--

(i) the National Committee is satisfied that the project or the scheme is not being carried on in accordance with all or any of the conditions subject to which such project or scheme was notified; or

(ii) a report in respect of such eligible project or scheme has not been furnished after the end of each financial year, in such form and setting forth such particulars and within such time as may be prescribed, such notification may be withdrawn in the same manner in which it was issued:

Provided that a reasonable opportunity of showing cause against the proposed withdrawal shall be given by the National Committee to the concerned association, institution, public sector company or local authority, as the case may be:

Provided further that a copy of the notification by which the notification of the eligible project or scheme is withdrawn shall be forwarded to the Assessing Officer having jurisdiction over the concerned association, institution, public sector company or local authority, as the case may be, carrying on such eligible project or scheme."

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## Section 11 - Amendment of section 40

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In section 40 of the Income-tax Act, in clause (a), for sub-clause(i) the following shall be substituted, namely:--

(i) any interest (not being interest on a loan issued for public subscription before the 1st day of April, 1938), royalty, fees for technical services or other sum chargeable under this Act, which is payable,--

(A) outside India; or

(B) in India to a non-resident, not being a company or to a foreign company, on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Explanation:--For the purposes of this sub-clause,--

(A) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;

(B) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(ia) any interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or subcontractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII\_B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of section 200;

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

Explanation.--for the purposes of this sub-clause,--

(i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to section 194H;

(ii) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(iii) "professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J;

(iv) "work" shall have the same meaning as in Explanation III to section 194C;

(ib) any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004;'

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## Section 12 - Amendment of Section 48

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In section 48 of the Income-tax Act, after the fourth proviso and before the Explanation, the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:--

"Provided also that no deduction shall be allowed in computing the income chargeable under the head "Capital gains" in respect of any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004.".'. "

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## Section 13 - Amendment of section 56

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In section 56 of the Income-tax Act, in sub-section (2), after clause (iv), the following clause shall be inserted at the end, with effect from the 1st day of April, 2005, namely:--

"(v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, the whole of such sum:

Provided that this clause shall not apply to any sum of money received--

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer. Explanation.-- For the purposes of this clause, "relative" means--

(i) spouse of the individual;

(ii) brother or sister of the individual;

- (iii) brother or sister of the spouse of the individual;
- (iv) brother or sister of either of the parents of the individual;
- (v) any lineal ascendant or descendant of the individual;
- (vi) any lineal ascendant or descendant of the spouse of the individual;
- (vii) spouse of the person referred to in clauses (ii) to (vi)."

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#### **Section 14 - Amendment of section 71**

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In section 71 of the Income-tax Act, after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2005, namely:--

'(2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss and the assessee has income assessable under the head "Salaries", the assessee shall not be entitled to have such loss set off against such income.'

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#### **Section 15 - Insertion of new section 80CCD**

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After section 80CCC of the Income-tax Act, the following section shall be inserted, namely:--

'80CCD. Deduction in respect of contribution to pension scheme of Central Government.

(1) Where an assessee, being an individual employed by the Central Government on or after the 1st day of January, 2004, has in the previous year paid or deposited any amount in his account under a pension scheme notified or as may be notified by the Central Government, he shall, in accordance with, and subject to, the provisions of this section, be allowed a deduction in the computation of his total income, of the whole of the amount so paid or deposited as does not exceed ten per cent. of his salary in the previous year.

(2) Where, in the case of an assessee referred to in sub-section (1), the Central Government makes any contribution to his account referred to in that sub-section, the assessee shall be allowed a deduction in the computation of his total income, of the whole of the amount contributed by the Central Government as does not exceed ten per cent. of his salary in the previous year.

(3) Where any amount standing to the credit of the assessee in his account referred to in sub-section (1), in respect of which a deduction has been allowed under that sub-section or sub-section (2), together with the amount accrued thereon, if any, is received by the assessee or his nominee, in whole or in part, in any previous year,--

(a) on account of closure or his opting out of the pension scheme referred to in sub-section (1);  
or

(b) as pension received from the annuity plan purchased or taken on such closure or opting out, the whole of the amount referred to in clause (a) or clause (b) shall be deemed to be the income of the assessee or his nominee, as the case may be, in the previous year in which such amount is received, and shall accordingly be charged to tax as income of that previous year.

(4) Where any amount paid or deposited by the assessee has been allowed as a deduction under sub-section (1), no rebate with reference to such amount shall be allowed under section 88.

Explanation.--For the purposes of this section, "salary" includes clearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.'

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#### **Section 16 - Amendment of section 80DD**

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In section 80DD of the Income-tax Act, in the Explanation, with effect from the 1st day of April, 2005,--

(a) in clause (c), after the figures "1995", occurring at the end, the words, brackets, letters and figures 'and includes "autism", "cerebral palsy" and "multiple disability" referred to in clauses (a), (c) and (h) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999)' shall be inserted;

(b) in clause (e), after the figures "1995", occurring at the end, the words, brackets, letters and figures 'or such other medical authority as may, by notification, be specified by the Central Government for certifying "autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability" referred to in clauses (a), (c), (h), (j) and (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999)' shall be inserted;

(c) in clause (Rafter the figures "1995", occurring at the end the words, brackets, letter and figures "or clause (j)of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999)" shall be inserted;

(d) for clause (g), the following clause shall be substituted, namely:--

'(g) "person with severe disability" means--

(i) a person with eighty per cent. or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(1 of 1996); or

(ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999);'.

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## **Section 17 - Amendment of section 80-IA**

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In section 80-IA of the Income-tax Act, with effect from the 1st day of April, 2005.--

(a) in sub-section (2), after the words "generates power or commences transmission or distribution of power", the words "or undertakes substantial renovation and modernisation of the existing transmission or distribution lines" shall be inserted;

(b) in sub-section (3),--

(A) in the opening portion, for the words, brackets and figures "undertaking referred to in clause (iv)", the words, brackets and figures "undertaking referred to in clause (ii) or clause (iv)"shall be substituted;

(B) after clause (ii) and before Explanation 1, the following proviso shall be inserted, namely:--

"Provided that nothing contained in this sub-section shall apply in the case of transfer, either in whole or in part, of machinery or plant previously used by a State Electricity Board referred to in clause (7) of section 2 of the Electricity Act, 2003(36 of 1999), whether or not such transfer is in pursuance of the splitting up or reconstruction or reorganisation of the Board under Part XIII of that Act.";

(c) in sub-section (4),--

(A) in clause (ii), for the figures, letters and words "31st day of March, 2004", the figures, letters and words "31st day of March, 2005" shall be substituted;

(B) in clause (iv), after sub-clause (b), the following shall be inserted, namely:--

'(c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on the 1st day of April, 2004 and ending on the 31st day of March, 2006.

Explanation.--For the purposes of this sub-clause, "substantial renovation and modernisation" means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent. of the book value of such plant and machinery as on the 1st day of April, 2004.'

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## Section 18 - Amendment of section 80-IB

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In section 80-IB of the Income-tax Act, with effect from the 1st day of April, 2005,--

(a) in sub-section (1), for the brackets, figures, word and letter "(11) and (11A)", the brackets, figures, letters and word "(11), (11A) and (11B)" shall be substituted;

(b) in sub-section (4), after the third proviso, the following provisos shall be inserted, namely--

'Provided also that in the case of an industrial undertaking in the State of Jammu and Kashmir, the provisions of the first proviso shall have effect as if for the figures, letters and words "31st day of March, 2004", the figures, letters and words "31st day of March, 2005" had been substituted:

Provided also that no deduction under this sub-section shall be allowed to an industrial undertaking in the State of Jammu and Kashmir which is engaged in the manufacture or production of any article or thing specified in Part C of the Thirteenth Schedule.');

(c) in sub-section (8A), in clause (iii), for the figures, letters and words "1st day of April, 2004", the figures, letters and words "1st day of April, 2005" shall be substituted;

(d) for sub-section (10), the following shall be substituted, namely.--

"(10) The amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March, 2007 by a local authority shall be hundred per cent. of the profits derived in the previous year relevant to any assessment year from such housing project if,--

(a) such undertaking has commenced or commences development and construction of the housing project on or after the 1st day of October, 1998 and completes such construction,--

(i) in a case where a housing project has been approved by the local authority before the 1st day of April, 2004, on or before the 31st day of March, 2008;

(ii) in a case where a housing project has been, or, is approved by the local authority on or after the 1st day of April, 2004, within four years from the end of the financial year in which the housing project is approved by the local authority.

Explanation.--For the purposes of this clause,--

(i) in a case where the approval in respect of the housing project is obtained more than once, such housing project shall be deemed to have been approved on the date on which the building plan of such housing project is first approved by the local authority;

(ii) the date of completion of construction of the housing project shall be taken to be the date on which the completion certificate in respect of such housing project is issued by the local authority;

(b) the project is on the size of a plot of land which has a minimum area of one acre:

Provided that nothing in clause (a) or clause (b) shall apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction or redevelopment of existing buildings in areas declared to be slum areas

under any law for the time being in force and such scheme is notified by the Board in this behalf;

(c) the residential unit has a maximum built-up area of one thousand square feet where such residential unit is situated within the city of Delhi or Mumbai or within twenty-five kilometres from the municipal limits of these cities and one thousand and five hundred square feet at any other place; and

(d) the built-up area of the shops and other commercial establishments included in the housing project does not exceed five per cent. of the aggregate built-up area of the housing project or two thousand square feet, whichever is less.";

(e) in sub-section (11A), for the words "an undertaking deriving profit from", the words "an undertaking deriving profit from the business of processing, preservation and packaging of fruits or vegetables or from" shall be substituted.

(f) after sub-section (11A), the following sub-section shall be inserted, namely:--

"(11B) the amount of deduction in the case of an undertaking deriving profits from the business of operating and maintaining a hospital in a rural area shall be hundred per cent. of the profits and gains of such business for a period of five consecutive assessment years, beginning with the initial assessment year, if--

(i) such hospital is constructed at any time during the period beginning on the 1st day of October, 2004 and ending on the 31st day of March, 2008;

(ii) the hospital has at least one hundred beds for patients;

(iii) the construction of the hospital is in accordance with the regulations, for the time being in force, of the local authority; and

(iv) the assessee furnishes alongwith the return of income, the report of audit in such form and containing such particulars as may be prescribed, and duly signed and verified by an accountant, as defined in the Explanation below sub-section (2) of section 288, certifying that the deduction has been correctly claimed.

Explanation,--For the purposes of this sub-section, a hospital shall be deemed to have been constructed on the date on which a completion certificate in respect of such construction is issued by the concerned local authority,";

(g) in sub-section (14),--

(A) clauses (a) and (aa) shall be re-lettered as clauses (aa) and (ab) respectively, and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:--

'(a) "built-up area" means the inner measurements of the residential unit at the floor level, including the projections and balconies, as increased by the thickness of the walls but does not include the common areas shared with other residential units;';

(B) in clause (c),--

(I) in sub-clause (iv), after the words "undertaking engaged", the words "in the business of processing, preservation and packaging of fruits or vegetables or" shall be inserted;

(II) after sub-clause (vi), the following sub-clause shall be inserted, namely:--

"(vii) in the case of an undertaking engaged in operating and maintaining a hospital in a rural area, means the assessment year relevant to the previous year in which the undertaking begins to provide medical services;".

In section 80U of the Income-tax Act, for the Explanation, the following Explanation shall be substituted with effect from the 1st day of April, 2005, namely:--

"Explanation.--For the purposes of this section,--

(a) "disability" shall have the meaning assigned to it in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(1 of 1996), and includes "autism", "cerebral palsy" and "multiple disabilities" referred to in clauses (a), (c) and (h) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999);

(b) "medical authority" means the medical authority as referred to in clause (p) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(1 of 1996), or such other medical authority as may, by notification, be specified by the Central Government for certifying "autism", "cerebral palsy", "multiple disabilities", "person with disability" and "severe disability" referred to in clauses (a), (c), (h), (j) and (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999);

(c) "person with disability" means a person referred to in clause (t) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(1 of 1996), or clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999);

(d) "person with severe disability" means--

(i) a person with eighty per cent. or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995(1 of 1996);or

(ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999(44 of 1999).;

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## **Section 20 - Amendment of section 87**

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In section 87 of the Income-tax Act, with effect from the 1st day of April, 2005,--

(a) in sub-section (1), for the words, figures and letters "sections 88, 88A, 88B and 88C", the words, figures and letters "sections 88, 88A, 88B, 88C, 88D and 88E" shall be substituted;

(b) in sub-section (2), after the words, figures and letter "or section 88C", the words, figures and letters "or section 88D or section 88E" shall be inserted.

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## **Section 21 - Amendment of section 88**

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In section 88 of the Income-tax Act, in sub-section (2), in clause (xv), in sub-clause (c), after item (6), the following item shall be inserted with effect from the 1st day of April, 2005, namely:--

"(6A) the assessee's employer where such employer, is an authority or a board or a corporation or any other body established or constituted under a Central or State Act, or".

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## **Section 22 - Insertion of new section 88D**

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After section 88C of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:--

88D. An assessee, being an individual resident in India,--

(a) whose total income does not exceed one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax (as computed before allowing the deductions under this Chapter) on his total income with which he is chargeable for any assessment year, of an amount equal to hundred per cent. of such income-tax;

(b) whose total income exceeds one hundred thousand rupees and the income-tax payable on such total income (as computed before allowing the deductions under this Chapter) exceeds the amount by which such total income is in excess of one hundred thousand rupees, shall be entitled to a deduction from the amount of income-tax on his total income, of an amount equal to the amount by which the income-tax payable on such total income is in excess of the amount by which the total income exceeds one hundred thousand rupees."

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### **Section 23 - Insertion of new section 88E**

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After section 88D of the Income-tax Act, as so inserted, the following section shall be inserted with effect from the 1st day of April, 2005, namely:--

88E. Rebate in rebate in respect of securities transaction tax.

(1) Where the total income of an assessee in a previous year includes any income, chargeable under the head "Profits and gains of business or profession", arising from taxable securities transactions, he shall be entitled to a deduction, from the amount of income-tax on such income arising from such transactions, computed in the manner provided in sub-section (2), of an amount equal to the securities transaction tax paid by him in respect of the taxable securities transactions entered into in the course of his business during that previous year;

Provided that no deduction under this sub-section shall be allowed unless the assessee furnishes alongwith the return of income, evidence of payment of securities transaction tax in the prescribed form:

Provided further that the amount of deduction under this sub-section shall not exceed the amount of income-tax on such income computed in the manner provided in sub-section (2).

(2) For the purpose of sub-section (1), the amount of income-tax on the income arising from the taxable securities transactions, referred to in that sub-section, shall be equal to the amount calculated by applying the average rate of income-tax on such income.

Explanation.--For the purposes of this section, the expressions, "taxable securities transaction" and "securities transaction tax" shall have the same meanings respectively assigned to them under Chapter VII of the Finance (No. 2) Act, 2004.'

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### **Section 24 - Amendment of section 90**

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In section 90 of the Income-tax Act, in the Explanation, the words and brackets", where such foreign company has not made the prescribed arrangement for declaration and payment within India, of the dividends (including dividends on preference shares) payable out of its income in India" shall be omitted and shall be deemed to have been omitted with effect from the 1st day of April, 1962.

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### **Section 25 - Amendment of section 94**

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In section 94 of the Income-tax Act, with effect from the 1st day of April, 2005,--

(a) in sub-section (7), for clause (b), the following clause shall be substituted, namely:--

"(b) such person sells or transfers--

(i) such securities within a period of three months after such date; or (ii) such unit within a period of nine months after such date;";

(b) after sub-section (7), the following sub-section shall be inserted, namely:--

"(8) Where--

(a) any person buys or acquires any units within a period of three months prior to the record date;

(b) such person is allotted additional units without any payment on the basis of holding of such units on such date;

(c) such person sells or transfers all or any of the units referred to in clause (a) within a period of nine months after such date, while continuing to hold all or any of the additional units referred to in clause (b),

then, the loss, if any, arising to him on account of such purchase and sale of all or any of such units shall be ignored for the purposes of computing his income chargeable to tax and notwithstanding anything contained in any other provision of this Act, the amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units referred to in clause (b) as are held by him on the date of such sale or transfer.";

(c) in the Explanation, for clause (aa), the following clause shall be substituted, namely:--

'(aa) "record date" means such date as may be fixed by--

(i) a company for the purposes of entitlement of the holder of the securities to receive dividend; or

(ii) a Mutual Fund or the Administrator of the specified undertaking or the specified company as referred to in the Explanation to clause (35) of section 10, for the purposes of entitlement of the holder of the units to receive income, or additional unit without any consideration, as the case maybe;'

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## Section 26 - Insertion of new section 111A

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After section 111 of the Income-tax Act, the following section shall be inserted, with effect from the 1st day of April, 2005, namely:--

111A Tax on short term capital gains in certain cases.

(1) Where the total income of an assessee includes any income chargeable under the head "Capital gains", arising from the transfer of a short-term capital asset, being an equity share in a company or a unit of an equity oriented fund and--

(a) the transaction of sale of such equity share or unit is entered into on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force; and

(b) such transaction is chargeable to securities transaction tax under that Chapter, the tax payable by the assessee on the total income shall be the aggregate of--

(i) the amount of income-tax calculated on such short-term capital gains at the rate of ten per cent; and

(ii) the amount of income-tax payable on the balance amount of the total income as if such balance amount were the total income of the assessee:

Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced fall short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the rate of ten per cent.

(2) Where the gross total income of an assessee includes any short term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

(3) Where the total income of an assessee includes any short term capital gains referred to in sub-section (1), the rebate under section 88 shall be allowed from the income-tax on the total income as reduced by such capital gains.

Explanation.-- For the purposes of this section, the expression "equity oriented fund" shall have the meaning assigned to it in the Explanation to clause (38) of section 10.'

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### **Section 27 - Amendment of section 115AD**

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In section 115AD of the Income-tax Act, in sub-section (1), in clause (ii), the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:--

"Provided that the amount of income-tax calculated on the income by way of short-term capital gains referred to in section 111A shall be at the rate of ten per cent.;"

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### **Section 28 - Amendment of section 115JB**

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In section 115JB of the Income-tax Act, in the Explanation, with effect from the 1st day of April, 2005,--

(a) in clause (f), for the word and figures "section 10", the words, figures, brackets and letter "section 10 [other than the provisions contained in clause (23G) thereof]" shall be substituted;

(b) in clause (ii), for the words and figures "provisions of section 10", the words, figures, brackets and letter "provisions of section 10 [other than the provisions contained in clause (23G) thereof]" shall be substituted.

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### **Section 29 - Amendment of section 115R**

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In section 115R of the Income-tax Act, in sub-section (2),--

(a) for the words "at the rate of twelve and one-half per cent.", the following shall be substituted with effect from the 9th day of July, 2004, namely:--

"at the rate of--

(i) twelve and one-half per cent. on income distributed to any person being an individual or a Hindu undivided family; and

(ii) twenty per cent. on income distributed to any other person:";

(b) in the proviso, the words, figures and letters "for a period of one year commencing from the 1st day of April, 2003" shall be omitted.

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### **Section 30 - Insertion of new Chapter XII-G**

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After Chapter XII-F of the Income-tax Act, the following Chapter shall be inserted with effect from the 1st day of April, 2005, namely:--

#### **Chapter XII-G**

#### **SPECIAL PROVISIONS RELATING TO INCOME OF SHIPPING COMPANIES**

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

## **115V. Definitions**

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

- (a) "bareboat charter" means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;
- (b) "bareboat charter-cum-demise" means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered;
- (c) "Director-General of Shipping" means the Director-General of Shipping appointed by the Central Government under sub-section (1) of section 7 of the Merchant Shipping Act, 1958 (44 of 1958);
- (d) "factory ship" includes a vessel providing processing services in respect of processing of the fishing produce;
- (e) "fishing vessel" shall have the meaning assigned to it in clause (12) of section 3 of the Merchant Shipping Act, 1958(44 of 1958);
- (f) "pleasure craft" means a ship of a kind whose primary use is for the purposes of sport or recreation;
- (g) "qualifying company" means a company referred to in section 115VC;
- (h) "qualifying ship" means a ship referred to in section 115VD;
- (i) "seagoing ship" means a ship if it is certified as such by the competent authority of any country;
- (j) "tonnage income" means the income of a tonnage tax company computed in accordance with the provisions of this Chapter;
- (k) "tonnage tax activities" means the activities referred to in sub-sections (2) and (5) of section 115V-I;
- (l) "tonnage tax company" means a qualifying company in relation to which tonnage tax option is in force;
- (m) "tonnage tax scheme" means a scheme for computation of profits and gains of business of operating qualifying ships under the provisions of this Chapter.

### **B.--Computation of tonnage income from business of operating qualifying ships**

#### **115VA. Computation of profits and gains from the business of operating qualifying ships**

Notwithstanding anything to the contrary contained in sections 28 to 43C, in the case of a company, the income from the business of operating qualifying ships, may, at its option, be computed in accordance with the provisions of this Chapter and such income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

#### **115VB. Operating ships**

For the purposes of this Chapter, a company shall be regarded as operating a ship if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered in by it in an arrangement such as slot charter, space charter or joint charter:

Provided that a company shall not be regarded as the operator of a ship which has been chartered out by it on bareboat charter-cum-demise terms or on bareboat charter terms for a period exceeding three years.

#### **115VC. Qualifying company**

For the purposes of this Chapter, a company is a qualifying company if--

- (a) it is an Indian company;
- (b) the place of effective management of the company is in India;
- (c) it (sic) at least one qualifying ship; and
- (d) the main object of the company is to carry on the business of operating ships.

Explanation.--For the purposes of this section, "place of effective management of the company" means--

(A) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(B) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.

### **115VD. Qualifying ship**

For the purposes of this Chapter, a ship is a qualifying ship if--

- (a) it is a sea going ship or vessel of fifteen net tonnage or more;
- (b) it is a ship registered under the Merchant Shipping Act, 1958(44 of 1958), or a ship registered outside India in respect of which a licence has been issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958(44 of 1958); and
- (c) a valid certificate in respect of such ship indicating its net tonnage is in force, but does not include--
  - (i) a seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;
  - (ii) fishing vessels;
  - (iii) factory ships;
  - (iv) pleasure crafts;
  - (v) harbour and river ferries;
  - (vi) offshore installations;
  - (vii) dredgers;
  - (viii) a qualifying ship which is used as a fishing vessel for a period of more than thirty days during a previous year.

### **115VE. Manner of computation of income under tonnage tax scheme**

- (1) A tonnage tax company engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.
- (2) The business of operating qualifying ships giving rise to income referred to in sub-section (1) of section 115V-I shall be considered as a separate business (hereafter in this Chapter referred to as the tonnage tax business) distinct from all other activities or business carried on by the company.
- (3) The profits referred to in sub-section (1) shall be computed separately from the profits and gains from any other business.

(4) The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.

(5) Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

### **115VF. Tonnage income**

Subject to the other provisions of this Chapter, the tonnage income shall be computed in accordance with section 115VG and the income so computed shall be deemed to be the profits chargeable under the head "Profits and gains of business or profession" and the relevant shipping income referred to in sub-section (1) of section 115V-I shall not be chargeable to tax.

### **115VG. Computation of tonnage income**

(1) The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed in accordance with the provisions of sub-sections (2) and (3).

(2) For the purposes of sub-section (1), the tonnage income of each qualifying ship shall be the daily tonnage income of each such ship multiplied by--

(a) the number of days in the previous year; or

(b) the number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year, as the case may be.

(3) For the purposes of sub-section (2), the daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table below shall be the amount specified in the corresponding entry in column (2) of the Table:

<b>TABLE</b>	
<b>Qualifying ship having net tonnage</b>	
<b>(1)</b>	<b>(2)</b>
up to 1,000	
exceeding 1,000 but not more than 10,000	
exceeding 10,000 but not more than 25,000	
exceeding 25,000	

(4) For the purposes of this Chapter, the tonnage shall mean the tonnage of a ship indicated in the certificate referred to in section 115VX and includes the deemed tonnage computed in the prescribed manner.

Explanation.--For the purposes of this sub-section, "deemed tonnage" shall be the tonnage in respect of an arrangement of purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.

(5) The tonnage shall be rounded off to the nearest multiple of hundred tons and for this purpose any tonnage consisting of kilograms shall be ignored and thereafter if such tonnage is not a multiple of hundred, then, if the last figure in that amount is fifty tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of hundred and if the last figure is less than fifty tons, the tonnage shall be reduced to the next lower tonnage which is a multiple of hundred; and the tonnage so rounded off shall be the tonnage of the ship for the purposes of this section.

(6) Notwithstanding anything contained in any other provision of this Act, no deduction of set off shall be allowed in computing the tonnage income under this Chapter.

## **115VH. Calculation in case of joint operation, etc.**

(1) Where a qualifying ship is operated by two or more companies by way of joint interest in the ship or by way of an agreement for the use of the ship and their respective shares are definite and ascertainable, the tonnage income of each such company shall be an amount equal to a share of income proportionate to its share of that interest.

(2) Subject to the provisions of sub-section (1), where two or more companies are operators of a qualifying ship, the tonnage income of each company shall be computed as if each had been the only operator.

## **115V-I. Relevant shipping income**

(1) For the purposes of this Chapter, the relevant shipping income of a tonnage tax company means--

- (i) its profits from core activities referred to in sub-section (2);
- (ii) its profits from incidental activities referred to in sub-section (5);

Provided that where the aggregate of all such incomes specified in clause (ii) exceeds one-fourth per cent. of the turnover from core activities referred to in sub-section (2), such excess shall not form part of the relevant shipping income for the purposes of this Chapter and shall be taxable under the other provisions of this Act.

(2) The core activities of a tonnage tax company shall be--

- (i) its activities from operating qualifying ships; and
- (ii) other ship-related activities mentioned as under:--

(A) shipping contracts in respect of--

- (i) earning from pooling arrangements;
- (ii) contracts of affreightment.

Explanation.--for the purposes of this sub-clause,--

(a) "pooling arrangement" means an agreement between two or more persons for providing services through a pool or operating one or more ships and sharing earnings or operating profits on the basis of mutually agreed terms;

(b) "contract of affreightment" means a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period;

(B) specific shipping trades, being--

- (i) on-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board;
- (ii) slot charters, space charters, joint charters, feeder services, container box leasing of container shipping.

(3) The Central Government, if it considers necessary or expedient so to do, may, by notification in the Official Gazette, exclude any activity referred to in clause (ii) of sub-section (2) or prescribe the limit up to which such activities shall be included in the core activities for the purposes of this section.

(4) Every notification issued under this Chapter shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in

making any modification in the notification, or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

(5) The incidental activities shall be the activities which are incidental to the core activities and which may be prescribed for the purpose.

(6) Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.

(7) Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company, or where any goods or services held for the purposes of any other business carried on by such tonnage tax company are transferred to the tonnage tax business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the relevant shipping income in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such income on such reasonable basis as he may deem fit.

Explanation.--For the purposes of this sub-section, "market value", in relation to any goods or services, means the price that such goods or services would ordinarily fetch on sale in the open market.

(8) Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this Chapter, take the amount of income as may reasonably be deemed to have been derived therefrom.

Explanation.--For the purposes of this Chapter, in case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

#### **115VJ. Treatment of common costs**

(1) Where a tonnage tax company also carries on any business or activity other than the tonnage tax business, common costs attributable to the tonnage tax business shall be determined on a reasonable basis.

(2) Where any asset, other than a qualifying ship, is not exclusively used for the tonnage tax business by the tonnage tax company, depreciation on such asset shall be allocated between its tonnage tax business and other business on a fair proportion to be determined by the Assessing Officer, having regard to the use of such asset for the purpose of the tonnage tax business and for the other business.

#### **115VK. Depreciation**

(1) For the purposes of computing depreciation under clause (iv) of section 115VL, the depreciation for the first previous year of the tonnage tax scheme (hereafter in this section referred to as the first previous year) shall be computed on the written down value of the qualifying ships as specified under sub-section (2).

(2) The written down value of the block of assets, being ships, as on the first day of the first previous year, shall be divided in the ratio of the book written down value of the qualifying ships (hereafter in this section referred to as the qualifying assets) and the book written down value of the non-qualifying ships (hereafter in this section referred to as the other assets).

(3) the block of qualifying assets as determined under sub-section (2) shall constitute a separate block of assets for the purposes of this Chapter.

(4) For the purposes of sub-section (2), the book written down value of the block of qualifying assets and the block of other assets shall be computed in the following manner, namely :--

(a) the book written down value of each qualifying asset and each other asset as on the first day of the previous year and which form part of the block of assets to be divided shall be determined by taking the book written down value of each asset appearing in the books of account as on the last day of the preceding previous year:

Provided that any change in the value of the assets consequent to their revaluation after the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President shall be ignored;

(b) the book written down value of all the qualifying assets and other assets shall be aggregated; and

(c) the ratio of the aggregate book written down value of the qualifying assets to the aggregate book written down value of the other assets shall be determined.

(5) Where an asset forming part of a block of qualifying assets begins to be used for purposes other than the tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of that block and shall be added to the block of other assets.

Explanation.--For the purposes of this sub-section, appropriate portion of the written down value allocable to the asset, which begins to be used for purposes other than the tonnage tax business, shall be an amount which bears the same proportion to the written down value of the block of qualifying assets as on the first day of the previous year as the book written down value of the asset beginning to be used for purposes other than tonnage tax business bears to the book written down value of all the assets forming the block of qualifying asset.

(6) Where an asset forming part of a block of other assets begins to be used for tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of the block of other assets and shall be added to the block of qualifying asset.

Explanation.--For the purposes of this sub-section, appropriate portion of written down value allocable to the asset which begins to be used for the tonnage tax business shall be an amount which bears the same proportion to the written down value of the block of other assets as on the first day of the previous year as the book written down value of the asset beginning to be used for tonnage tax business bears to the total book written down value of all the assets forming the block of other assets.

(7) For the purposes of computing depreciation under clause (iv) of section 115VL in respect of an asset mentioned in sub-sections (5) and (6), depreciation computed for the previous year shall be allocated in the ratio of the number of days for which the asset was used for the tonnage tax business and for purposes other than tonnage tax business.

Explanation 1.--For the removal of doubts, it is hereby declared that for the purposes of this Act, depreciation on the block of qualifying assets and block of other assets so created shall be allowed as if such written down value referred to in sub-section (2) had been brought forward from the preceding previous year.

Explanation 2.--For the purposes of this section, "book written down value" means the written down value as appearing in the books of account.

### **115VL. Gernal exclusion of deduction and set off, etc.**

Notwithstanding anything contained in any other provision of this Act, in computing the tonnage income of a tonnage tax company for any previous year (hereafter in this section referred to as the "relevant previous year") in which it is chargeable to tax in accordance with this Chapter--

(i) sections 30 to 43B shall apply as if every loss, allowance or deduction referred to therein and relating to or allowable for any of the relevant previous years, had been given full effect to for that previous year itself;

(ii) no loss referred to in sub-sections (1) and (3) of section 70 or sub-sections (1) and (2) of section 71 or sub-section (1) of section 72 or sub-section (1) of section 72A, in so far as such loss relates to the business of operating qualifying ships of the company, shall be carried forward or set off where such loss relates to any of the previous years when the company is under the tonnage tax scheme;

(iii) no deduction shall be allowed under Chapter VI-A in relation to the profits and gains from the business of operating qualifying ships; and

(iv) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the tonnage tax business shall be computed as if the company has claimed and has been actually allowed the deduction in respect of depreciation for the relevant previous years.

### **115VM. Exclusion of loss**

(1) Section 72 shall apply in respect of any losses that have accrued to a company before its option for tonnage tax scheme and which are attributable to its tonnage tax business, as if such losses had been set off against the relevant shipping income in any of the previous years when the company is under the tonnage tax scheme.

(2) The losses referred to in sub-section (1) shall not be available for set off against any income other than relevant shipping income in any previous year beginning on or after the company exercises its option under section 115VP.

(3) Any apportionment necessary to determine the losses referred to in sub-section (1) shall be made on a reasonable basis.

### **115VN. Chargeable gains from transfer of tonnage tax assets**

Any profits or gains arising from the transfer of a capital asset being an asset forming part of the block of qualifying assets shall be chargeable to income-tax in accordance with the provisions of section 45, read with section 50, and the capital gains so arising shall be computed in accordance with the provisions of sections 45 to 51:

Provided that for the purpose of computing such profits or gains, the provisions of section 50 shall have effect as if for the words "written down value of the block of assets", the words "written down value of the block of qualifying assets" had been substituted.

Explanation.--For the purposes of this Chapter, "written down value of the block of qualifying assets" means the written down value computed in accordance with the provisions of sub-section (2) of section 115VK.

### **115V-O. Exclusion from provisions of section 115JB**

The book profit or loss derived from the activities of a tonnage tax company, referred to in sub-section (1) of section 115V-I, shall be excluded from the book profit of the company for the purposes of section 115JB.

## **C.--Procedure for option of tonnage tax scheme**

### **115VP. Method and time of opting for tonnage tax scheme**

(1) A qualifying company may opt for the tonnage tax scheme by making an application to the Joint Commissioner having jurisdiction over the company in the form and manner as may be prescribed, for such scheme.

(2) The application under sub-section (1) may be made by any existing qualifying company at any time after the 30th day of September, 2004 but before the 1st day of January, 2005(hereafter referred

to as the "initial period"):

Provided that--

- (i) a company incorporated after the initial period; or
- (ii) a qualifying company incorporated before the initial period but which becomes a qualifying company for the first time after the initial period, may make an application within three months of the date of its incorporation or the date on which it became a qualifying company, as the case may be.

(3) On receipt of an application for option for tonnage tax scheme under sub-section (1), the Joint Commissioner may call for such information or documents from the company as he thinks necessary in order to satisfy himself about the eligibility of the company and after satisfying himself about such eligibility of the company to make such option for tonnage tax scheme, he--

- (i) shall pass an order in writing approving the option for tonnage tax scheme; or
- (ii) shall, if he is not so satisfied, pass an order in writing refusing to approve the option for tonnage tax scheme, copy of such order shall be sent to the applicant:

Provided that no order under clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(4) Every order granting or refusing the approval of the option for tonnage tax scheme under clause (i) or clause (ii), as the case may be, of sub-section (3) shall be passed before the expiry of one month from the end of the month in which the application was received under sub-section (1).

(5) Where an order granting approval is passed under sub-section (3), the provisions of this Chapter shall apply from the assessment year relevant to the previous year in which the option for tonnage tax scheme is exercised.

#### **115VQ. Period for which tonnage tax option to remain in force**

(1) An option for tonnage, tax scheme, after it has been approved under sub-section (3) of section 115 VP, shall remain in force for a period often years from the date on which such option has been exercised and shall be taken into account from the assessment year relevant to the previous year in which such option is exercised.

(2) An option for tonnage tax scheme shall cease to have effect from the assessment year relevant to the previous year in which--

- (a) the qualifying company ceases to be a qualifying company;
- (b) a default is made in complying with the provisions contained in section 115VT or section 115VU or section 115VV;
- (c) the tonnage tax company is excluded from the tonnage tax scheme under section 115VZC;
- (d) the qualifying company furnishes to the Assessing Officer, a declaration in writing to the effect that the provisions of this Chapter may not be made applicable to it, and the profits and gains of the company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

#### **115VR. Renewal of tonnage tax scheme**

(1) An option for tonnage tax scheme approved under sub-section (3) of section 115VP may be renewed within one year from the end of the previous year in which the option ceases to have effect.

(2) The provisions of sections 115VP and 115VQ shall apply in relation to a renewal of the option for tonnage tax scheme in the same manner as they apply in relation to the approval of option for tonnage tax scheme.

## **115VS. Prohibition to opt for tonnage tax scheme in certain cases**

A qualifying company, which, on its own, opts out of the tonnage tax scheme or makes a default in complying with the provisions of section 115VT or section 115VU or section 115VV or whose option has been excluded from tonnage tax scheme in pursuance of an order made under sub-section (1) of section 115VZC, shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.

## **D.--Conditions for applicability of tonnage tax scheme**

### **115VT. Transfer of profits to Tonnage Tax Reserve Account**

(1) A tonnage tax company shall, subject to and in accordance with the provisions of this section, be required to credit to a reserve account (hereafter in this section referred to as the Tonnage Tax Reserve Account) an amount not less than twenty per cent. of the book profit derived from the activities referred to in clauses (i) and (ii) of sub-section (1) of section 115V-I in each previous year to be utilised in the manner laid down in sub-section (3):

Provided that a tonnage tax company may transfer a sum in excess of twenty per cent. of the book profit and such excess sum transferred shall also be utilised in the manner laid down in sub-section (3).

Explanation.--For the purposes of this section, "book profit" shall have the same meaning as in the Explanation to sub-section (2) of section 115JB so far as it relates to the income derived from the activities referred to in clauses (i) and (ii) of subsection (1) of section 115V-I.

(2) Where the company has book profit from the business of operating qualifying ships and book loss from any other sources, and consequently, the company is not in a position to create the full or any part of the reserves under sub-section (1), the company shall create the reserves to the extent possible in that previous year and the shortfall, if any, shall be added to the amount of the reserves required to be created for the following previous year and such shortfall shall be deemed to be part of the reserve requirement of that following previous year:

Provided that to the extent the shortfall in creation of reserves during a particular previous year is carried forward to the following previous year under this sub-section, the company shall be considered as having created sufficient reserves for the first mentioned previous year:

Provided further that nothing contained in the first proviso shall apply in respect of the second year in case the shortfall in creation of reserves continues for two consecutive previous years.

(3) The amount credited to the Tonnage Tax Reserve Account under sub-section (1) shall be utilised by the company before the expiry of a period of eight years next following the previous year in which the amount was credited--

(a) for acquiring a new ship for the purposes of the business of the company; and

(b) until the acquisition of a new ship, for the purposes of the business of operating qualifying ships other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(4) Where any amount credited to the Tonnage Tax Reserve Account under sub-section (1),--

(a) has been utilised for any purpose other than that referred to in clause (a) or clause (b) of sub-section (3); or

(b) has not been utilised for the purpose specified in clause (a) of subsection (3); or

(c) has been utilised for the purpose of acquiring a new ship as specified in clause (a) of sub-section (3), but such ship is sold or otherwise transferred, , other than in any scheme of demerger by the company to any person at any time before the expiry of three years from the end of the previous year in which it was acquired, an amount which bears the same proportion to the total relevant shipping income of the year in which such reserve was created, as the amount out of such reserve so utilised or not utilised bears to the total reserve created during that year under sub-

section (1) shall be taxable under the other provisions of this Act--

- (i) in a case referred to in clause (a), in the year in which the amount was so utilised; or
- (ii) in a case referred to in clause (b), in the year immediately following the period of eight years specified in sub-section (3); or
- (iii) in a case referred to in clause (c), in the year in which the sale or transfer took place:

Provided that the income so taxable under the other provisions of this Act shall be reduced by the proportionate tonnage income charged to tax in the year of creation of such reserves.

(5) Notwithstanding anything contained in any other provision of this Chapter, where the amount credited to the Tonnage Tax Reserve Account in accordance with sub-section (1) is less than the minimum amount required to be credited under sub-section (1), an amount which bears the same proportion to the total relevant shipping income, as the shortfall in credit to the reserves bears to the minimum reserve required to be credited under sub-section (1) shall not be taxable under the tonnage tax scheme and shall be taxable under the other provisions of this Act.

(6) If the reserve required to be created under sub-section (1) is not created for any two consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the failure to create the reserve under sub-section (1) had occurred.

Explanation.--For the purposes of this section, "new ship" includes a qualifying ship which, before the date of acquisition by the qualifying company was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India.

#### **115VU. Minimum training requirement for tonnage tax company**

(1) A tonnage tax company, after its option has been approved under sub-section (3) of section 115 VP, shall comply with the minimum training requirement in respect of trainee officers in accordance with the guidelines framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.

(2) The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines referred to in sub-section (1) for the previous year.

(3) If the minimum training requirement is not complied, with for any five consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the fifth consecutive previous year in which the failure to comply with the minimum training requirement under sub-section (1) had occurred.

#### **115VV. Limit for charter in of tonnage**

(1) In the case of every company which has opted for tonnage tax scheme, not more than forty-nine per cent. of the net tonnage of the qualifying ships operated by it during any previous year shall be chartered in.

(2) The proportion of net tonnage referred to in sub-section (1) in respect of a previous year shall be calculated based on the average of net tonnage during that previous year.

(3) For the purposes of sub-section (2), the average of net tonnage shall be computed in such manner as may be prescribed in consultation with the Director-General of Shipping.

(4) Where the net tonnage of ships chartered in exceeds the limit under sub-section (1) during any previous year, the total income of such company in relation to that previous year shall be computed as if the option for tonnage tax scheme does not have effect for that previous year.

(5) Where the limit under sub-section (1) had exceeded in any two consecutive previous years, the option for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the limit had exceeded.

Explanation.--For the purposes of this section, the term "chartered in" shall exclude a ship chartered in by the company on bareboat charter-cum-demise terms.

### **115VW. Maintenance and audit of accounts**

An option for tonnage tax scheme by a tonnage tax company shall not have effect in relation to a previous year unless such company--

- (i) maintains separate books of account in respect of the business of operating qualifying ships; and
- (ii) furnishes, along with the return of income for that previous year, the report of an accountant, in the prescribed form duly signed and verified by such accountant.

Explanation.--For the purposes of this section, "accountant" shall have the same meaning as in the Explanation below sub-section (2) of section 288.

### **115VX. Determination of tonnage**

(1) For the purposes of this Chapter,--

- (a) the tonnage of a ship shall be determined in accordance with the valid certificate indicating its tonnage;
- (b) "valid certificate" means,--
  - (i) in case of ships registered in India--
    - (a) having a length of less than twenty-four metres, a certificate issued under the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958;
    - (b) having a length of twenty-four metres or more, an international tonnage certificate Issued under the provisions of the Convention on Tonnage Measurement of Ships, 1969 as specified in the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958;
  - (ii) in case of ships registered outside India, a licence issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 specifying the net tonnage on the basis of Tonnage Certificate issued by the Flag State Administration where the ship is registered or any other evidence acceptable to the Director-General of Shipping produced by the ship owner while seeking permission for chartering in the ship;

## **E.--Amalgamation and demerger of shipping companies**

### **115VY. Amalgamation**

Where there has been an amalgamation of a company with another company or companies, then, subject to the other provisions of this section, the provisions relating to the tonnage tax scheme shall, as far as may be, apply to the amalgamated company if it is a qualifying company:

Provided that where the amalgamated company is not a tonnage tax company, it shall exercise an option for tonnage tax scheme under sub-section (1) of section 115VP within three months from the date of the approval of the scheme of amalgamation:

Provided further that where the amalgamating companies are tonnage tax companies, the provisions of this Chapter shall, as far as may be, apply to the amalgamated company for such period as the option for tonnage tax scheme which has the longest unexpired period continues to be in force:

Provided also that where one of the amalgamating companies is a qualifying company as on the 1st day of October, 2004 and which has not exercised the option for tonnage tax scheme within the initial period, the provisions of this Chapter shall not apply to the amalgamated company and the income of the amalgamated company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

### **115VZ. Demerger**

Wherein a scheme of demerger, the demerged company transfers its business to the resulting company before the expiry of the option for tonnage tax scheme, then, subject to the other provisions of this Chapter, the tonnage tax scheme shall, as far as may be, apply to the resulting company for the unexpired period if it is a qualifying company:

Provided that the option for tonnage tax scheme in respect of the demerged company shall remain in force for the unexpired period of the tonnage tax scheme if it continues to be a qualifying company.

### **F.--Miscellaneous**

#### **115VZA. Effect of temporarily ceasing to operate qualifying ships**

(1) A temporary cessation (as against permanent cessation) of operating any qualifying ship by a company shall not be considered as a cessation of operating of such qualifying ship and the company shall be deemed to be operating such qualifying ship for the purposes of this Chapter.

(2) Where a qualifying company continues to operate a ship, which temporarily ceases to be a qualifying ship, such ship shall not be considered as a qualifying ship for the purposes of this Chapter.

### **G--Provisions of this Chapter not to apply in certain cases**

#### **115VZB. Avoidance of tax**

(1) Subject to the provisions of this Chapter, the tonnage tax scheme shall not apply where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme.

(2) For the purposes of sub-section (1), a transaction or arrangement shall be considered an abuse if the entering into or the application of such transaction or arrangement results, or would but for this section have resulted, in a tax advantage being obtained for--

(i) a person other than a tonnage tax company; or

(ii) a tonnage tax company in respect of its non-tonnage tax activities.

Explanation.--For the purposes of this section, "tax advantage" includes,--

(i) the determination of the allowance for any expense or interest, or the determination of any cost or expense allocated or apportioned, or, as the case may be, which has the effect of reducing the income or increasing the loss, as the case may be, from activities other than tonnage tax activities chargeable to tax, computed on the basis of entries made in the books of account in respect of the previous year in which the transaction was entered into; or

(ii) a transaction or arrangement which produces to the tonnage tax company more than ordinary profits which might be expected to arise from tonnage tax activities.

#### **115VZC. Exclusion from tonnage tax scheme**

(1) Where a tonnage tax company is a party to any transaction or arrangement referred to in sub-section (1) of section 115VZB, the Assessing Officer shall, by an order in writing, exclude such company from the tonnage tax scheme:

Provided that an opportunity shall be given by the Assessing Officer by serving a notice calling upon such company to show cause, on a date and time to be specified in the notice, why it should

not be excluded from the tonnage tax scheme:

Provided further that no order under this sub-section shall be passed without the previous approval of the Chief Commissioner.

(2) The provisions of this section shall not apply where the company shows to the satisfaction of the Assessing Officer that the transaction or arrangement was a bona fide commercial transaction and had not been entered into for the purpose of obtaining tax advantage under this Chapter.

(3) Where an order has been passed under sub-section (1) by the Assessing Officer excluding the tonnage tax company from the tonnage tax scheme, the option for tonnage tax scheme shall cease to be in force from the first day of the previous year in which the transaction or arrangement was entered into.'

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### **Section 31 - Amendment of Section 119**

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In section 119 of the Income-tax Act, in sub-section (2), in clause (a), after the bracket and words "(whether by way of relaxation of any of the provisions of sections", the figures and letters "115P, 115S," shall be inserted with effect from the 1st day of October, 2004.

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### **Section 32 - Amendment of Section 139**

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In section 139 of the Income-tax Act, in sub-section (9) in the Explanation, in clause (c), in sub-clause (i), for the words "deducted at source and", the words, figures and letters "deducted at source before the 1st day of April, 2005 and" shall be substituted with effect from the 1st day of April, 2005.

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### **Section 33 - Amendment of Section 139A**

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In section 139A of the Income-tax Act,--

(a) in sub-section (5A), the first proviso shall be omitted with effect from the 1st day of April, 2005;

(b) in sub-sections (5C) and (5D), for the word "buyer", the words "buyer or licensee or lessee" shall be substituted with effect from the 1st day of October, 2004.

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### **Section 34 - Insertion of new section 142A**

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After section 142 of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 15th day of November, 1972, namely:--

'142A. Estimate by Valuation Officer in certain cases :

(1) For the purposes of making an assessment or re-assessment under this Act, where an estimate of the value of any investment referred to in section 69 or section 69B or the value of any bullion Jewellery or other valuable article referred to in section 69A or section 69B is required to be made, the Assessing Officer may require the Valuation Officer to make an estimate of such value and report the same to him.

(2) The Valuation Officer to whom a reference is made under sub-section (1) shall, for the purposes of dealing with such reference, have all the powers that he has under section 38A of the Wealth-tax Act, 1957(27 of 1957).

(3) On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making such assessment or re-assessment:

Provided that nothing contained in this section shall apply in respect of an assessment made on or before the 30th day of September, 2004, and where such assessment has become final and conclusive on or before that date, except in cases where a reassessment is required to be made in accordance with the provisions of section 153A.

Explanation.--In this section, "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957(27 of 1957).

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### **Section 35 - Amendment of Section 153**

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In section 153 of the Income-tax Act, in Explanation 1, with effect from the 1st day of October, 2004,--

- (a) in clause (v), for the words "that section,", the words "that section, or" shall be substituted;
- (b) after clause (v) and before the words "shall be excluded", the following clauses shall be inserted, namely:--

"(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vii) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R,".

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### **Section 36 - Amendment of Section 153B**

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In section 153B of the Income-tax Act, in sub-section (1), in the Explanation, with effect from the 1st day of October, 2004,--

- (a) in clause (iv), for the words "that section,", the words "that section, or" shall be substituted;
- (b) after clause (iv) and before the words "shall be excluded", the following clauses shall be inserted, namely:--

"(v) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order rejecting the application is received by the Commissioner under sub-section (3) of section 245R, or

(vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of section 245R,".

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### **Section 37 - Amendment of Section 194C**

---

In section 194C of the Income-tax Act, in sub-section (3), for clause (i), the following clause shall be substituted with effect from the 1st day of October, 2004, namely:--

- "(i) the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor or sub-contractor, if such sum does not exceed twenty thousand rupees:

Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) or, as the case may be, sub-section (2) shall

be liable to deduct income-tax under this section; or".

---

### **Section 38 - Insertion of new Section 194LA**

---

After section 194L of the Income-tax Act, the following section shall be inserted with effect from the 1st day of October, 2004, namely:--

'194LA. Payment of compensation on acquisition of certain immovable property:

Any person responsible for paying to a resident any sum, being in the nature of compensation or the enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land), shall, at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to ten per cent. of such sum as income-tax thereon:

Provided that no deduction shall be made under this section where the amount of such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed one hundred thousand rupees.

Explanation.--For the purposes of this section,--

(i) "agricultural land" means agricultural land in India including land situate in any area referred to in items (a) and (b) of sub-clause (iii) of clause (14) of section 2;

(ii) "immovable property" means any land (other than agricultural land) or any building or part of a building.'

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### **Section 39 - Amendment of Section 197**

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In section 197 of the Income-tax Act, in sub-section (1), for the figures and letters "194C, 194D, 194G, 194H, 194-I, 194J, 194K", the figures and letters "194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA" shall be substituted with effect from the 1st day of October, 2004.

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### **Section 40 - Amendment of Section 198**

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In section 198 of the Income-tax Act, for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

---

### **Section 41 - Amendment of Section 199**

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In section 199 of the Income-tax Act,--

(a) in sub-section (1), for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted at the end with effect from the 1st day of April, 2005, namely:--

"(3) Where any-deduction is made in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2005 and paid to the Central Government, the amount of tax deducted and specified in the statement referred to in section 203AA shall be treated as tax paid on behalf of the persons referred to in sub-section (1) or, as the case may be, sub-section (2) and credit shall be given to him for the amount so deducted in the assessment made under

this Act for the assessment year for which such income is assessable without the production of certificate."

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#### **Section 42 - Amendment of Section 200**

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In section 200 of the Income-tax Act,--

(a) in sub-section (1), for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted with effect from the 1st day of April, 2005, namely:--

"(3) Any person deducting any sum on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, after paying the tax deducted to the credit of the Central Government within the prescribed time, 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 or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed."

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#### **Section 43 - Amendment of Section 202**

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In section 202 of the Income-tax Act, for the portion beginning with the word and figures "sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

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#### **Section 44 - Amendment of Section 203**

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In section 203 of the Income-tax Act,--

(a) in sub-section (1), for the portion beginning with the words and figures "the provisions of sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004;

(b) after sub-section (2), the following sub-section shall be inserted at the end with effect from the 1st day of April, 2005, namely:--

"(3) Where the tax has been deducted or paid in accordance with the foregoing provisions of this Chapter on or after the 1st day of April, 2005, there shall be no requirement to furnish a certificate referred to in sub-section (1) or, as the case may be, sub-section (2)."

---

#### **Section 45 - Substitution of new Section for Section 203A**

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For section 203A of the Income-tax Act, the following section shall be substituted with effect from the 1st day of October, 2004, namely:--

'203A. Tax deduction and collection account number:

(1) Every person, deducting tax or collecting tax in accordance with the provisions of this Chapter, who has not been allotted a tax deduction account number or, as the case may be, a tax collection account number, shall, within such time as may be prescribed, apply to the Assessing Officer for the allotment of a "tax deduction and collection account number".

(2) Where a "tax deduction account number" or, as the case may be, a "tax collection account number" or a "tax deduction and collection account number" has been allotted to a person, such person shall quote such number--

(a) in all challans for the payment of any sum in accordance with the provisions of section 200 or sub-section (3) of section 206C;

(b) in all certificates furnished under section 203 or sub-section (5) of section 206C;

(c) in all the returns, delivered in accordance with the provisions of section 206 or sub-section (5A) or sub-section (5B) of section 206C to any income-tax authority; and

(d) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.!

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#### **Section 46 - Insertion of new Section 203AA**

---

After section 203A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:--

"203AA. Furnishing of statement of tax deducted:

The prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) of section 200, shall, within the prescribed time after the end of each financial year beginning on or after the 1st day of April, 2005 prepare and deliver to every person from whose income the tax has been deducted or in respect of whose income the tax has been paid a statement in the prescribed form specifying the amount of tax deducted or paid and such other particulars as may be prescribed."

---

#### **Section 47 - Amendment of Section 204**

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In section 204 of the Income-tax Act, for the portion beginning with the word and figures "sections 192" and ending with the words and figures "sections 195 to 203", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

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#### **Section 48 - Amendment of Section 205**

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In section 205 of the Income-tax Act, for the portion beginning with the word and figures "sections 192" and ending with the word, figures and letter "section 196D", the words "the foregoing provisions of this Chapter" shall be substituted with effect from the 1st day of October, 2004.

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#### **Section 49 - Amendment of Section 206**

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In section 206 of the Income-tax Act;--

(a) in sub-section (1), with effect from the 1st day of October, 2004,--

(i) for the words "prescribed income-tax authority", the words "prescribed income-tax authority or such other authority or agency as may be prescribed" shall be substituted;

(ii) the following proviso shall be inserted, namely:--

"Provided that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section.";

(b) in sub-section (2), with effect from the 1st day of April, 2005,--

(i) for the words "other than the principal officer in the case of every company", the words "other than the prescribed person in the case of every office of the Government and the principal officer in the case of every company" shall be substituted;

(ii) for the proviso, the following proviso shall be substituted, namely:--

"Provided that the prescribed person in the case of every office of Government and the principal officer in the case of every company responsible for deducting tax under the foregoing provisions of this Chapter shall, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme."

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## Section 50 - Amendment of Section 206C

---

In section 206C of the Income-tax Act,--

(a) after sub-section (1B), the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:--

'(1C) 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 (hereafter in this section referred to as "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 of the amount payable by the licensee or lessee to the account of the licensee or lessee or at the time of receipt of such amount from the licensee or lessee in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, collect from the licensee or lessee of any such licence, contract or lease of the nature specified in column (2) of the Table below, a sum equal to the percentage, specified in the corresponding entry in column (3) of the said Table, of such amount as income-tax:

### Table

Sl. No.	Nature of contract or licence or lease, etc.	Percentage
(1)	(2)	(3)
(i)	Parking lot	Two per cent.
(ii)	Toll plaza	Two per cent.
(iii)	Mining and quarrying	Two per cent.;

(b) in sub-section (2), after the word, brackets and figure "sub-section (1)", the words, brackets, figure and letter "or sub-section (1C)" shall be inserted with effect from the 1st day of October, 2004;

(c) in sub-section (3),--

(i) after the word, brackets and figure "sub-section (1)", the words, brackets, figure and letter "or sub-section (1C)" shall be inserted with effect from the 1st day of October, 2004;

(ii) the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:--

"Provided that the person collecting tax on or after the 1st day of April, 2005 in accordance with the foregoing provisions of this section shall, after paying the tax collected to the credit of the Central Government within the prescribed time, 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 or cause to be delivered to the prescribed income-tax authority, or the person authorised by such authority, such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed";

(d) in sub-section (4), the following proviso shall be inserted with effect from the 1st day of April, 2005, namely:--

"Provided that where any amount is collected in accordance with the provisions of this section on or after the 1st day of April, 2005 and paid under sub-section (3) to the credit of the Central Government, the amount of tax collected and specified in the statement referred to in the second proviso to sub-section (5) shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected in the assessment made under this Act for the assessment year for which such income is assessable without the production of certificate.";

(e) in sub-section (5),--

(i) for the word "buyer", the words "buyer or licensee or lessee" shall be substituted with effect from the 1st day of October, 2004;

(ii) the following provisos shall be inserted with effect from the 1st day of April, 2005, namely:--

"Provided that no certificate may be furnished in a case where tax has been collected in accordance with the foregoing provisions of this section on or after the 1st day of April, 2005:

Provided further that the prescribed income-tax authority or the person authorised by such authority referred to in sub-section (3) shall, within the prescribed time after the end of each financial year, prepare and deliver to the buyer referred to in sub-section (1) or, as the case may be, to the licensee or lessee referred to in sub-section (1C), a statement in the prescribed form specifying the amount of tax collected and such other particulars as may be prescribed.";

(f) in sub-section (5A), with effect from the 1st day of October, 2004,--

(i) for the words, figures and letters "prepare half-yearly returns for the period ending on the 30th September and 31st March in each financial year", the words "prepare within the prescribed time after the end of each financial year" shall be substituted;

(ii) for the words "prescribed income-tax authority", the words "prescribed income-tax authority or such other authority or agency as may be prescribed" shall be substituted;

(iii) the following proviso shall be inserted, namely:--

"Provided that the Board may, if it considers necessary or expedient so to do, frame a scheme for the purposes of filing such returns with such other authority or agency referred to in this sub-section.";

(g) for sub-sections (5B) and (5C), the following sub-sections shall be substituted with effect from the 1st day of April, 2005, namely:--

"(5B) Without prejudice to the provisions of sub-section (5A), any person collecting tax, other than in a case where the seller is a company, the Central Government or a State Government, may at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified by the Board in this behalf, by notification in the Official Gazette, and subject to such conditions as may be specified therein, on or before the prescribed time after the end of each financial year, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media (hereinafter referred to as the computer media) and in the manner as may be specified in that scheme:

Provided that where the person collecting tax is a company or the Central Government or a State Government, such person shall, in accordance with the provisions of this section, deliver or cause to be delivered, within the prescribed time after the end of each financial year, such returns on computer media under the said scheme.

(5C) Notwithstanding anything contained in any other law for the time being in force, a return filed on computer media shall be deemed to be a return for the purposes of sub-section (5A) and the rules made thereunder and shall be admissible in any proceedings made thereunder, without further proof of production of the original, as evidence of any contents of the original or of any facts stated therein.

(5D) Where the Assessing Officer considers that the return delivered or caused to be delivered under sub-section (5B) is defective, he may intimate the defect to the person collecting tax and give him an opportunity of rectifying the defect within a period of fifteen days from the date of such intimation or within , such further period which, on an application made in this behalf, the Assessing Officer may, in his discretion, allow; and if the defect is not rectified within the said period of fifteen days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to deliver the return.";

(h) in sub-section (9), with effect from the 1st day of October, 2004,--

(i) for the word "buyer", the words "buyer or licensee or lessee" shall be substituted;

(ii) after the word, brackets and figure "sub-section (1)", at both the places where they occur, the words, brackets, figure and letter "or sub-section (1C)" shall be inserted.

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#### **Section 51 - Amendment of Section 206CA**

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In section 206CA of the Income-tax Act, after sub-section (2), the following proviso shall be inserted with effect from the 1st day of October, 2004, namely:--

"Provided that the provisions of this section shall not apply on or after the 1st day of October, 2004.".

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#### **Section 52 - Amendment of Section 245RR**

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In section 245RR of the Income-tax Act, for the words, brackets, figures and letter "under sub-section (1) of section 245R", the words, brackets, figures and letter "under sub-section (1) of section 245Q" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of October, 1998.

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#### **Section 53 - Amendment of Section 246A**

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In section 246A of the Income-tax Act, in sub-section (1), in clause (a), in the opening portion, for the words "an order against the assessee", the words, brackets, figures and letters "an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee" shall be substituted with effect from the 1st day of October, 2004.

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#### **Section 54 - Amendment of Section 253**

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In section 253 of the Income-tax Act, in sub-section (1), after clause (b), the following clause shall be inserted with effect from the 1st day of October, 2004, namely:--

"(ba) an order passed by an Assessing Officer under sub-section (1) of section 115VZC; or".

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#### **Section 55 - Insertion of new Section 271FA**

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After section 271F of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2005, namely:--

"271FA. Penalty for failure to furnish annual information return: If a person who is required to furnish an annual information return, as required under sub-section (1) of section 285BA, fails to furnish such return within the time prescribed under that sub-section, the income-tax authority prescribed under the said sub-section may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for every day during which the failure continues."

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#### **Section 56 - Amendment of Section 272A**

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In section 272A of the Income-tax Act, in sub-section (2), after clause (j), the following clause shall be inserted with effect from the 1st day of April, 2005, namely:--

"(k) to deliver or cause to be delivered a copy of the statement within the time specified in sub-section (3) of section 200 or the proviso to sub-section (3) of section 206C,".

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#### **Section 57 - Amendment of Section 272B**

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In section 272B of the Income-tax Act, in sub-section (2), after the word, brackets, figure and letter "sub-section (5A)", the words, brackets, figure and letter "or sub-section (5C)" shall be inserted with effect from the 1st day of April, 2005.

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#### **Section 58 - Amendment of Section 272BBB**

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In section 272BBB of the Income-tax Act, in sub-section (1), for the words "fails to comply", the words, figures and letters "fails to comply before the 1st day of October, 2004" shall be substituted with effect from the 1st day of October, 2004.

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#### **Section 59 - Amendment of Section 273B**

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In section 273B of the Income-tax Act, for the word, figures and letter "section 271F," the words, figures and letters "section 271F, section 271FA," shall be substituted with effect from the 1st day of April, 2005.

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#### **Section 60 - Insertion of new Section 277A**

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After section 277 of the Income-tax Act, the following section shall be inserted with effect from the 1st day of October, 2004, namely:--

"277A. Falsification of books of account or document, etc.:

If any person (hereafter in this section referred to as the first person) wilfully and with intent to enable any other person (hereafter in this section referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

Explanation.--For the purposes of establishing the charge under this section, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act."

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## **Section 61 - Amendment of Section 278B**

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In section 278B of the Income-tax Act, after sub-section (2) and before the Explanation, the following sub-section shall be inserted with effect from the 1st day of October, 2004, namely:--

"(3) Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act."

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## **Section 62 - Amendment of Section 279**

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In Section 279 of the Income-tax Act, in sub-section (1), for the words and figures "section 277 or section 278", the words, figures and letter "section 277, section 277A or section 278" shall be substituted with effect from the 1st day of October, 2004.

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## **Section 63 - Substitution of new Section for Section 285BA**

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For section 285BA of the Income-tax Act, the following section shall be substituted with effect from the 1st day 51 April, 2005, namely:--

'285BA. Obligation to furnish annual information return:

(1) Any person, being--

(a) an assessee; or

(b) the prescribed person in the case of an office of Government; or

(c) a local authority or other public body or association; or

(d) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908(16 of 1908); or

(e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988(59 of 1988); or

(f) the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898(6 of 1898); or

(g) the Collector referred to in clause (c) of section 3 of the Land Acquisition Act, 1894(1 of 1894); or

(h) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956(42 of 1956); or

(i) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934(2 of 1934); or

(j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996(22 of 1996),

who is responsible for registering, or maintaining books of account or other document containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction which is registered or recorded by him during any financial year beginning on or after the 1st day of April, 2004 and information relating to which is relevant and required for the purposes of this Act, to the prescribed income-tax authority or such other authority or

agency as may be prescribed.

(2) The annual information return referred to in sub-section (1) shall be furnished within the prescribed time after the end of such financial year, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) as may be prescribed.

(3) For the purposes of sub-section (1), "specified financial transaction" means any--

- (a) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or
- (b) transaction for rendering any service; or
- (c) transaction under a works contract; or
- (d) transaction by way of an investment made or an expenditure incurred; or
- (e) transaction for taking or accepting any loan or deposit, which may be prescribed:

Provided that the Board may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction:

Provided further that the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

(4) Where the prescribed income-tax authority considers that the annual information return furnished under sub-section (1) is defective, he may intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the date of such intimation or within such further period which, on an application made in this behalf, the prescribed income-tax authority may, in his discretion, allow; and if the defect is not rectified within the said period of one month or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such return shall be treated as an invalid return and the provisions of this Act shall apply as if such person had failed to furnish the annual information return.

(5) Where a person who is required to furnish an annual information return under sub-section (1) has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice and he shall furnish the annual information return within the time specified in the notice."

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## Section 64 - Amendment of Thirteenth Schedule

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In the Thirteenth Schedule to the Income-tax Act, with effect from the 1st day of April, 2005,--

(a) for the brackets, words, figures and letters "[See section 80-IC(2)]", the brackets, words, figures and letters "[See sections 80-IB(4) and 80-IC(2)]" shall be substituted;

(b) after Part B, the following Part shall be inserted, namely:--

### "PART C

#### FOR THE STATE OF JAMMU AND KASHMIR

S.No.	Article or thing
1.	Cigarettes/cigars of tobacco, manufactured tobacco and substitutes
2.	Distilled/brewed alcoholic drinks
3.	Aerated branded beverages and their concentrates".

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## **Section 65 - Amendment of Section 35HA of Act 27 of 1957**

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### **Wealth-tax**

In section 35HA of the Wealth-tax Act, 1957, after sub-section (2), the following subsection shall be inserted with effect from the 1st day of October, 2004, namely:--

"(3) Where an offence under this Act has been committed by a person, being a company and such offence is punishable with imprisonment and fine, then, without prejudice to the provisions contained in sub-section (1) or sub-section (2), such company shall be punished with fine and every person, referred to in sub-section (1) or the director, manager, secretary or other officer of the company referred to in sub-section (2), shall be liable to be proceeded against and punished in accordance with the provisions of this Act."