CIRCULAR No. 14/2001

THE FINANCE ACT, 2001

EXPLANATORY NOTES

ON THE

PROVISIONS RELATING TO

DIRECT TAXES

CONTENTS

EXPLANATORY NOTES ON THE PROVISIONS OF THE FINANCE ACT, 2001

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GOVERNMENT OF INDIA
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CENTRAL BOARD OF DIRECT TAXES

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Subject :- Finance Act, 2001 - Explanatory Notes on provisions relating to Direct Taxes

1. INTRODUCTION

1.1 The Finance Act, 2001 as passed by the Parliament, received the assent of the President on 11th May 2001 and has been enacted as Act No. 14 of 2001. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. CHANGES MADE BY THE FINANCE ACT, 2001.

2.1 The Finance Act, 2001 (hereinafter referred to as the 'Act') has,-

Amended sections 2, 9, 10, 10A, 10B, 11, 12A, 16, 17, 25, 25A, 25B, 27, 32, 33AB, 35, 36, 43, 43B, 44AB, 47, 49, 54EC, 54H, 55, 72A, 80CCC, 80D, 80DD, 80G, 80GG, 80HHC, 80HHE, 80HHF, 80-IA, 80-IB, 80L, 88, 90, 94, 115AB, 115ACA, 115BB, 115-O, 115P, 115R, 115S, 139, 139A, 140A, 143, 149, 153, 154, 158B, 158BFA, 192, 194A, 194B, 196C, 197, 201, 206C, 220, 234A, 234B, 234C, 244A, 251, 254, 264, 271, 271A, 271F, 272A, 272BB, 273B and Rule 68 of the Second Schedule of the Income Tax Act, 1961;

Inserted new sections 10BB, 14A, 25AA, 35DDA, 54ED, 194H, 271AA, 271BA and 271G of the Income Tax Act, 1961;

Substituted new sections for sections 23, 24, 92, 115AC of the Income Tax Act, 1961;

Omitted sections 230A and 241 of the Income Tax Act, 1961;

Amended sections 17, 17A, 17B, 31 and 34A of the Wealth Tax Act, 1957;

Amended section 14 of the Expenditure Tax Act, 1987;

Omitted section 55 of the National Bank for Agriculture and Rural Development Act, 1981;

Omitted section 48 of the National Housing Bank Act, 1987;

Omitted section 50 of the Small Industries Development Bank of India Act, 1989.

3. PROVISIONS IN BRIEF

3.1 The provisions of the Act in the sphere of direct taxes relate to the following matters:-

(i) Prescribing the rates of income-tax on income liable to tax for the assessment year 2001-2002; the rates at which the tax will be deductible at source in the financial year 2001-2002 from interest (including interest on securities), winnings from lotteries or cross-word puzzles, winnings from horse rates, insurance commission and other categories of income liable for tax deduction at source under the Income-tax Act, rats for computing 'advance tax', deduction of income-tax from 'Salaries' and charging of income tax on current incomes in certain cases for the financial year 2001-2002.

(ii) Amendment of the Income-tax Act, 1961, Wealth-tax Act and Expenditure-tax Act with a view to

- provide definitions of "books of account" and "document" in line with the definitions in the Information Technology Act, 2000;
- clarify the definition of lottery and card game and other game of any sort;
- include in the scope of Royalty as consideration for the use of, or the right to use, industrial, commercial or scientific equipment;
- extend exemption of amount received under VRS to Central and State Government employees;
- provide a sunset clause for withholding tax on interest payable on external commercial borrowings;
- exempt penal interests upto 2 per cent under existing external commercial borrowings;

- exempt income of Secretariat of Asian Organization of Supreme Audit Institutions;
- exempt income of Insurance Regulatory and Development Authority;
- waive requirement of educational and medical institutions for investing their funds being part of corpus before 1st day of June, 1998 in specified securities;
- prescribe period of accumulation for income not applied for charitable purposes etc. in five year in case of medical and educational institutions;
- continue exemption for a venture capital company or venture capital fund if the shares of venture capital undertaking get listed;
- to make available exemption under clause (23FB) of section 10 to venture capital scheme of UTI;
- provide that definition of "infrastructure facility" in clause (23G) of section 10 to be same as that in section 80-IA(4);
- make co-operative banks to be eligible investors under clause (23G) of section 10;
- exempt income by way of fee or guarantee commission received by financial institutions for providing financial guarantee under clause (23G) of section 10;
- clarify that exemption in respect of income received in respect of units of UTI and Mutual Fund not to include income arising on transfer of such units;
- rationalize provisions relating to undertakings in free trade zones, export processing zones, special economic zones and export oriented units;
- clarify that manufacture of processing of computer programs under section 10B would include data processing and data management;
- prescribe period of accumulation of income not applied for charitable purposes etc. as five years in case of trusts;
- prescribe that charitable trusts etc. are required to publish their abridged accounts in a local newspaper;
- clarify that no deduction for expenditure in respect of exempt income against taxable income;
- modify standard deduction in case of salaried employees omit redundant provision in relation to entertainment allowances for salaried persons;
- provide that stock option issued as per guidelines will not be taxed as perk at time of exercise of option;
- modify taxation of perquisites and profits in lieu of salary;
- rationalize the provisions relating to "income from house property", and to enhance the limit on deduction of interest payable on borrowed capital in respect of self occupied residential house under certain circumstances;
- modify the provisions relating to depreciation;
- enhance the limit of deduction for tea development account;
- modify the provisions relating to tax concessions for scientific research;
- insert a provision relating to amortization of expenditure incurred under VRS;
- clarify the provisions allowability of bed debts for provisions for doubtful debts;
- provide for exemption from capital gains tax on assets of Stock Exchanges transferred under an approved scheme of corporatization;
- modify the provision to allow deduction for any sum payable in lieu of any leave at the credit of an employee or actual payment;
- provide that the audit report in the prescribed form of salary from an accountant;

- rationalize the specified date for getting accounts audited and furnishing report of such audit;
- extend the exemption under section 54EC to investment in bonds issued by Rural Electrification Corporation Limited;
- provide for exemption from tax on long term capital gains on securities and units if reinvested in primary issues;
- modify the provision of section 54H to delete reference to sections 54EA and 54EB and insert reference to section 54EC'
- provide for cost of acquisition in respect of trade mark or brand name associated with the business;
- provide for a definition of the term "industrial undertaking" in section 72A;
- provide level playing field to private insurers by allowing similar benefits to them and their clients as are available to LIC, GIC and their clients;
- provide 100% deduction to donations to National Trusts for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities;
- backloading rate of phasing out of deductions under sections 80HHC, 80HHE and 80HHF to 70% for A.Y. 2002-2003, 50% for A.Y. 2003-2004 and 30% for A.Y. 2004-2005;
- rationalization of tax holiday for infrastructure under section 80-IA;
- extend tax holiday to telecom sector under section 80-IA to broadband networks and internet services;
- extend period of commencement of business for tax holiday to generation of power and new transmission and distribution lines to 31.3.2006;
- extend deduction under section 80-IA to enterprises developing SEZs;
- provide tax holiday for undertakings engaged in the integrated handling, storage and transportation of foodgrains under section 80-IB;
- reduce deduction limit under section 80L from Rs.12,000 to Rs.,9000;
- provide higher rebate under section 88 to those in receipt of salary upto Rs.1 lakh in certain cases;
- amend provision of section 90;
- provide for new legislation to curb tax avoidance by abuse of transfer pricing;
- provide for measures to curb creation of short term losses by certain transactions in securities and units;
- prescribe that SEBI will be the approving authority for "overseas financial organization";
- extend concessional rate of tax under section 115AC to other notified schemes;
- extend GDRs issued to employees under ESOPs to subsidiary companies and other knowledge based industries;
- reduce the tax on winning lotteries, cross word puzzles, races including horse races, card games and other games of any sort or gambling or betting;
- reduce tax on distributed profits of domestic companies from 20% to 10%;
- rationalize the provisions related to interest chargeable from the assesses under the Income-tax Act;
- reduce tax on income distributed by Unit Trusts of India and Mutual Funds from 20% to 10%;
- rationalize due dates for filing of returns;

- provide for compulsory filing of returns by companies;
- provide for compulsory quoting of PAN by every person deducting or collecting tax at source in certain returns and certificates;
- rationalize the provisions relating to interest chargeable in cases of defaults in furnishing return of income and in payment of advance tax;
- rationalize various time limits for issue of refunds, reassessment, rectification and reopening of assessments;
- rationalize the block period;
- provide that persons responsible for paying income under the head "salaries" will be required to furnish a statement of perquisites or profits in lieu of salary;
- reduce the monetary limit for the purpose of tax deduction at source on interest income in respect of time deposit with a branch of a bank or deposit with a branch of housing finance company;
- provide for deduction of tax at source from income by way of winnings from card game and other game of any sort;
- provide for deduction of tax at source from income in the nature of commission or brokerage, and to enable recipient of commission or brokerage to obtain certificate for no TDS at a lower rate;
- clarify that the provisions of the section 201 shall not apply in cases of part deduction of tax;
- remove the requirement of clearance certificate u/s 230A for registration of transfer of immovable property in certain cases;
- omit section 241 relating to power to withhold refunds;
- rationalize the provisions relating to interest payable to the assesses under the Income-tax Act;
- modify power of Commissioner (Appeals) so as not to include powers to set aside the assessment;
- provide for a time limit for stay orders granted by Appellate Tribunal to be operative;
- enhance the fees for filing of revision applications;
- rationalize the quantum of penalties leviable in certain cases;
- rationalize certain time limit for assessment, re-assessment and re-opening of wealth tax assessments;
- rationalize the provisions related to interest chargeable from the assesses under the Wealth-tax Act;
- rationalize the provisions relating to interest payable to the assesses under the Wealth-tax Act;
- rationalize the provisions related to interest chargeable from the assesses under the Expenditure-tax Act;
- withdraw exemption for National Bank for Agricultural and Rural Development, National Housing Bank and Small Industries Development Bank of India by amending their respective Acts.

4. Rate Structure

4.1 Rates of income tax in respect of incomes liable to tax for the assessment year 2001-2002.

In respect of incomes of all categories of tax payers (corporate as well as non-corporate) liable to tax for the assessment year 2001-2002, the rates of income-tax have been specified in Part I of the First Schedule to the Act and are the same as those laid down in Part III of the First Schedule to the Finance Act, 2000.

4.2 Rates for deduction of income tax at source during the financial year 2001-2002 from income other than "Salaries".

4.2.1 The rates for deduction of income-tax at source during the financial year 2001-2002 from incomes other than "Salaries", have been specified in Part II of the First Schedule to the Act. These rates apply to income by way of interest on securities, interest other than "interest on securities," insurance commission, winnings from lotteries or crossword puzzles, winnings from horse races and income of non-residents (including non-resident Indians). The tax so computed for deduction at source in the case of individuals (for income above Rs. 60,000), companies, firms, co-operative societies and local authorities (except foreign companies) will be enhanced by a surcharge calculated at the rate of two per cent. of such tax.

4.2.2 These rates are broadly the same as those specified in Part II of the First Schedule to the Finance Act, 2000, for the purposes of deduction of income-tax at source during the financial year 2000-2001 except that the rate of tax to be deducted from winnings from lotteries or cross-word puzzles and winnings from horse races has been reduced from forty per cent. to thirty per cent.

4.3 Rates for deduction of income-tax at source from "Salaries" computation of "advance tax" and charging of Income-tax in special cases during the financial year 2001-2002.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2001-2002 and also for computation of "advance tax" payable during that year in the case of all categories of tax payers have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2001-2002 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non - residents, assessment of persons leaving India for good during that financial year or assessment of persons who are likely to transfer property to avoid tax, etc. The salient features of the rates specified in the said Part III are indicated in the following paragraphs.

4.3.1 Individuals, Hindu undivided families, etc.

Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of individuals, Hindu undivided families, association of persons, etc. There is no change in the rate structure. However, the tax payable would be enhanced by a surcharge for the purposes of the Union at the rate of two per cent. of the tax payable (after allowing rebate under Chapter VIII-A of the Income-tax Act) in cases of persons having total income exceeding Rs.60,000/-. No surcharge would be payable by persons having incomes of Rs.60,000/- or below. Marginal relief would be provided to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over Rs.60,000/- is limited to the amount by which the income is more than Rs.60,000/-.

It is clarified that the surcharge payable under Paragraph A of Part III of the First Schedule in the case of individuals, Hindu Undivided Families, association of persons and body of individuals is also payable by non-residents.

The following Table gives the income slabs and the rates of income-tax. Column (a) specifies the rates given in Paragraph A of Part I of the First Schedule to the Act; and column (b) specifies the rates given in Paragraph A of Part III of the First Schedule to the Act.

Existing Rates		**New Rates**	
Income slab	**Rates as specified in Paragraph A of Part I of First Schedule to the Act.**	**Income slab**	**Rates as specified in Paragraph A of Part III of First Schedule to the Act.**
Upto Rs. 50,000/-	Nil	Upto Rs. 50,000/-	Nil
Rs.50,001/- to Rs.60,000/-	10 %	Rs.50,001/- to Rs.60,000/-	10 %
Rs.60,001/- to Rs.1,50,000/-	20 %[1]	Rs.60,001/- to Rs.1,50,000/-	20 % [2]
Above Rs.1,50,000/-	30 % [3]	Above Rs.1,50,000/-	30 %[4]

[1] Persons in this slab would be required to pay twelve per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A

[2] Persons in this slab would be required to pay two per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A

[3] Persons in this slab would be required to pay seventeen per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A

[4] Persons in this slab would be required to pay two per cent. surcharge on the total income-tax payable after rebate under Chapter VIII-A

4.3.2 Effect of levy of surcharge

The effect of levy of surcharge in the case of individuals, HUFs, etc. at different income levels would be as under:-

Total income (Rs.)	Existing Tax liability (Rs.)	New Tax liability (Rs.)	Tax saving (Rs.)	Tax saving (%)
50,000	Nil	Nil	Nil	Nil
55,000	500	500	Nil	Nil
60,000	1,000	1,000	Nil	Nil
60,010	1,010 *	1,010 *	Nil	Nil
60,020	1,020 *	1,020 *	Nil	Nil
60,050	1,050 *	1,030	20	1.90
60,100	1,100 *	1,040	60	5.45
60,120	1,120 *	1,045	75	6.70
60,130	1,130 *	1,047	83	7.35
60,150	1,150 *	1,051	99	8.61
60,170	1,156	1,054	102	8.82
61,200	1,165	1,061	104	8.93
65,000	2,240	2,040	200	8.93
75,000	4,480	4,080	400	8.93
1,50,000	21,280	19,380	1,900	8.93
1,50,100	21,290 @	19,411	1,900	8.93
1,50,500	21,780 @	19,533	2,247	10.32
1,51,000	22,280 @	19,686	2,594	11.64
1,51,500	22,757	19,839	2,918	12.82
1,52,000	22,932	19,992	2,940	12.82
2,00,000	39,780	34,680	5,100	12.82
3,00,000	74,880	65,280	9,600	12.82
4,00,000	1,09,980	95,880	14,100	12.82
5,00,000	1,45,080	1,26,480	18,600	12.82
10,00,000	3,20,580	2,79,480	41,000	12.82

***** Marginal relief would be provided to ensure that the additional income-tax payable, including surcharge, on the excess of income over Rs.60,000/- is limited to the amount by which the income is more than Rs.60,000/-.

@ Marginal relief would be provided to ensure that the additional income tax payable, including surcharge, on the excess of income over Rs.150,000/- is limited to the amount by which the income is more than Rs.1,50,000/-.

4.3.3 Co-operative societies

In the case of co-operative societies the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. These rates are the same as those specified in the corresponding Paragraph of Part I of the First Schedule to the Act, except that the maximum marginal rate leviable on the incomes above Rs. 20,000/- has been reduced to 30 % from the existing 35%. However, the tax payable would be enhanced by a surcharge for the purposes of the Union at the rate of two per cent. of the tax payable.

4.3.4 Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Act. This rate remains at 35 per cent. However, the tax payable by resident firms would be enhanced by a surcharge for the purposes of the Union at the rate of two per cent. of the tax payable.

4.3.5 Local authorities

In the case of local authorities, the rate of income-tax has been specified in Paragraph D of Part III of the First Schedule to the Act. This rate is 30%, that is the same as that specified in the corresponding Paragraph of Part I of the First Schedule to the Act. However, the tax payable would be enhanced by a surcharge for the purposes of the Union at the rate of two per cent. of the tax payable.

4.3.6 Companies

In the case of companies, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act. There is no change in the existing rates of 35 per cent for domestic companies and 48 per cent. for foreign companies. However, the tax payable by domestic companies would be enhanced by a surcharge at the rate of two per cent. of the tax payable.

4.3.7 Aggregation of Agricultural Income

Under the existing provisions, if an individual, HUF, body of individuals or association of persons has agricultural income exceeding Rs. 600/-, in addition to total income which exceeds Rs. 50,000/- then the agricultural income is taken into account for determining the rate of tax chargeable on the total income. The amount of Rs. 600/- for aggregation of agricultural income was fixed in 1973 when this provision was introduced. At that time, the basic exemption limit was Rs. 5,000/- and the minimum width of each slab was Rs. 5,000/-. Now, the basic exemption limit is Rs. 50,000/- and the minimum width of income slab is Rs. 10,000/-. Hence through Finance Act, 2001, the minimum amount of agricultural income has been increased to Rs. 5,000/-, for the aggregation of such agricultural income for rate purposes.

[Section 2 & First Schedule]

5. Defining of 'Books of Account' and 'Document' so as to include electronic records etc.

5.1 With the passing of the Information Technology Act, 2000, the Act has provided definitions of 'books of account' and 'document' in section 2 of the Income-tax Act, so as to include electronic records within the meaning of these terms.

5.2 A new clause (12A) has been inserted in section 2 to define "books of account" as including ledgers, day- books, cash books, account-books and other books whether kept in written form or as print-outs of data stored in a floppy disc, tape or any other form of electro-magnetic data storage device.

5.3 Another new clause (22AA) has been inserted in the section to define the expression "document" as including an electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000, as per which electronic record means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

5.4 These amendments take effect from 1st June, 2001.

[Sections 3(a) & 3 (b)]

6. Definition of lottery and card game and other game of any sort

6.1 Sub-clause (ix) of clause (24) of section 2 of the Income-tax Act refers to income as including any winnings from lotteries, crossword puzzles, races including horse races, card games and other game of any sort or from gambling or betting of any form or nature whatsoever.

6.2 An *Explanation* has been inserted by the Act in the said sub-clause to clarify that “lottery” shall include winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever under any scheme or arrangement by whatever name called. It has also been clarified that “card game and other game of any sort” shall include any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game.

6.3 The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 3(c)]

7. "Royalty" to include consideration for the use of, or the right to use, industrial, commercial or scientific equipment

7.1 Under the existing provisions contained in clause (vi) of sub-section (1) of section 9, income by way of royalty payable is deemed to accrue or arise in India subject to certain conditions. The term “royalty” has been defined in Explanation 2 to this clause.

7.2 The definition of the term 'royalty' as used in the DTAAs entered into by India includes inter alia payments "for the use of, or the right to use, industrial, commercial or scientific equipment". Presently, these payments are not included in the definition of royalty in the aforesaid Explanation. The result is that income from the leasing of industrial, commercial or scientific equipment becomes taxable in the source country as business income only. Consequently, there is no withholding tax on such payments as the taxpayer take shelter under the definition of the term 'Royalty' as provided in the Income-tax Act since the same is more beneficial to the assessee.

7.3 Section 9 has therefore been amended so as to widen the scope of the term 'royalty' as provided in Explanation 2 of clause (vi) of sub-section (1) of section 9 so as to include in its ambit consideration for the use of, or the right to use, industrial, commercial or scientific equipment. However, this will not include the amounts referred to in section 44BB, that is, profits and gains arising from the business of exploration etc., of mineral oils.

7.4 This amendment will take effect with effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Section 4]

8. Exemption of amount received under VRS extended to Central and State Government employees.

8.1 Under the existing provisions contained in clause (10C) of section 10, any amount received by an employee of a public sector company or any other company or an authority established under a Central, State or, Provincial Act or a local authority or a co-operative society or a University or an Indian Institute of Technology or a notified Institute of management, at the time of his voluntary retirement/separation is not included in computing his total income. The exemption is available for amounts received upto Rupees five lakhs and if the payment is in accordance with a scheme of voluntary retirement/separation framed by the employer as per the prescribed guidelines.

8.2 Clause (10C) of section 10 has been amended through Finance Act, 2001 so as to extend the exemption to the employees of Central and State Governments also.

8.3 This amendment will take effect from 1^{st} April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. However, in the case of employees of State Government, the amendment takes retrospective effect from 1^{st} April, 2001 relevant to Assessment Year 2001-2002 and subsequent assessment years.

[Section 5(a)]

9. Sunset clause for External Commercial Borrowings (ECBs)

9.1 Under the existing provisions contained in parts (a), (b), (c), (d), (e) and (f) of sub-clause (iv) of clause (15) of section 10, income by way of interest payable by specified Indian entities on certain borrowings in foreign currency (external commercial borrowings) is currently exempted from tax. Having regard to the fact, that interest received by the lender is taxable in the country of his residence and he would get a credit for any tax paid by him in India on such interest income, any exemption from tax liability in India does not really benefit the lender but only results in reducing our tax revenues, parts (a), (b), (c), (d), (e) and (f) of section 10(15)(iv) have been amended through Finance Act, 2001, as discussed below:

(i) Part (a) of sub-clause (iv) of clause (15) of section 10 has been amended so as to limit the exemption in respect of income by way of interest payable by Government or local authority on moneys borrowed from or debts owed to sources outside India to interest related to such moneys borrowed or debts owed before 1st June, 2001.

(ii) Part (b) of sub-clause (iv) of clause (15) of section 10 has been amended so as to limit the exemption in respect of income by way of interest payable by an industrial undertaking in India on moneys borrowed by it under a loan agreement entered before 1st June, 2001 with an approved financial institution in a foreign country.

(iii) Part (c) of sub-clause (iv) of clause (15) of section 10 has been amended so as to limit the exemption in respect of income by way of interest payable by an industrial undertaking in India on moneys borrowed or debts incurred by it in a foreign country in respect of certain purchases to interest related to such moneys borrowed or debts owed before 1st June, 2001.

(iv) Part (d) of sub-clause (iv) of clause (15) of section 10 has been amended so as to limit the exemption in respect of income by way of interest payable by specified financial institutions on money borrowed from sources outside India to interest related to such moneys borrowed or debts owed before 1st June, 2001.

(v) Part (e) of sub-clause (iv) of clause (15) of section 10 has been amended so as to limit the exemption in respect of income by way of interest payable by financial institutions on money borrowed from sources outside India on or after 1st June, 2001 under an approved loan agreement for specified purposes.

(vi) Part (f) of sub-clause (iv) of clause (15) of section 10 has been amended so as to limit the exemption in respect of income by way of interest payable by an industrial undertaking in India on moneys borrowed from sources outside India under a loan agreement approved by the Central Government on or before 1st June, 2001.

9.2 After withdrawal of income tax exemption on interest payable on ECBs, the interest received by foreign entities on ECBs which are payable by Indian entities has now become taxable if such interest relates to moneys borrowed on or after 1.6.2001 or if the agreements for the loan have been entered into or approved on or after 1.6.2001, as the case may be. In other words, the exemption will be available only for interest in respect of borrowings made or agreements entered into or approved before 1.6.2001.

9.3 These amendments will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Section 5(b)]

10. Exemption of penal interest upto 2% under external commercial borrowing

10.1 Sub-clause (iv) of clause (15) of section 10 of the Income-tax Act provides that certain incomes by way of interest shall not be included in computing the total income of the previous year. Finance Act, 2000 inserted an Explanation 1A in this sub-clause to provide that the expression "interest" shall not include interest paid on delayed re-payment of loan or default so as to deny the benefit of exemption from withholding of tax on such payment.

10.2 Through Finance Act, 2001, sub-clause (iv) of clause (15) of section 10 has been amended so as to provide that interest paid at penal/default rate upto 2% per annum over the original interest rate contracted will be eligible for exemption under the said sub-clause.

10.3 This amendment will take effect with effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Section 5(b)]

11. Exemption of the income of the Secretariat of Asian Organisation of Supreme Audit Institutions

11.1 Through Finance Act, 2001, a new clause (23BBD) has been introduced in section 10 of the Income-tax Act so as to exempt the income of the Secretariat of the Asian Organisation of the Supreme Audit Institutions which has been registered as ASOSAI - Secretariat under the Societies Registration Act, 1860 (21 of 1860) for a period of three previous years relevant to the assessment years beginning on the 1st day of April, 2001.

11.2 This amendment takes effect retrospectively from 1st April 2001 and applies in relation to the assessment years 2001-2002, 2002-2003 and 2003-2004.

[Section 5(d)]

12. Exemption of the income of the Insurance Regulatory and Development Authority

12.1 Through Finance Act, 2001, a new clause (23BBE) has been introduced in section 10 of the Income-tax Act so as to exempt the income of the Insurance Regulatory and

Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.

12.2 This amendment will take effect from 1st April 2002 and will, accordingly, apply in relation to the assessment years 2002-2003 and subsequent assessment years.

[Section 5(d)]

13. Educational and medical institutions not required to invest their funds being part of corpus before 1st day of June, 1998 in specified securities.

13.1 Through Finance Act, 1999, the blanket exemptions available under sections 10(22) and 10(22A) to educational or medical institutions established for educational or philanthropical purposes were withdrawn. Sections 10(22) and 10(22A) provided that the income of a University or other educational institution or a hospital or other medical institution is not includible while computing the total income. Such institutions are now required to maintain a discipline similar to trusts under section 11. The exemption is available if the institution applies its income or accumulates it for application, wholly and exclusively for the objective for which it is established. The income so accumulated is required to be invested in securities as specified under sub-section (5) of section 11.

13.2 The sixth proviso to section 10(23C) further provides that the educational and medical institutions are required to dis-invest their investments made before the 1st day of June, 1998 in forms or modes other than those specified in section 11(5) by the 30th day of March, 2001.

13.3 Finance Act, 2001 has amended the third proviso of clause (23C) of section 10 so as to provide that the investments made by any university or educational institutions or any hospital or medical institutions referred to in sections 10(23)(vi) and 10(23)(via) in the form of equity shares of a public company on or before the 1st day of June, 1998 and which form part of the corpus of the fund of the said institutions will not be required to be dis-invested. It is further provided that any accretion to the above-mentioned shares by way of bonus shares and forming part of corpus of the fund will also not be required to be dis-invested.

13.4 This amendment takes effect retrospectively from 1st April 2001 and accordingly, applies in relation to the assessment year 2001-2002 and subsequent assessment years.

[Section 5(e)]

14. Period of accumulation for income not applied for charitable purposes etc. to be prescribed as five years in case of medical and educational institutions

14.1 Under the existing provisions contained in sub-clauses (iv), (v), (vi) and (via) of clause (23C) of section 10, the income of following entities is exempt from payment of income-tax:-

(a) notified fund or institution established for charitable purposes;

(b) notified trust set up wholly for public religious purposes or notified institution wholly for public religious purposes;
(c) approved University or other educational institution existing solely for educational purposes; and
(d) approved hospital or other medical institution existing solely for philanthropic purposes.

The third proviso to the said clause provides that the aforesaid fund or trust or institution or educational or medical institutions shall apply its income, or accumulate it for application, wholly and exclusively for the purposes for which they are established. No maximum period for which such income can be accumulated has been provided.

14.2 Through Finance Act, 2001, the third proviso of clause (23C) of section 10 has been amended so as to provide that the maximum period for accumulation of income, in excess of twenty-five per cent. of the income earned during the year, if such income is accumulated after the 1st day of April, 2001, by any such fund or trust or institution or any university or other educational institution or any hospital or other medical institutions, as the case may be, will be five years only. If, however, the income accumulated is less than twenty-five per cent. of the income earned during the year by these educational and medical institutions, there is no limitation on the period of accumulation.

14.3 This amendment will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Sections 5(e)]

15. Exemption to continue for a Venture Capital Company or Venture Capital Fund if the shares of venture capital undertaking get listed

15.1 A new Section 10(23FB) was introduced in the Income-tax Act through the Finance Act, 2000, with effect from 1.4.2001, with respect to the taxation of Venture Capital. The section provides that any income of a Venture Capital Company (VCC) or a Venture Capital Fund (VCF) set up to raise funds for investment in a Venture Capital Undertaking (VCU) shall not be included in computing the total income for the previous year.

15.2 As per the Explanation of Section 10(23FB), VCU means a domestic company whose shares are not listed in a recognized stock exchange in India. If the shares of VCUs are subsequently listed in a stock exchange, the VCC/VCF may lose the tax exemptions by virtue of this Explanation if their investments continue in such listed VCUs. It is considered that this provision may be perceived as a disincentive for VCUs to enlist themselves in the recognized stock exchange.

15.3 Clause (23FB) of section 10 has been amended through the Finance Act, 2001 so as to provide that a VCC/VCF will continue to be eligible for exemption under section 10(23FB) even if the shares of the VCU in which the VCC/VCF has made the initial investment, are subsequently listed in a recognized Stock Exchange in India.

15.4 This amendment takes retrospective effect from 1st April, 2001 and accordingly, applies in relation to the assessment year 2001-2002 and subsequent assessment years.

[Section 5(f)]

16. Exemption to be available to Venture Capital schemes of UTI

16.1 Under the existing provisions of clause (23FB) of section 10, income of a Venture Capital Fund or Venture Capital Company set up to raise funds for investment in a Venture Capital Undertaking is exempt from payment of income-tax. The Venture Capital Fund has been defined as a fund operating under a trust deed registered under the provisions of the Registration Act, 1908. As the Unit Trust of India, has been established under an Act of Parliament, namely the Unit Trust of India Act, 1963, it is not a trust registered under the provisions of the Registration Act. Therefore, a Venture Capital Scheme floated by Unit Trust of India will not be covered within the definition of VCF.

16.2 Clause (23FB) of section 10 has been amended so as to provide that a venture capital scheme floated by the UTI will also be covered within the definition of VCF in section 10 (23FB).

16.3 This amendment takes retrospective effect from 1st April, 2001 and will accordingly, applies in relation to the assessment year 2001-2002 and subsequent assessment years.

[Section 5(f)]

17. Definition of 'Infrastructure facility' in section 10(23G) to be same as that in section 80-IA(4)

17.1 Under the existing provisions contained in clause (23G) of section 10, any income of an infrastructure capital fund or an infrastructure capital company by way of interest, dividend (other than dividends referred to in section 115-O) and long term capital gains from investment made by way of equity or long-term finance in an approved enterprise wholly engaged in the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating an infrastructure facility shall not be included in computing the total income.

17.2 Fiscal incentives for development of infrastructure have been provided in the Income-tax Act as a package, so that tax holiday is allowed under section 80-IA to the infrastructure enterprise and income from long-term investment made by the Infrastructure Capital Company or Infrastructure Capital Fund in the approved enterprise is exempt under section 10(23G). Thus, whenever a decision is taken to revise the scope of fiscal incentives to infrastructure by amending section 80-IA, necessary amendments are required to be made in sections 10(23G) as well.

17.3 Thus, as a measure of rationalisation, Finance Act, 2001 has amended section 10(23G) so as to provide that income by way of interest, dividend or long term capital gains of an infrastructure capital fund or an infrastructure capital company, from investments in any enterprise or undertaking wholly engaged in the business referred to in sub-section (4) of section 80-IA or in a housing project referred to in sub-section (10) of section 80-IB will not be included in computing the total income. This will remove the requirement of consequential amendment in Section 10(23G) as a result of any future change in section 80-IA regarding infrastructure.

17.4 This amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to assessment year 2002-03 and subsequent assessment years.

[Section 5(g)]

18. Co-operative Banks to be eligible investors

18.1 The expressions "infrastructure capital company" and "infrastructure capital fund" have been defined in section 10(23G). At present, Co-operative Banks being neither a company nor a fund operating under the provisions of the Registration Act are not covered by these definitions.

18.2 Clause (23G) of section 10 has therefore been amended through Finance Act, 2001 so as to provide that income of a Co-operative Bank by way of interest, dividends (other than dividends referred to in section 115-O) and long term capital gains from investments made by way of equity or long term finance in an approved enterprise will also be exempt from payment of income-tax.

18.3 This amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to assessment year 2002-03 and subsequent assessment years.

[Section 5(g)]

19. Income by way of fee or guarantee commission received by financial institutions for providing financial guarantee to be exempt

19.1 Under the existing provisions contained in clause (23G) of section 10, any income of an infrastructure capital fund or an infrastructure capital company by way of interest, dividends (other than dividends referred to in section 115-O) and long term capital gains from investment made by way of equity or long-term finance in an approved enterprise wholly engaged in the business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating an infrastructure facility shall not be included in computing the total income.

19.3 Finance Act, 2001 has amended clause (23G) of section 10 so as to extend the exemption under this clause to income received by way of credit enhancement fees or guarantee commission by a financial institution from an approved enterprise.

19.4 This amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Section 5(g)]

20. Exemption in respect of income received in respect of units of UTI and Mutual Fund not to include income arising on transfer of such units.

20.1 The Finance Act, 1999 amended clause (33) of section 10 so as to provide that any income by way of income received in respect of Units from the Unit Trust of India and units of a Mutual Fund specified in section 10(23D) shall not be included while computing the total income.

20.2 While making this amendment, the intention of the legislature was to tax the income received in respect of the units of the UTI and the Mutual Fund on lines similar to dividends distributed by a domestic company. The income received in respect of Units from UTI and Mutual Funds was exempted simultaneously with the insertion of the provisions of Chapter XII-E which provided that the UTI and MFs shall be liable to pay additional income-tax on such income distributed by them. However, the provisions of sub-clause (ii) and (iii) of clause (33) of section 10 are being interpreted in a manner so as to claim exemption also in respect of capital gains arising on the sale of the units of UTI or Mutual Fund by the unit holders in the secondary market by treating the same as income received in respect of units of UTI or mutual funds.

20.3 Through Finance Act, 2001, clause (33) of section 10 has, therefore, been amended so as to clarify that nothing contained in this clause shall apply to any income arising from the transfer of the units of UTI or Mutual Funds.

20.4 This amendment takes retrospective effect from 1st April 2000 and accordingly, applies in relation to the assessment year 2001-2002 and subsequent assessment years.

[Section 5(h)]

21. Rationalization of provisions related to undertakings in Free Trade Zones, Export Processing Zones, Special Economic Zones and Export Oriented Units.

21.1 Under section 10A of the Income-tax Act, newly established undertakings in free trade zones are entitled to a tax holiday for a ten year period. Similarly, section 10B of the Income-tax Act provides for a ten year tax holiday in respect of newly established hundred per cent export oriented undertakings. The Finance Act, 2000 substituted sections 10A and 10B of the Income-tax Act. The newly substituted provisions of sections 10A and 10B provide for deduction of profits and gains of business derived by an undertaking from export of products or articles or things or computer software for a period of ten consecutive assessment years in a manner that the deductions are gradually phased out over the subsequent period. The definition of "export turnover" has been amended to clarify that the working of the proportionate deduction on export profits are meant to be of the undertaking, and not of the business, as a whole.

21.2 The Finance Act, 2001 clarifies that in the event of conversion of a free trade zone into Special Economic Zone the period of ten years shall be reckoned from the date the unit first began to manufacture or produce articles or things or computer software. The Act also omits the proviso to sub-section (1), under which upto 25% of production sold in domestic tariff area was also treated as eligible for deduction. The effect of this amendment would be that the profits derived from domestic sales of articles or things or computer software would be liable to tax. The proposed amendment will take effect from assessment year 2002-03.

21.3 Sub-section (9) provides that where during any previous year, the ownership or beneficial ownership interest in the undertaking is transferred, the benefit of the deduction would not be allowed for that year and subsequent years. An Explanation applicable in cases of companies further provides that where 51% of shares are not beneficially held by persons, who held these shares at the time of setting up of the unit, it will be deemed to be a transfer of ownership.

21.4 Owing to difficulties in monitoring change in shareholding pattern in listed companies in which the public are substantially interested, the amendment provides that the provisions of sub-section (9) would not be applicable in the case of a company where its shareholding undergoes any change as a result of its becoming a company in which public are substantially interested. The proviso would also not be applicable to a company in which public are substantially interested at the time of setting up of the undertaking. In other words, the proviso will not apply to companies in which public are substantially interested either at the time of setting up or later on its becoming a company in which public are substantially interested. The proviso also applies to any change in the shareholding pattern of any venture capital company or a venture capital funds, which have to necessarily disinvest at some stage.

21.5 A circular No.694 dated 23.11.1994 was issued by the CBDT stating that the benefit of concession u/s 10A/10B would be available for the profits derived from on site development of computer programme.

21.6 In view of intellectual input required for writing client specific software, a new Explanation-3 in the provision has been inserted to clarify that export of computer software shall include receipts from development of software at the client's site abroad. Such earnings would also be eligible for the benefit under the provision. For earlier years, the circular of CBDT referred to above shall continue to apply in respect of profits derived from on-site development of computer programme.

21.7 These amendments being clarificatory, will take effect from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent years.

[Sections 10A, 10B]

22. Clarification regarding the meaning of computer programmes in certain cases

22.1 A new section 10BB has been inserted so as to clarify the meaning of computer programme in certain cases under section 10B as it stood prior to its substitution by section 7 of the Finance Act, 2000. It has been clarified that where an undertaking derived profits and gains from the production of computer programmes these shall include profits and gains from processing or management of electronic data.

22.2 These amendments will take effect from 1st April, 1994 and will, accordingly, apply in relation to the assessment year 1994-95 and subsequent years.

[Section 10BB]

23. Period of accumulation for income not applied for charitable purposes etc. to be prescribed as five years in case of trusts

23.1 Under the existing provisions contained in section 11, income from property held under a trust and used wholly and exclusively for charitable or religious purposes is exempt from payment of income-tax. This exemption is confined only to that portion of income which is applied for charitable or religious purposes or is accumulated for such purposes, provided such accumulation is not more than 25% of the total income of the trust and the money is accumulated or set apart for application for charitable or religious purposes. If the trust does not apply 75% of its income for charitable purposes, then the exemption is available only if the unapplied income is accumulated for application to charitable purposes subject to the conditions specified in section 11(2). These conditions, inter-alia specify that the maximum period for which such income can be accumulated is ten years.

23.2 Sub-section 2 of section 11 has been amended so as to reduce the maximum period for which accumulation is permitted to five years in respect of any income accumulated or set apart after the 1st day of April, 2001.

23.3 This amendments will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Section 9]

24 Charitable Trusts etc. to publish their abridged accounts in a local newspaper

24.1 Under the provisions contained in section 11, income from property held under a trust and used wholly and exclusively for charitable or religious purposes is not includible while computing their total income. Under the existing provisions contained in sub-clauses (iv), (v), (vi) and (via) of clause (23C) of section 10, income of notified fund or trust or institution established for charitable or religious purposes and income of approved educational and medical institutions established not for the purposes of profit is not includible while computing their total income.

24.2 The above-mentioned provisions provided in the statute as a fiscal incentive for persons desiring to do philanthropic work are sometimes misused by unscrupulous elements. To enable interested persons to form informed opinion about the work and worth of these fund, trust or institutions, and to promote transparency in their functioning, Finance Act, 2001 has made necessary amendments in sections 12A and 10(23C) so as to require the fund, trust or institution to publish their accounts in a leading local newspaper. It has also been provided that the exemption under section 11 will be allowed to a trust only if a copy of such published accounts is enclosed with the return of income. Similarly, it has been provided that a trust, fund or institution referred to in section 10(23C) shall be required to furnish a copy of such newspaper where the accounts have been published with the form of application for exemption or continuance thereof.

24.3 To mitigate hardship, to smaller trusts, this requirement will apply only to trusts having total income, before giving effect to the exemption available under sections 11 and 12, in excess of rupees one crore in the relevant previous year. It has also been provided that the above-mentioned requirements will be applicable only for educational or medical institutions referred to in sub-clauses (iv), (v), (vi) and (via) where the annual receipt is above rupees one crore.

24.4 These amendments will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Section 5(e) and 10]

25. No deduction for expenditure incurred in respect of exempt income against taxable income.

25.1 Certain incomes are not includible while computing the total income, as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income, is being used to reduce also the tax payable on the non-exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income, i.e., gross income minus the expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income.

25.2 Through Finance Act, 2001, a new section 14A has been inserted so as to clarify the intention of the legislature since the inception of the Income-tax Act, 1961, that no deduction shall be made in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income-tax Act.

25.3 It is also being clarified that the assessments where the proceedings have become final before the first day of April, 2001 should not be re-opened under section 147 of the Act to disallow expenditure relatable to the exempt income by applying the provisions of section 14A of the Act.

25.4 This amendment takes effect retrospectively from 1st April, 1962 and accordingly, applies in relation to the assessment year 1962-1963 and subsequent assessment years.

[Section 11]

26. Modification of standard deduction in case of salaried employees and omission of redundant provision in relation to entertainment allowances for salaried persons.

26.1 Under the existing provision of section 16, certain deductions from salaries are allowed. At present, standard deduction is allowed in cases where salary does not exceed one lakh rupees at the rate of a sum equal to 33-1/3% of the salary or twenty five thousand rupees whichever is less. For salaries exceeding one lakh rupees but not exceeding five lakh rupees, a deduction of a sum of twenty thousand rupees is allowed.

26.2 To provide relief to salaried taxpayers in low and medium categories, the Finance Act, 2001 has increased the categories and the amount of standard deduction w.e.f. 1.4.2002. For assessees whose income does not exceed one lakh fifty thousand rupees, a deduction of a sum equal to 33-1/3% of salary or thirty thousand rupees, whichever is less is to be allowed. In cases where salary income exceeds one lakh fifty thousand rupees but does not exceed three lakh rupees, a deduction of a sum of twenty five thousand rupees shall be allowed. In case of assessees whose income from salaries before allowing any deduction exceeds three lakh rupees but does not exceed five lakh rupees, a deduction of a sum of twenty thousand rupees is to be allowed.

26.3 The amendment shall come into effect from 1st April, 2002 and shall, accordingly, apply to assessment year 2002-03 and subsequent years.

26.4 A deduction to the extent of the entertainment allowance or 1/5th of salary or Rs.7500, whichever is the least is available to an assessee not being in receipt of salary from government, and who is in receipt of entertainment allowance continuously in the same employment since 1st April, 1955.

26.5 The Finance Act omits this deduction under section 16.

[Section 16]

27. Clarifications in respect of Stock Options

27.1 Prior to the amendments effected by the Finance Act, 2000, stock options were taxed at two stages. Firstly, as perquisite on the amount representing the difference between the price at which option was exercised and the fair market value on the date of exercise and secondly, as capital gains. The Finance Act, 2000 sought to tax stock options only once, at the time of sale as capital gains, if such shares, debentures or warrants were issued to such employees under the Employees Stock Option Plan or Scheme. Since these provisions did not specify the nature of such plan or scheme, the provision has been suitably modified to provide that such shares, debentures or warrants are to be issued to employees in accordance with the guidelines issued by the Central Government in this regard. Detailed guidelines governing such stock options have been issued by the Central Government vide Notification No.1021(E) dt.11.10.2001 .

27.2 The Finance Act, 2001 also clarifies that in those cases, where tax has been levied under sec.17 of the Income-tax Act as perquisite at the time of the exercise of the option by the employees, the fair market value at the time of exercise of such shares shall be the cost of the share for working out the capital gains. This clarificatory amendment will take care of shares issued during the previous year relevant to assessment year 2000-01 to avoid double taxation.

27.3 The amendment will take effect w.e.f., 1st April, 2001 and will, accordingly apply in relation to the assessment year 2001-02 and subsequent years.

[Sections 17, 47, 49]

28. Changes in taxation of perquisites and profits in lieu of salary

28.1 Section 17 defines the terms “salary”, “perquisite” and “profits in lieu of salary. “Perquisite”, includes the value of any benefit or amenity granted or provided free of cost or at concessional rate, in specified cases. Perquisites are charged to tax under the existing provisions for employees who are directors of companies, have substantial interest in a company, or have an income from salaries, excluding the value of all benefits or amenities, exceeding Rs. 24,000. The Finance Act, 2001 amends the provision to raise the above monetary limit to Rs. 50,000.

28.2 The definition of “perquisite” has also been amended to include the value of any other fringe benefit or amenity as may be prescribed. The details of fringe benefits are to be calculated in the manner prescribed in the Income-tax Rules. It is further provided that 'profits in lieu of salary' shall include amounts received in lump sum or otherwise, prior to employment or after cessation of employment for the purposes of taxation.

28.3 The nature and the value of other fringe benefits have already been prescribed under the Rules. The value of different perquisites, benefits, amenities and other fringe benefits will henceforth be worked out in accordance with Rule-3 of the Income-tax Rules which has been rewritten and notified vide No.940(E) dt.25.9.2001. .

28.4 These amendments shall come into effect from 1st April, 2002 and shall, accordingly, apply to assessment year 2002-03 and subsequent years.

[Section 17]

29. Rationalization of provisions relating to income from house property

29.1 The existing provisions contained in section 23 of the Income-tax Act provide for determination of annual value of the property in certain circumstances including where the property is let, or is self-occupied, or is vacant, or is partially let, or is let for part of the year. The annual value so determined was subject to deductions allowable under section 24, including deductions on account of vacancy for any part of the year in respect of the property let, and on account of rent which could not be realized. With the various amendments made over the years in this section, the provisions had become quite complicated, disjointed and difficult for the taxpayer to understand. With a view to rationalize these provisions, the Act has substituted section 23 so as to provide for a simplified determination of annual value after allowing deductions in computing the annual value itself on account of vacancy and unrealized rent.

29.2 The substituted section 23 retains the existing concept of annual value as being the sum for which the property might reasonably be expected to let from year to year i.e., annual letting value (ALV). **However, in case of let out property, the concept of "annual rent" has been removed.** The new section provides that where the property or any part of the property is let and the **actual rent** received or receivable is in excess of the ALV, the amount so received or receivable shall be the annual value. This will be the case even if the property (or part of the property) was vacant for a part of the year, but the actual rent received or receivable during the year is still higher than the ALV. Where the property or any part of the property is let and was vacant during the whole or any part of the previous year and **owing to such vacancy**, the actual rent received or receivable is less than the ALV, the sum so received or receivable shall be the annual value. In case the actual rent received or receivable during the year is less than the ALV, but not because of vacancy, it is the ALV which shall be taken to be the annual value.

29.3 The explanation to the substituted section provides that unrealised rent shall not be included in the actual rent receivable and shall therefore not form part of the annual value subject to rules made in this behalf by the Board. Conditions to be satisfied for such exclusion are specified in Rule 4, which has been suitably modified.

29.4 The section also provides that the taxes levied by a local authority in respect of the property shall be deducted in determining the annual value for that previous year in which such taxes are actually paid, irrespective of the previous year in which the liability to pay such taxes was incurred by the owner. Under the existing provisions, this deduction was allowable only in respect of property which was in the occupation of a tenant. **As per the amended provisions, however, the deduction is available in every case where annual value is determined under sub-section (1) including the case of a second self-occupied house not falling under sub-section (2) of the section.**

29.5 Under the existing provisions contained in section 24, the income chargeable under the head "income from house property" was computed after making deductions of one-fourth of the annual value in respect of repairs of, and collection of rent from the property, interest on capital borrowed for acquiring, constructing, repairing, renewing or reconstructing the property, as also a number of other deductions on account of insurance premium, ground rent, annual charge, etc. The various deductions made the computation of income from house property a cumbersome process.

29.6 With a view to rationalize the deductions and simplify the computation, the Act has substituted the said section so as to provide for **only two deductions, namely a deduction of thirty per cent. of the annual value (which takes into account all expenses and outgoings for maintaining the property), and interest paid** on capital borrowed for acquiring, constructing, repairing, renewing or reconstructing the property. **The limit on deduction of interest payable on housing loans for acquiring or constructing a self-occupied house has been enhanced from the existing Rupees one lakh to Rupees one lakh fifty thousand** in cases where the capital is borrowed on or after 01.4.1999. In other cases, the existing limit of Rupees thirty thousand shall continue.

29.7 A new section 25AA has been introduced to provide that in cases where unrealised rent has not been included in the actual rent receivable (and consequently the annual value) for any previous year, and subsequently any amount in respect of such rent is realised by the assessee, the amount so realised shall be charged to tax as income from house property for the previous year in which it is realised, even if the assessee is no longer the owner of the house property in that previous year.

29.8 Consequential amendments have been made by amending sections 25, 25A, 25B, 27 and 80GG of the Income-tax Act.

29.9 These amendments will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Sections 14, 15, 16, 17, 18, 19,20 & 40]

30. Modification of provisions relating to depreciation

30.1 Under the existing provisions of section 32 of the Income-tax Act, carry forward and set off of unabsorbed depreciation is allowed for 8 assessment years.

30.2 With a view to enable the industry to conserve sufficient funds to replace plant and machinery, specially in an era where obsolescence takes place so often, the Act has dispensed with the restriction of 8 years for carry forward and set off of unabsorbed depreciation. The Act has also clarified that in computing the profits and gains of business or profession for any previous year, deduction of depreciation under section 32 shall be mandatory.

30.3 Under the existing provisions, no deduction for depreciation is allowed on any motor car manufactured outside India unless it is used (i) in the business of running it on hire for tourists, or (ii) outside India in the assessee's business or profession in another country.

30.4 The Act has allowed depreciation allowance on all imported motor cars acquired on or after 1st April 2001.

30.5 These amendments will take effect from the 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 21]

31. Enhanced tax incentive for tea industry

31.1 Under the existing provisions of sub-section (1) of section 33AB of the Income-tax Act, where an assessee carrying on the business of growing and manufacturing tea in India has, before the expiry of six months from the end of the previous year or before filing of return, whichever is earlier, deposited with the National Bank for Agriculture and Rural Development or in the Tea Deposit Account, any amount in accordance with and for the purposes specified in the approved scheme, the assessee shall be allowed a deduction of the amount so deposited or twenty per cent. of the profits of such business, whichever is less.

31.2 The Act has enhanced the limit for the purpose of deduction from twenty per cent. to forty per cent with a view to enable the tea industry to generate additional resources for rejuvenation & replantation and modernizing of processing facilities so as to enhance its productivity and competitiveness.

31.2 The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 22]

32. Tax concessions for scientific research

32.1 Section 35 of the Income-tax Act relates to expenditure on scientific research. Sub-section (2AA) of the section allows for a weighted deduction of one and one-fourth times of the sum paid by an assessee to an approved National Laboratory or a University or an Indian Institute of Technology for carrying out approved programme of scientific research. Sub-section (2AB) allows a deduction of a sum equal to one and one-half times of the expenditure incurred on scientific research (not being expenditure in the nature of cost of any land or building) on in-house research and development facility, as approved by the prescribed authority, to a company engaged in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board.

32.2 With a view to give further boost to research and development activities and to provide impetus to economic growth, the Act has amended sub-sections (2AA) and (2AB) of section 35.

32.3 As per the amended provisions, the weighted deduction under sub-section (2AA) will also be available in respect of any sum paid to specified persons, approved by the prescribed authority, for carrying out scientific research undertaken under a programme approved by the prescribed authority. Rule 6 of the Income-tax Rules, 1962 has accordingly been modified and the Prescribed Authority for this purpose shall be the Principal Scientific Adviser to the Government of India.

32.4 Weighted deduction under sub-section (2AB) shall also be available on expenditure for research and development for the business of bio-technology. An *Explanation* has also been inserted which provides that 'expenditure on scientific research', in relation to drugs and pharmaceuticals, shall include expenditure incurred on clinical drug trial, obtaining approval from any regulatory authority under any Central, State or Provincial Act and filing an application for a patent under the Patents Act, 1970.

32.5. These amendments will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 23]

33. New provisions for amortization of expenditure incurred under Voluntary Retirement Scheme

33.1 The Act has introduced a new section 35DDA in the Income-tax Act regarding amortization of expenditure incurred under Voluntary Retirement Scheme. The section provides that the expenditure incurred by way of payment of any sum to an employee at the time of his voluntary retirement, in accordance with any scheme of voluntary retirement, would be allowable as deduction over a period of five years.

33.2 The payments made in accordance with any scheme or schemes of voluntary retirement are only covered within the purview of the said section. Such payments are normally in the nature of ex-gratia payments and are made over and above the regular terminal benefits like pension, gratuity, leave encashment etc. in respect of which normal provisions of the Act will apply.

33.3 The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 24]

34. Clarification regarding allowability of bad debts

34.1 With a view to avoid litigation, the Act has inserted an *Explanation* in clause (vii) of sub-section (1) so as to clarify that any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee.

34.2 The amendment will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent years.

[Section 25]

35. Capital gains not to arise on transfer of capital assets of a Stock Exchange under an approved scheme of corporatisation.

35.1 Stock exchanges in India are generally mutual associations of stock brokers, who hold not only trading rights but also an undivided interest in the ownership of the exchange. The exchanges are managed mainly by the brokers. Corporatisation of such stock exchanges could ensure professional management and better regulation, by delinking the trading rights from ownership rights and providing a more diversified ownership. It could also help the exchanges in raising capital, attracting skilled manpower, and in economic growth through mergers or other forms of corporate restructuring.

35.2 With a view to encourage such corporatisation of stock exchanges in the country, the Act has provided a one-time exemption from capital gains tax in respect of capital assets of a recognised stock exchange transferred under a scheme of corporatisation, subject to certain conditions.

35.3 The Act has amended clause (xiii) of section 47 of the Income-tax Act to provide that any transfer of a capital asset from an association of persons or body of individuals to a company, under a scheme of corporatisation of a recognised stock exchange, shall not be regarded as transfer for the purposes of capital gains tax. The proviso to clause (xiii) has also been amended to provide that this one-time exemption from capital gains tax is available only if all assets and liabilities of the stock exchange immediately before the succession, become the assets and liabilities of the corporatised stock exchange; and the scheme of corporatisation is approved by the Securities and Exchange Board of India.

35.4 Corresponding amendments have been made in sections 43(1) and 43(6) to provide for definitions of ‘actual cost’ and ‘written down value’ of assets transferred under such a scheme of corporatisation, and in section 55(2) to provide for definition of cost of acquisition of equity shares allotted to a shareholder of the corporatised stock exchange.

[Sections 26, 29 and 34]

36. Modifications of the provisions relating to deduction in respect of certain liabilities

36.1 Under the existing provisions of section 43B of the Income-tax Act, deduction for certain amounts payable by the assessee is allowed in computing the income of that previous year in which the sum is actually paid.

36.2 The Act has amended the section to provide that the deduction for any sum payable by an employer in lieu of any leave at the credit of his employee shall also be allowed only on actual payment basis.

36.3 The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 27]

37. Modification of provisions relating to audit of accounts of certain persons

37.1 Under the existing provisions of section 44AB of the Income-tax Act, every person carrying on business or profession is required to get his accounts audited by an "accountant", as defined in the Explanation below section 288(2), if his total sales, turnover or gross receipts in business or profession are in excess of certain limits or the profits are lower than the prescribed presumptive profits. Such person is required to get his accounts audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant. The second proviso to the said section lays down that where such person is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of the said section if such person gets his accounts audited under such other law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report in the form prescribed under the said section.

37.2 The Act has amended the said section to provide that in the cases where the accounts are required to be audited by or under any other law, it shall be sufficient compliance with the provisions of the said section if the person gets the accounts audited under such law before the specified date and furnishes by that date, the report of the audit under such other law and a further report from an accountant in the form prescribed under the said section.

37.3 The amendment takes effect from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

[Section 28]

38. Specified date for getting accounts audited and furnishing report of such audit to be rationalised

38.1 Under the existing provisions contained in sub-clause (ii) of the Explanation below section 44AB of the Income-tax Act, the "specified date", for furnishing the tax audit report in relation to the accounts of the previous year relevant to an assessment year, was the 30th day of November of the assessment year, for companies, and 31st day of October of the assessment year in any other case.

38.2 In line with the revision of due dates for filing of returns of income, the Act has revised the specified dates for getting the accounts audited by different classes of assessees by providing that **31st October of the assessment year shall be the specified date for furnishing tax audit report in all cases requiring such audit.**

38.3 This amendment takes effect from 1st June, 2001, and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

[Section 28]

39. Exemption under section 54EC in case of investment in bonds issued by the Rural Electrification Corporation Ltd.

39.1 Under the existing provision of section 54EC , an exemption from tax in respect of capital gains arising from the transfer of a long-term capital asset is provided to the extent of the gains invested in a long-term specified asset. The explanation at the end of this section defines long-term specified asset to mean any bond redeemable after 3 years issued on or after 1st day of April, 2000 by the National Bank for Agriculture and Rural Development (NABARD) or by the National Highways Authority of India (NHAI).

39.2 Since rural electrification, including electrification of villages and energization of pump sets in rural areas is a matter of priority for the Government, the Act has amended the Explanation in section 54EC to provide that a long-term specified asset for the purposes of this section shall also include bonds redeemable after 3 years issued on or after the 1st day of April, 2001 by the Rural Electrification Corporation Ltd.

39.3 This amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 31]

40. Long Term Capital Gains on securities and units exempt if reinvested in primary issues

40.1 With a view to promote development of the primary market, the Act has inserted a new section 54ED in the Income-tax Act, to provide that the capital gains arising from transfer of a long-term capital asset, being listed securities or units of a mutual fund or of the Unit Trust of India shall be exempt from tax to the extent such capital gain is invested in equity shares forming part of an eligible issue of capital, made by a public company, and offered for subscription to public.

40.2 The newly acquired shares are subject to a **lock-in period of one year** and if they are sold or transferred during this period, the capital gains from the original asset will be charged to tax in the year of sale or transfer.

40.3 The new section also provides that where the cost of the new equity shares has been taken into account for the purposes of this section, no tax rebate with reference to such cost shall be allowed under section 88.

40.4 This amendment will take effect from 1st day of April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 32]

41. Consequential Amendment of section 54H

41.1 Under the existing provisions of section 54H of the Income-tax Act, where the transfer of the original asset is by way of compulsory acquisition, and the amount of compensation is not received on the date of transfer, the period available to the assessee under section 54, 54B, 54D and 54F for depositing or investing the amount is reckoned from the date of receipt of compensation, and not the date of transfer.

41.2 The Finance Act, 2000, inserted a new section 54EC providing for exemption from long-term capital gains, on investments in select bonds, targeted exclusively at agricultural and rural finance and highway infrastructure. By the same Act, the provisions of sections 54EA and 54EB were omitted. However consequential amendments remained to be made in section 54H.

41.3 The Act has therefore amended section 54H by deleting reference to sections 54EA and 54EB and inserting reference to section 54EC.

41.4 This amendment will take effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

[Section 33]

42. Providing for cost of acquisition of certain intangible capital assets under section 55

42.1 Under the existing provisions of sub-section (2) of section 55 of the Income-tax Act, the cost of acquisition of an intangible capital asset, being goodwill of a business or a right to manufacture, produce or process any article or thing, tenancy rights, stage carriage permits or loom hours, is the purchase price in case the asset is purchased by the assessee from a previous owner, and nil in any other case. It was pointed out that certain similar self-generated intangible assets like brand name or a trade mark may not be considered to form part of the goodwill of a business, and consequently it may not be possible to compute capital gains arising from the transfer of such assets.

42.2 The Act has therefore amended clause (a) of sub-section (2) to provide that the cost of acquisition in relation to trade mark or brand name associated with a business shall also be taken to be the purchase price in case the asset is purchased from a previous owner and nil in any other case.

42.3 This amendment will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 34]

43. Providing for a definition of the term " industrial undertaking" in section 72A

43.1 Under the existing provisions contained in sub-section (1) of section 72A (as substituted by Finance Act, 2000), the set- off and carry forward of loss and allowance for depreciation under the Income-tax Act is allowed in the case of amalgamation of a company owning an industrial undertaking or a ship with another company. However, the term "industrial undertaking" has not been defined in the provision while different definitions of the term are provided in certain other sections. The interpretation of this term could therefore become the subject matter of litigation. With a view to avoid such disputes, and consistent with the intention underlying section 72A, the Act has inserted a definition of the term "industrial undertaking" in the section to mean any undertaking engaged in the manufacture or processing of goods, or the manufacture of computer software or the business of generation or distribution of electricity or any other form of power or mining or the construction of ships, aircrafts or rail systems.

43.2 This amendment takes effect retrospectively from 1st April, 2000 and will, accordingly, apply in relation to assessment year 2000-2001 and subsequent years.

[Section 35]

44. Amendment for providing level playing field to private insurers

44.1 Under sections 80CCC, 80D, 80DD of the Income-tax Act, deduction in respect of contributions to certain pension funds, in respect of medical insurance premia, and for maintenance of handicapped dependents are allowed. Under section 88, rebate is available on specified investments and on life insurance premia. With the opening of the insurance sector, these sections have been amended so that, the private insurers and their policy holders are provided the same incentives as are available to the Life Insurance Corporation and its policy holders. Section 2(28BB) has been inserted to provide that an “insurer” means an insurer being an Indian insurance company, as defined under clause (7A) of section 2 of the Insurance Act, which has been granted a certificate of registration under section 3 of that Act.

44.2 The amendments will take effect from the 1st April, 2002, and will, accordingly apply in relation to the assessment year 2002-03 and subsequent years.

[Sections 3(d), 5(c), 36,37, 38, 47]

45. Hundred per cent deduction to donations made to the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

45.1 Under the existing provisions of section 80G of the Income-tax Act, a deduction of 50% of the contribution to approved charitable institutions is allowed in the computation of income of the donor. However, in respect of donation to certain funds, 100% deduction is allowed.

45.2 For alleviating the hardships of those suffering with autism, cerebral palsy, mental retardation and multiple disabilities, the benefit of 100% deduction to donations made to the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities has been provided by amending section 80G of the Income-tax Act.

45.3 The amendment will take effect from the 1st day of April, 2002, and will, accordingly apply to assessment year 2002-03 and subsequent years.

[Section 39]

46. Change in rate of phasing out of deductions for export

46.1 Sections 80HHC, 80HHE and 80HHF provide for deductions in respect of profits retained for export business, profits from export of computer software etc. and profits from export or transfer of film software etc.. The Finance Act, 2000 amended these provisions to the effect that the extent of deduction would be reduced to 80% for assessment year 2001-2002, 60% for assessment year 2002-2003, 40% for assessment year 2003-2004 and 20% for assessment year 2004-2005. The deduction would cease to be available from assessment year 2005-2006 and onwards.

46.2 To cushion the impact of difficulties induced by competition on the one hand and infrastructural bottlenecks faced by exporters on the other, Finance Act, 2001 has amended the rate of phasing out of these deductions. The deduction from profits shall now be reduced to 70% for assessment year 2002-2003, 50% for assessment year 2003-2004 and 30% for assessment year 2004-2005. The deduction would however cease to be available from assessment year 2005-2006 and onwards.

46.3 The amendments will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-03 and subsequent years.

[Sections 41, 42, 43]

47. Tax holiday for infrastructure rationalised

47.1 Under the provisions of section 80 IA, roads, highways, bridges, airports, ports and rail systems are regarded as infrastructure facility and the enterprises engaged in developing or operating and maintaining or developing, operating and maintaining such infrastructure are entitled to a tax holiday for five years and a deduction of 30% of profits for the next five years. This benefit is applicable in respect of such specified infrastructural facility becoming operational on or after 1st April, 1995. The enterprise claiming such benefit has to enter into an agreement with the Central or State Government or a local authority or any other statutory authority, by which the enterprise which develops such facility, has to transfer such facility to the Government or public authority after the stipulated period. In other words, the required condition for availing of this benefit is that transfer under BOT (Build, Owner, Transfer) or BOOT (Build, Own, Operate and Transfer) schemes has to be met.

47.2 Investments in infrastructure have to compete with investment in other sectors to be attractive. There is, in particular, a need to encourage investment in the area of surface transport, water supply, water treatment system, irrigation project, sanitation and sewerage system or solid waste management systems. With this in view, section 80 IA has been amended to relax the existing two tier benefit to provide a ten year tax holiday. Keeping in view, their capital intensive nature, the higher allowances of depreciation in the initial years to such enterprises and the need for improved cash flows, an infrastructure facility in the nature of a road (including a toll road), bridge, rail system, highway project, water supply project, sanitation, sewerage and solid waste management system shall be allowed a ten year tax holiday in place of a two-tier tax holiday. Such an enterprise may avail of the tax holiday consecutively for any ten years out of twenty years beginning from the year in which the undertaking begins operating the infrastructure facility.

47.3 In the case of other infrastructure, namely, for airport, port, inland port and inland waterways, sec.80 IA has been further amended to relax the existing two tier fiscal incentive. Instead, an identical ten year tax holiday may be availed of in a block of initial fifteen years.

47.4 The condition that such infrastructure facility shall be transferred to the Central Government, State Government or local authority has also been removed. However, the agreement with such authorities for creation of such infrastructure will have to be entered into.

47.5 Under sub-section(8) of section 80 IA, where any goods are transferred for a consideration to any other business of the assessee, the consideration should correspond to the market value of such goods. As in certain cases, the transfer may relate to services, the provision has been accordingly amended to clarify that this would include services. Such services may include marketable services of operation and maintenance (O&M) in case of infrastructure facilities, marketable services for distribution of electricity and specified marketable services in telecom. Instead of the words "industrial undertaking" occurring in section 80 IA, the word "undertaking" has also been substituted in the provision for the same reason.

47.6 These amendments will take effect from the 1st day of April, 2002, and will, apply in relation to assessment years 2002-03 and subsequent years.

[Section 44]

48. Tax holiday to broadband networks and internet services

48.1 Under the existing provisions of section 80 IA, in respect of profits and gains of an undertaking set up on or before 31.3.2000 and engaged in providing telecommunication services whether basic or cellular, including radio paging, domestic satellite service or network of trunking and electronic data interchange, is allowed a five year tax holiday with further deduction of 25% of profits (30% in case of companies) of such business in the next five years.

48.2 The country's telecommunication services are modernizing rapidly and are critically poised. With a view to promoting communication capacity and convergence by encouraging investment levels in these segments, the two tier benefit is being extended to include internet service providers and broadband networks. The benefit is being similarly liberalized and shall uniformly cover all undertakings, set up after 1.4.95 but on or before 31.3.2003, and will also include undertakings set up after 31.3.2000.

48.3 The expression "broadband network" shall include creation of infrastructure for telecommunications including the laying of dark fibres, right of way, duct space towers and buildings and end-to end bandwidth. Where the undertaking is engaged in the activity of creating broadband network and providing services emanating therefrom, it shall be entitled to the benefit. However, it will not be available to undertakings which provide mere services other than such services as are specifically mentioned in this provision.

48.4 The provision has been further amended to similarly extend the benefit to internet service providers.

48.5 The amendment will take effect retrospectively from 1.4.2001 and will apply in relation to assessment year 2001-02 and subsequent years.

[Section 44]

49. Tax holiday for power generation, transmission and distribution networks

49.1 Under the provisions of section 80 IA, a five year tax holiday and a deduction of 25% (30% in the case of companies) of profits in the subsequent five years is allowed to an undertaking engaged in the business of generation, or generation and distribution of power, which commences generation of power on or before 31.3.2003.

49.2 As the generation of power is still to reach targeted levels, the tax holiday period has now been extended to undertakings commencing generation of power or laying a network of new transmission and distribution lines on or before 31.3.2006. The fiscal benefit available has been further relaxed and such undertakings shall now be entitled to a ten year tax holiday in place of the existing two tier tax benefit. The ten year tax holiday can be availed of consecutively in the block of initial fifteen years.

49.3 The amendment will take effect from the 1st day of April, 2002 and will apply in relation to assessment year 2002-03 and subsequent years.

[Section 44]

50. Tax holiday to developers of Special Economic Zones and Industrial Parks

50.1 Under the provisions of section 80 IA, any undertaking which develops, develops and operates or operates and maintains an industrial park during the period beginning on the 1st day of April, 1997 and ending on the 31st day of March, 2002, is entitled to a five year tax holiday and a deduction of 30% of profits in the subsequent five years. The two-tier benefit may be availed within a period of any ten consequent assessment years out of fifteen years beginning from the year in which the undertaking develops an industrial park.

50.2 As part of a medium term strategy to provide an export thrust by creating new infrastructure, the benefit has been extended to developers of Special Economic Zones. This benefit will be available to the developers of new special economic zones and also to developers of industrial parks, if such economic zones and industrial parks are notified by the Central Government in accordance with the schemes framed and notified by that Government and are developed on or before 31.3.2006. The existing two-tier benefit has also been further liberalized to provide a tax holiday, which may be availed in ten consecutive assessment years in a block of initial fifteen years.

50.3 The amendment will take effect from the 1st day of April, 2002 and will, accordingly apply in relation to assessment years 2002-03 and subsequent years.

[Section 44]

51. Tax holiday for undertakings engaged in the integrated handling, storage and transportation of foodgrains.

51.1 Under the existing provisions of section 80 IB of the Income-tax Act, a deduction is allowed, in computing the taxable income, in respect of profits derived from a new industrial undertaking, or, a ship, or the business of a hotel.

51.2 To address the country's basic concerns relating to enhanced food security and agricultural development, upgradation and modernization of infrastructure for storage, handling and transportation of foodgrains is a central concern. The introduction of modern technology would bring greater efficiency in the grain management system and minimize post harvest foodgrain losses.

51.3 To encourage building of storage capacities, section 80-IB has been amended to provide that any undertaking engaged in integrated bulk handling, storage and transportation shall be allowed hundred per cent deduction for the first five years and a deduction of 25% of profits (30% in case of companies) for the next five years.

51.4 The amendment will come into effect from 1st April, 2002 and will, accordingly, apply in relation to assessment year 2002-03 and subsequent years.

[Section 45]

52. Modification of provisions relating to deduction of interest from certain specified investments.

52.1 Under the existing provisions of sub-section (1) of section 80L of the Income-tax Act, 1961, deduction is allowed in computing the total income of an assessee, being an individual or a Hindu Undivided Family in respect of income derived from certain specified deposits and securities etc. The deduction is, however, subject to a ceiling of Rs.12,000. An exclusive amount of Rs.3,000 can be availed if it is derived from interest on any security of the Central or State Government.

52.2 The amendment reduces the limit of Rs.12,000/- to Rs.9,000/-. The deduction of Rs.3,000 for government securities shall continue to be available.

52.3 The amendment will come into effect from 1st April, 2002 and will, accordingly, apply in relation to assessment years 2002-03 and subsequent years.

[Section 46]

53. Relief in rebate for low category of salaried employees

53.1 Section 88 of the Income-tax Act provides relief on life insurance premia, contribution to provident fund etc. to individuals or Hindu Undivided Families. The rebate is twenty per cent of the aggregate amount or twenty five per cent in the case of an author, playwright, artist, musician or sportsman, of the amount specified in the provision.

53.2 The Act amends the provision to provide that in the case of a taxpayer having a gross salary of up to Rs.1 lakh and where not less than 90% of his gross total income is from the head "Salaries", the amount of rebate under this section would be thirty per cent.

53.3 The amendment will take effect from the 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-03 and subsequent years.

[Section 47]

54. Amendment in Section 90 relating to agreement with foreign countries

54.1 Through Finance Act, 2001 an Explanation has been inserted in section 90 of the Income tax Act to clarify that the charge of the tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favorable charge or levy of tax in respect of such foreign company, 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.

54. 2 This amendment takes effect retrospectively from 1st April, 1962 and accordingly, applies in relation to the assessment year 1962-1963 and subsequent assessment years.

[Section 48]

55. New Legislation to curb tax avoidance by abuse of transfer pricing

55.1 The increasing participation of multi-national groups in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises belonging to the same multi-national group. The profits derived by such enterprises carrying on business in India can be controlled by the multi-national group, by manipulating the prices charged and paid in such intra-group transactions, thereby, leading to erosion of tax revenues.

55.2 Under the existing section 92 of the Income-tax Act, which was the only section dealing specifically with cross border transactions, an adjustment could be made to the profits of a resident arising from a business carried on between the resident and a non resident, if it appeared to the Assessing Officer that owing to the close connection between them, the course of business was so arranged so as to produce less than expected profits to the resident. Rule 11 prescribed under the section provided a method of estimation of reasonable profits in such cases. However, this provision was of a general nature and limited in scope. It did not allow adjustment of income in the case of non residents. It referred to a "close connection" which was undefined and vague. It provided for adjustment of profits rather than adjustment of prices, and the rule prescribed for estimating profits was not scientific. It also did not apply to individual transactions such as payment of royalty etc which are not part of a regular business carried on between a resident and a non-resident. There were also no detailed rules prescribing the documentation required to be maintained.

55.3 With a view to provide a detailed statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises, the Act has substituted section 92 with a new section, and has introduced new sections 92A to 92F in the Income-tax Act, relating to computation of income from an international transaction having regard to the arm's length price, meaning of associated enterprise, meaning of international transaction, computation of arm's length price, maintenance of information and documents by persons entering into international transactions, furnishing of a report from an accountant by persons entering into international transactions and definitions of certain expressions occurring in the said sections.

55.4 The newly substituted section 92 provides that income arising from an international transaction between associated enterprises shall be computed having regard to the arm's length price. Any expense or outgoing in an international transaction is also to be computed having regard to the arms length price. Thus in the case of a manufacturer, for example, the provisions will apply to exports made to the associated enterprise as also to imports from the same or any other associated enterprise. The provision is also applicable in a case where the international transaction comprises only an outgoing from the Indian assessee.

55.5 The new section further provides that the cost or expenses allocated or apportioned between two or more associated enterprises under a mutual agreement or arrangement shall be at arm's length price. Examples of such transactions could be where one associated enterprise carries out centralized functions which also benefit one or more other associated enterprises, or two or more associated enterprises agree to carry out a joint activity, such as research and development, for their mutual benefit.

55.5 The new provision is intended to ensure that profits taxable in India are not understated (or losses are not overstated) by declaring lower receipts or higher outgoings than those which would have been declared by persons entering into similar transactions with unrelated parties in the same or similar circumstances. The basic intention underlying the new transfer pricing regulations is to prevent shifting out of profits by manipulating prices charged or paid in international transactions, thereby eroding the country's tax base. The new section 92 is, therefore, not intended to be applied in cases where the adoption of the arm's length price determined under the regulations would result in a decrease in the overall tax incidence in India in respect of the parties involved in the international transaction.

55.6 The substituted new sections 92A and 92B provide meanings of the expressions "associated enterprise" and "international transaction" with reference to which the income is to be computed under the new section 92. While subsection (1) of section 92A gives a general definition of associated enterprises, based on the concept of participation in management, control or capital, sub-section (2) specifies the circumstances under which the two enterprises shall be deemed to be associated enterprises.

55.7 Section 92B provides a broad definition of an international transaction, which is to be read with the definition of transaction given in section 92F. An international transaction is essentially a cross border transaction between associated enterprises in any sort of property, whether tangible or intangible, or in the provision of services, lending of money etc.. At least one of the parties to the transaction must be a non-resident. The definition also covers a transaction between two non-residents, where for example, one of them has a permanent establishment whose income is taxable in India.

55.8 Sub-section (2) of section 92B extends the scope of the definition of international transaction by providing that a transaction entered into with an unrelated person shall be deemed to be a transaction with an associated enterprise, if there exists a prior agreement in relation to the transaction between such other person and the associated enterprise, or the terms of the relevant transaction are determined by the associated enterprise. An illustration of such a transaction could be where the assessee, being an enterprise resident in India, exports goods to an unrelated person abroad, and there is a separate arrangement or agreement between the unrelated person and an associated enterprise which influences the price at which the goods are exported. In such a case the transaction with the unrelated enterprise will also be subject to transfer pricing regulations.

55.9 The new section 92C provides that the arm's length price in relation to an international transaction shall be determined by (a) comparable uncontrolled price method; or (b) resale price method; or (c) cost plus method; or (d) profit split method; or (e) transactional net margin method; or (f) any other method which may be prescribed by the Board. For the present, no additional method has been prescribed. One of the five specified methods shall be the most appropriate method in respect of a particular international transaction, and shall be applied for computation of arm's length price in the manner specified by the rules. Rule 10A to 10E, which have been separately notified vide S.O. 808(E) dated 21.8.2001 inter-alia, provide for the factors which are to be considered in selecting the most appropriate method. The major considerations in this regard have been specified to be the availability, coverage and reliability of data necessary for application of the method, the extent and reliability of assumptions required to be made, and the degree of comparability existing between the international transaction and the uncontrolled transaction. The Rules also lay down in detail the manner in which the methods are to be applied in determining the arms length price.

55.10 Applying the most appropriate method to different sets of comparable data can possibly result in computation of more than one arms length price. With a view to avoid unnecessary disputes, the proviso to section 92C(2) provides that in such a case the arithmetic mean of the prices shall be adopted as the arms length price. In normal course, if the different sets of comparable data are equally reliable there may not be any significant divergence between the various arm's length prices determined.

55.11 Under the new provisions the primary onus is on the tax-payer to determine an arms length price in accordance with the rules, and to substantiate the same with the prescribed documentation. Where such onus is discharged by the assessee and the data used for determining the arms length price is reliable and correct, there can be no intervention by the Assessing Officer. This is made clear by sub-section (3) of section 92C which provides that the Assessing Officer may intervene only if he is, on the basis of material or information or document in his possession, of the opinion that the price charged in the international transaction has not been determined in accordance with sub-sections (1) and (2), or information and documents relating to the international transaction have not been kept and maintained by the assessee in accordance with the provisions contained in sub-section (1) of section 92D and the rules made thereunder; or the information or data used in computation of the arm's length price is not reliable or correct; or the assessee has failed to furnish, within the specified time, any information or document which he was required to furnish by a notice issued under sub-section (3) of section 92D. If any one of such circumstances exists, the Assessing Officer may reject the price adopted by the assessee and determine the arm’s length price in accordance with the same rules. However, an opportunity has to be given to the assessee before determining such price. Thereafter, as provided in sub-section (4) of section 92C, the Assessing Officer may compute the total income on the basis of the arm’s length price so determined by him.

55.12 The first proviso to section 92C(4) recognizes the commercial reality that even when a transfer pricing adjustment is made under that subsection, the amount represented by the adjustment would not actually have been received in India or would have actually gone out of the country. Therefore it has been provided that no deductions u/s 10A or 10B or under Chapter VIA shall be allowed in respect of the amount of adjustment.

55.13 The second proviso to section 92C(4) refers to a case where the amount involved in the international transaction has already been remitted abroad after deducting tax at source and subsequently, in the assessment of the resident payer, an adjustment is made to the transfer price involved and, thereby, the expenditure represented by the amount so remitted is partly disallowed. Under the Income-tax Act, a non resident in receipt of income from which tax has been deducted at source has the option of filing a return of income in respect of the relevant income. In such cases, a non resident could claim a refund of a part of the tax deducted at source, on the ground that an arm's length price has been adopted by the Assessing Officer in the case of the resident and the same price should be considered in determining the taxable income of the non-resident. However, the adoption of the arm's length price in such cases would not alter the commercial reality that the entire amount claimed earlier would have actually been received by the entity located abroad. It has therefore been made clear in the second proviso that income of one associated enterprise shall not be recomputed merely by reason of an adjustment made in the case of the other associated enterprise on determination of arm's length price by the Assessing Officer.

55.14 The new section 92D provides that every person who has undertaken an international transaction shall keep and maintain such information and documents as may be specified by rules made by the Board. The Board may also specify by rules the period for which the information and documents are required to be retained. The documentation required to be maintained has been prescribed under Rule 10D. Such documentation includes background information on the commercial environment in which the transaction has been entered into, and information regarding the international transaction entered into, the analysis carried out to select the most appropriate method and to identify comparable transactions, and the actual working out of the arms length price of the transaction. The documentation should be available with the assessee by the specified date defined in section 92F and should be retained for a period of 8 years. During the course of any proceedings under the Act, an Assessing Officer or Commissioner (Appeals) may require any person who has undertaken an international transaction to furnish any of the information and documents specified under the rules within a period of thirty days from the date of receipt of a notice issued in this regard, and such period may be extended by a further period not exceeding thirty days.

55.15 The new section 92E provides that every person who has entered into an international transaction during a previous year shall obtain a report from an accountant and furnish such report on or before the specified date in the prescribed form and manner. Rule 10E and Form No.3CEB have been notified in this regard. The accountants report only requires furnishing of factual information relating to the international transaction entered into, the arm's length price determined by the assessee and the method applied in such determination. It also requires an opinion as to whether the prescribed documentation has been maintained.

55.16 The new section 92F defines the expressions "accountant", "arm's length price", "enterprise", "specified date" and "transaction" used in sections 92, 92A, 92B, 92C, 92D and 92E. The definition of enterprise is broad and includes a permanent establishment, even though a PE is not a separate legal entity. Consequently, transactions between a foreign enterprise and its PE, for example, between the head office abroad and a branch in India, are also subject to these transfer pricing regulations. Also, the regulations 33would apply to transactions between a foreign enterprise and a PE of another foreign enterprise. The term permanent establishment has not been defined in the provisions but its meaning may be understood with reference to the tax treaties entered into by India.

55.17 With a view to ensure that multinational enterprises comply with the requirements of the new regulations, the Act has also amended section 271 and inserted new sections 271AA, 271BA and 271G in the Income-tax Act, so as to provide for penalty to be levied in cases of non-compliance with procedural requirements, and in cases of understatement of profits through fraud or willful negligence.

55.18 The new Explanation 7 to sub-section (1) of section 271 provides that where in the case of an assessee who has entered into an international transaction, any amount is added or disallowed in computing the total income under sub-sections (1) and (2) of section 92, then, the amount so added or disallowed shall be deemed to represent income in respect of which particulars have been concealed or inaccurate particulars have been furnished. **However, no penalty u/s 271(1)(c) shall be levied where the assessee proves to the satisfaction of the Assessing Officer or the Commissioner (Appeals) that the price charged or paid in such transaction has been determined in accordance with section 92C in good faith and with due diligence.**

55.19 The new section 271AA provides that if any person who has entered into an international transaction fails to keep and maintain any such information and documents as specified under section 92D, the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two percent of the value of the international transaction entered into by such person.

55.20 The new section 271BA provides that if any person fails to furnish a report from an accountant as required by section 92E, the Assessing Officer may direct that such person shall pay by way of penalty, a sum of one lakh rupees.

55.21 The new section 271G provides that if any person who has entered into an international transaction fails to furnish any information or documents as required under sub-section (3) of section 92D, the Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal to two percent of the value of the international transaction.

55.22 The Act has also amended section 273B to provide that the above mentioned penalties under section 271AA, 271BA and 271G shall not be imposable if the assessee proves that there was reasonable cause for such failures.

55.23 These amendments will take effect from 1st April, 2002 and will accordingly apply to the assessment year 2002-2003 and subsequent years.

[Sections 49, 86, 88, 89, 91 & 94]

56. Measures to curb creation of short-term losses by certain transactions in securities and units

56.1 Under the existing provisions contained in section 94, where the owner of any securities enters into transactions of sale and re-purchase of those securities which result in the interest or dividend in respect of such securities being received by a person other than such owner, the transactions are to be ignored and the interest or dividend from such securities is required to be included in the total income of the owner.

56.2 The existing provisions did not cover a case where a person buy securities (including units of a mutual fund) shortly before the record date fixed for declaration of dividends, and sells the same shortly after the record date. Since the cum-dividend price at which the securities are purchased would normally be higher than the ex-dividend price at which they are sold, such transactions would result in a loss which could be set off against other income of the year. At the same time, the dividends received would be exempt from tax under section 10(33). The net result would be the creation of a tax loss, without any actual outgoings.

56.3 With a view to curb the creation of such short-term losses, the Act has inserted a new sub-section (7) in the section to provide that where any person buys or acquires securities or units within a period of three months prior to the record date fixed for declaration of dividend or distribution of income in respect of the securities or units, and sells or transfers the same within a period of three months after such record date, and the dividend or income received or receivable is exempt, then, the loss, if any, arising from such purchase or sale shall be ignored to the extent such loss does not exceed the amount of such dividend or interest, in the computation of the income chargeable to tax of such person.

56.4 Definitions of the terms "record date" and "unit" have also been provided in the Explanation after sub-section (7) of section 94.

56.5 This amendment will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 50]

57. SEBI to be approving authority for "overseas financial organisation"

57.1 Under the existing provisions contained in section 115AB, "overseas financial organisation" has been defined to mean any fund, institution, association or body, whether incorporated or not, established under the laws of a country outside India, which has entered into an agreement for investment in India with any public sector bank or public financial institution or a Mutual Fund specified under clause (23D) of section 10 and such arrangement is approved by the Central Government for this purpose.

57.2 As the Securities and Exchange Board of India (SEBI) is the regulatory authority under section 115AB, presently, any application received by the Government for the approval of the above-mentioned arrangement is being referred to it. With a view to simplify the procedure, it is provided through the Finance Act, 2001 that the SEBI will be the authority to grant approval in respect of arrangement entered into by the above-mentioned fund, etc. with any public sector bank or public financial institution or Mutual Fund for investment in India.

57.3 This amendment will take effect with effect from 1st June 2001.

[Section 51]

58. Concessional rate of tax under section 115AC extended to other notified schemes

58.1 Under the existing provisions contained in section 115AC, in the case of an assessee who is a non-resident, income by way of interest or dividends (other than dividends referred to in section 115-O) and long-term capital gains arising from bonds or shares of an Indian company issued in accordance with a scheme as the Central Government may specify by notification in the Official Gazette, and purchased by the non-resident assessee in foreign exchange, is taxed at the rate of 10% only. This section also provides that such income on bonds or shares of a public sector company sold by the Government and purchased by the non-resident assessee in foreign currency would also be taxed at 10%.

58.2 Finance Act, 2001 has substituted the existing section 115AC with a new section. Presently, the concessional rate of taxation is available with reference to the shares of an Indian company issued in accordance with Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 that refers to shares issued by way of Global Depository Receipts (GDRs). Under the new substituted section, therefore, the term 'Global Depository Receipts' in place of 'Share' has been used.

58.3 The concessional tax rate has been extended to GDRs issued under other notified schemes of the Central Government also. These are:-

(a) GDRs issued in accordance with a scheme notified by the Central Government in the Official Gazette against the initial issue of underlying shares of an Indian company and purchased by the non-resident in foreign currency through an approved intermediary; or

(b) GDRs issued against the shares of a public sector company sold by the Government and purchased by the non-resident in foreign currency through an approved intermediary; or

(c) GDRs re-issued against the existing underlying shares of an Indian company in accordance with such scheme as the Central Government may notify in the Official Gazette, and purchased by the non-resident in foreign currency through an approved intermediary; or

(d) GDRs issued against the shares of a listed Indian company on the disinvestment of such company of its shareholdings in its listed subsidiary company, in accordance with such scheme as the Central Government may notify in the Official Gazette, and purchased by the non-resident in foreign currency through an approved intermediary.

58.4 Consequential amendments have also been made in sections 47 and 196C of the Income-tax Act.

58.5 These amendments will take effect with effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Sections 29, 52 and 76]

59 GDRs issued to employees under ESOPs extended to subsidiary companies and other knowledge based industries

59.1 Under the existing provisions contained in section 115ACA, income by way of dividends or long term capital gains in respect of Global Depository Receipts (GDRs) of an Indian company purchased by a resident employee of such company engaged in information technology software and information technology services, in accordance with a notified Employees' Stock Option Scheme (ESOP), is liable to the income-tax at the rate of ten per cent.

59.2 Finance Act, 2001 has amended section 115ACA so as to extend this concessional rate of taxation to income in respect of GDRs purchased by employees of companies engaged in other knowledge based sectors also, viz., entertainment service, pharmaceuticals, bio-technology and other industry or service notified by the Central Government. The concessional rate of taxation is also extended to income from the GDRs purchased by employees of subsidiary companies, whether domestic or foreign, of the above-mentioned companies.

59.3 This amendment takes effect retrospectively with effect from 1st April, 2001 and accordingly, applies in relation to the assessment year 2001-2002 and subsequent assessment years.

[Section 53]

60. Tax on winnings from lottery, crossword puzzle, etc.

60.1 Under the existing provisions of clause (i) of section 115BB, any income by way of winnings from any lottery or crossword puzzle or race including horse race (not being income from the activity of owning and maintaining race horses) or card game and other game of any sort or from gambling or betting of any form or nature whatsoever, is chargeable to tax at the rate of 40%.

60.2 As a measure of rationalization, the Act has reduced the rate of tax on such winnings from forty per cent. to thirty per cent.

60.3 The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years.

[Section 54]

61. Tax on distributed profits of Domestic Companies

61.1 Under the existing provisions of section 115-O, in addition to the income-tax chargeable in respect of the total income of a domestic company, any amount declared, distributed or paid by way of dividends is charged to additional income-tax at the rate of twenty per cent.

61.2 This rate was increased from 10% to 20% through Finance Act, 2000. To provide a boost for the capital market, Section 115-O has been amended through Finance Act, 2001 so as to reduce the tax on distributed profits of domestic companies from twenty per cent. to ten per cent.

61.3 This amendment will take effect from the 1st day of June, 2001.

[Section 55]

62. Rationalization of interest chargeable from the assesses

62.1 Under the existing provisions, the rates of interest chargeable from the assessees for various defaults vary from 15% to 24% per annum. In order to rationalize these rates, the Act has prescribed a uniform rate of 15% per annum for various defaults. Accordingly, the rates have been decreased from 1.5% or 2% for every month or part of a month, as the case may be, to 1.25% for every month or part of a month in respect of interest chargeable under sections 115P, 115S, 158BFA(1), 206C(7), 220(2), 234A, 234B and 234C of the Income-tax Act. In respect of interest chargeable under sub-section (1A) of section 201, the rate has been reduced from 18% to 15% per annum.

62.2 These amendments will take effect from 1st June, 2001.

[Sections 56, 58, 67, 74, 75, 76, 78, 79 & 80]

63. Tax on income distributed by Unit Trust of India and Mutual Funds

63.1 Under the existing provision of Section 115-R, any amount of income distributed by the Unit Trust of India or by Mutual Funds to their unit holders is chargeable to tax and the Unit Trust of India or Mutual Funds are liable to pay tax on such distributed income at the rate of twenty per cent.

63.2 This rate was increased from 10% to 20% through Finance Act, 2000. To provide a boost to the capital market, Section 115-R has been amended through Finance Act, 2001 so as to reduce the tax on income distributed by the Unit Trust of India or by a Mutual Fund from twenty per cent. to ten per cent.

63.3 This amendment will take effect from the 1st day of June, 2001.

[Section 57]

64. Rationalisation of due dates for filing of returns

64.1 Under the existing provisions contained in section 139(1), the due date for filing of return of income was specified to be 30th November of the assessment year in the case of a company, and where the assessee is a person other than a company, the due date was specified to be –

(a) 31st October of the assessment year in a case where accounts of the assessee are required to be audited or where a report of an accountant is required to be furnished;
(b) 31st August of the assessment year, in a case where the total income includes income from business or profession, not being a case falling under (a) above; and
(c) 30th June of the assessment year, in any other case.

64.2 With a view to rationalise the provisions and reduce the multiplicity of due dates, the Act has reduced the number of due dates from four to two. As per the amended provisions, in the case of a company, or a person other than a company whose accounts are required to be audited, or a working partner of a firm whose accounts are required to be audited, 31st October of the assessment year shall be the due date for filing the return. In the case of a person other than a company, and falling within the one-by-six scheme, 31st October shall be the due date. In the case of any other assessee, 31st July shall be the due date for filing the return.

64.3 This amendment takes effect retrospectively from 1st April, 2001, and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

[Section 59]

65 Compulsory filing of returns by companies

65.1 Under the existing provisions contained in sub-section (1) of section 139 of the Income-tax Act, every person, if the total income, in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax, is required to file a return of such income on or before the due date in the prescribed form and manner. It has been observed that a number of companies have not been filing returns on the plea that they have not earned any income. The Act, therefore, amends section 139(1) to provide that every company is required to file a return, whether it is a return of income or of loss.

65.2 This amendment takes effect retrospectively from 1st April, 2001, and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

[Section 59]

66. Compulsory quoting of Permanent Account Number (PAN) by every person deducting or collecting tax at source in certain returns and certificates

Persons responsible for deducting tax from certain payments, and persons responsible for collecting tax from buyers of certain goods, are required to deliver returns and issue certificates in respect of such tax deducted or collected by them. The forms prescribed for delivering such returns or issuing such certificates contain columns for mentioning the permanent account number of the persons from whose income the tax is deducted, or from whom the tax is collected. However, in many cases, such number is not so mentioned. With a view to enable processing of the information contained in such returns or certificates for the purposes of matching of information and discovering new taxpayers, the Act has inserted new sub-sections (5A), (5B), (5C) & (5D) in section 139A of the Income-tax Act to make it obligatory for every person receiving income from which tax has been deducted or from whom tax is collectible, to furnish his PAN to the person responsible for deducting or collecting such tax, and also to make it obligatory for the person deducting or collecting tax to quote the PAN of such persons in the returns of tax deducted or collected at source prescribed under sections 206 and 206C respectively and in the certificates issued under sections 203 and 206C(5) respectively. Such number will also be required to be quoted in statements of perquisites required to be furnished under section 192 of the Income-tax Act. The requirement under sub-sections (5A) and (5B) will not apply in respect of certain non-residents and other persons who are not required to file returns of income. **With a view to give adequate time to Banks to collect PAN of their clients, the Government has vide notification No. S.O.511(E) dated 11.6.2001, specified 1st April, 2002 as the date from which such requirements will apply in respect of banks including cooperative banks**. For other persons, 1st June, 2001 shall be the effective date in respect of these provisions.

[Section 60]

67. Modification of provisions relating to interest chargeable in certain cases

67.1 Under the existing provisions of sections 234A and 234B of the Income-tax Act, interest is levied for defaults in furnishing return of income and in payment of advance tax respectively. Recently, the issue whether interest under these sections is chargeable on the basis of tax on returned income or assessed income has become a subject matter of litigation.

67.2 With a view to avoid litigation, the Act has amended sections 234A and 234B to clarify that the assessee shall be liable to pay interest under the said sections with reference to tax on the assessed income and not on returned income. It has further been clarified that for the purposes of section 140A, interest payable under sections 234A and 234B shall be computed with reference to tax on returned income.

67.3 The amendments will take effect retrospectively from 1st April, 1989 and will, accordingly, apply in relation to the assessment year 1989-90 and subsequent years.

[Sections 61, 78 & 79]

68. Rationalisation of time-limits for issue of refunds, re-assessment, rectification and re-opening of assessments

68.1 A period of two years for sending an intimation alongwith refund or demand notice, if any, to the assessee is provided for in section 143(1). With a view to expedite issue of refunds as also to ensure early collection of taxes, and considering the computer aids now available in the Department, the Act has amended the second proviso to sub-section (1) of section 143 to provide that such intimations shall be sent within one year from the end of the financial year in which the return of income is made. The existing time-limit of two years, however, will continue to apply in respect of returns already filed for the assessment year 1999-2000.

68.2 Under the existing provision contained in section 149(1) of the Income-tax Act, a notice under section 148 for assessment, reassessment or recomputation of income of any year can be issued within a period of four, seven or ten years from the end of the relevant assessment year, depending on whether an assessment was made earlier for the relevant year, and the amount of income escaping assessment. In order to provide certainty of finalisation of assessment within a smaller period, the Act has amended sub-section (1) of section 149 to provide that the notice under section 148 can be issued only within four years from the end of the relevant assessment year, or within six years from the end of the relevant assessment year in cases where the amount of income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year.

68.3 Sub-section (2) of section 153 of the Income-tax Act provided for a time-limit of two years for completion of an assessment, re-assessment or re-computation of income under section 147. Similarly, sub-section (2A) of the section provided for a time limit of two years for making of fresh assessment in cases where the original assessment had been set aside or cancelled in appeal or revision. The period of two years provided for making such assessments or re-assessments is more than necessary considering that the scope of such assessment or re-assessment is generally limited to a few specific issues. With a view to bringing about an early finalisation of such proceedings, the Act has amended sub-sections (2) and (2A) of section 153 to reduce the time-limit for making such orders of assessment, re-assessment or re-computation to one year. However, where the notice under section 148 has been served, or the appellate or revisionary order mentioned in section 153(2A) has been received or passed, as the case may be, on or after 1st April, 1999, but before 1st April, 2000, the existing time limits will continue and such assessment, re-assessment or re-computation may be made at any time upto 31st March, 2002.

68.4 Further, clause (i) of sub-section (3) of section 153, has been omitted as it referred to section 146, which is no longer in force.

68.5 Considering the absence of any specific time-limits regarding disposal of application for rectification under section 154, and with a view to ensure time-bound disposal of rectification applications, the Act has inserted a new sub-section (8) in section 154 to provide that where an application for amendment under this section is made by an assessee on or after 1st June, 2001 to an income-tax authority referred to in the said section, the authority shall pass an order within six months from the end of the month in which the application is received by it, either making the amendment or refusing to allow the claim. The overall time limit of four years provided in the section for passing any rectification order shall however continue to apply. In other words, the period of six months mentioned in the new sub-section (8) cannot extend, under any circumstances, beyond the overall time limit of four years from the end of the financial year in which the order sought to be rectified was passed.

68.6 These amendments will take effect from 1st June, 2001.

[Sections 62, 63, 64 & 65]

69. Rationalising the block period

69.1 Under the existing provisions contained in clause (a) of section 158B of the Income-tax Act relating to assessment in cases of search or requisition, "block period" means the previous years relevant to ten assessment years preceding the previous year in which the search was conducted under section 132 or any requisition was made under section 132A, and includes, in the year in which the search was conducted or requisition was made, the period upto the date of commencement of such search or as the case may be, the date of such requisition.

69.2 In line with the amendment proposed in section 149, to reduce the maximum time period for issue of notice under section 148 for initiating reassessment proceedings, etc., from ten years to six years, the Act has amended the definition of "block period" to mean the period comprising the previous years relevant to six assessment years preceding the previous year in which the search was conducted or any requisition was made and including the period upto the date of commencement of such search, or as the case may be, the date of such requisition, in the year of search or requisition.

69.3 The amendment takes effect from 1st June, 2001, and will apply in relation to searches initiated or requisitions made on or after that date.

[Section 66]

70. Person responsible for paying income under the head "Salaries" to furnish statement of perquisites or profits in lieu of salary.

70.1 As a consequence to the changes made in section 17, the responsibility of providing correct and complete particulars of perquisites or profits in lieu of salary given to an employee is placed on the person responsible for paying such income i.e., the person responsible for deducting tax at source. The form and manner of such particulars are prescribed in rule 26A, Form 12BA and Form 16 of the Income-tax Rules as amended by notification No.940(E) dt.25.9.2001.

[Section 68]

71. Modification of provisions relating to tax deduction at source on interest income

71.1 Under the existing provisions contained in section 194A of the Income-tax Act, no tax is required to be deducted at source on income by way of interest (other than interest on securities) where the aggregate amounts of such income credited or paid or likely to be credited or paid during the financial year does not exceed Rs.10,000/- in respect of time deposit with a branch of bank or deposit with a branch of housing finance company and Rs.5,000/- in other cases.

71.2 As a measure of rationalization, the Act has amended the said section to a provide monetary limit of Rs.5,000/- in all cases.

71.3 The amendment will take effect from 1st June, 2001**.**

[Section 69]

72. TDS on winnings from card game and other game of any sort

72.1 Under the existing provisions of section 194B of the Income-tax Act, tax is required to be deducted at source at the rates in force in respect of income by way of winnings from any lottery or crossword puzzle.

72.2 With a view to widen its scope the Act has amended the section so as to make it applicable to any income by way of winnings from card game and other game of any sort.

72.3 The amendment will take effect from 1st June 2001.

[Section 70]

73. Insertion of a new provision for deduction of tax at source from payments in the nature of commission or brokerage

73.1 An effective method of widening the tax base is to enlarge the scope of deduction of income tax at source. Apart from bringing in more persons in the tax net, it also helps in the reporting of correct income. An item of income which needs to be covered within the scope of deduction of income tax at source is the income by way of commission (not being insurance commission referred to in section 194D) and brokerage. The Act has, therefore, inserted a new section 194H relating to deduction of tax at source from income by way of commission (not being insurance commission referred to in section 194D) and brokerage.

73.2 Under this section, the person responsible for paying any income by way of commission or brokerage for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing (not being securities), shall deduct income-tax thereon at the rate of ten per cent. However, no such deduction will be made where the amount of payment or the aggregate amount of payments, in a financial year, does not exceed two thousand five hundred rupees. The new section will not apply when payments are made by individuals or Hindu undivided families. The expressions "commission or brokerage", "professional services" and "securities" have been defined in the *Explanation* to the section.

73.3 The Act has also amended section 197 so as to enable the recipient of the commission or brokerage to obtain certificate for no deduction of tax at source or deduction at a lower rate from the Assessing Officer if his total income so justifies.

73.4 These amendments will take effect from 1st June, 2001.

[Sections 71 & 73]

74. Collection of short TDS from payer of income

74.1 Under the existing provisions of sub-section (1) of section 201 of the Income-tax Act, the payer of the income is deemed to be an assessee in default in respect of the tax if he does not deduct or after deducting fails to pay the tax as required by or under the Income-tax Act. Sub-section (1A) provides that such person shall also be liable to pay simple interest at the prescribed rate on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid.

74.2 With a view to avoid litigation, it has been clarified by the Act that the provisions of sub-sections (1) and (1A) shall apply whether such person fails to deduct the whole or any part of the tax.

74.3 This amendment will take effect retrospectively from 1st April, 1962.

[Section 74]

75 Requirement of clearance certificate under section 230A for registration of transfer of immovable property in certain cases abolished

75.1 Under the existing provision of section 230A, any document purporting to transfer, assign, limit, or extinguish the right, title or interest of any person to a property valued at more than five lakh rupees, could not be registered unless the Assessing Officer certified that such person has either paid or made satisfactory provision for payment of all existing tax liabilities or that the registration of the document will not prejudicially affect the recovery of any existing tax liability. This procedural requirement resulted, in many cases, in delay in registration of the relevant documents. Further, the relevant information sought to be obtained through the application could always be collected from the Registrar of Properties, as PAN is required to be quoted in all documents pertaining to such transfer. With a view to simplify procedures, the Act has omitted section 230A.

75.2 This amendment takes effect from 1st June, 2001.

[Section 77]

76 Withdrawal of power to withhold refunds

76.1 Under the existing provisions of section 241 of the Income-tax Act, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund of any amount due to the assessee till such time as the Chief Commissioner or Commissioner determines, under the circumstances specified in the said section if the grant of refund is likely to adversely affect the revenue.

76.2 As a measure of simplification, the Act has omitted the said section so as to withdraw the powers conferred upon the Assessing Officers to withhold the refund.

76.3 This amendment will take effect from 1st June, 2001.

[Section 81]

77. Modifications of the provisions relating to interest payable to the assessee

77.1 Under the existing provisions of the Income-tax Act, interest is payable to the assessee at the rate of 1% for every month or part of a month or 12% per annum.

77.2 The Act has reduced the aforesaid rate of interest from one per cent. to three-fourth per cent. for every month or part of a month and from 12% to 9% per annum, as the case may be. Accordingly, sections 244A and sub-rule (3) of rule 68A of the Second Schedule to the Income-tax Act have been amended.

77.3 The amendments will take effect from 1st June, 2001.

[Section 82 & 95]

78. Powers of the Commissioner (Appeals) not to include powers to set aside the assessment

78.1 Under the existing provision contained in sub-section (1) of section 251 of the Income-tax Act, in an appeal filed before a Commissioner (Appeals) against an order of assessment, the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment, or he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment in accordance with the directions given by him, after making such further enquiry as may be necessary. With a view to help bringing about an early finalisation to the assessment and to avoid prolonging the process of litigation, the Act has amended section 251 so as to provide that, in an appeal filed before the Commissioner (Appeals), against an order of assessment, the Commissioner (Appeals) may not set aside the assessment and refer the case back to the Assessing Officer for making fresh assessment. The Commissioner (Appeals) continues to have the powers under section 250 of making further inquiry, or directing the Assessing Officer to make further inquiry and report the result of the same to him, which can be made use of in appeals needing further enquiry or gathering of additional facts or evidence.

78.2 This amendment will take effect from 1st June, 2001.

[Section 83]

79. Stay orders granted by Appellate Tribunal to be inoperative if appeal not disposed of in certain period

79.1 Under the existing provision of section 254, an advisory time-limit of four years has been prescribed for disposal of appeals by the Tribunal. However, in many cases, a stay granted on recovery of demand till the disposal of appeal, makes the demand irrecoverable for several months or even years. It has been observed that many assessees file appeals to the Tribunal only to obtain stay of demand and avoid payment of justified taxes. In order to discourage this practice, and ensure speedier collection of outstanding tax, the Act has amended section 254 to provide that where, in an appeal filed by the assessee, the Appellate Tribunal passes an order granting stay, the Tribunal shall hear and decide such appeal within a period of one hundred and eighty days from the date of passing such order granting stay, failing which the stay granted shall stand vacated on the expiry of the aforesaid period.

79.2 This amendment takes effect from 1st June, 2001.

[Section 84]

80. Enhancing the fees for filing of revision applications

80.1 Under the existing provisions contained in section 264, the Commissioner may, either of his own motion or on an application by the assessee for revision, revise any order passed by an authority subordinate to him. Sub-section (5) of the said section provides that every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees. With a view to discourage the filing of frivolous revision applications before the Commissioner, and to align the fees payable for filing such applications with the fees prescribed in respect of appeals to the Commissioner (Appeals), the Act amends section 264 to provide that every application by an assessee for revision under this section shall be accompanied by a fee of rupees five hundred.

80.2 This amendment takes effect from 1st June, 2001.

[Section 85]

81. Rationalization of quantum of penalties-sections 271, 271A, 271F, 272A, and 272BB

81.1 Penalties are prescribed under the Income-tax Act for failure to comply with certain procedural requirements. In some of these provisions, the minimum and the maximum amounts of penalty which may be levied are prescribed, and the actual amount of penalty to be levied is left to the discretion of the Assessing Officer. With a view to eliminate such discretion and rationalise the quantum, the Act has amended the range of amounts of penalty prescribed in these provisions by definite but reasonable amounts.

81.2 The Act amends-

(i) clause (ii) of sub-section (1) of section 271 relating to failure to comply with certain notices or directions issued in the course of assessment proceedings so as to provide for a fixed amount of penalty of ten thousand rupees for each such failure instead of the existing penalty of a sum ranging from one thousand rupees to twenty-five thousand rupees for each failure;

(ii) section 271A relating to failure on the part of certain persons carrying on profession or business to keep, maintain, or retain the books of account and documents specified under section 44AA, so as to provide for the levy of a fixed amount of penalty of twenty-five thousand rupees instead of the existing penalty of a sum ranging from two thousand rupees to one hundred thousand rupees;

(iii) section 272A (1) relating to failure to answer questions, produce books of account, comply with the provisions relating to permanent account number, etc., so as to provide for a fixed amount of penalty of ten thousand rupees for each such default or failure, instead of the existing penalty of a sum ranging from five hundred rupees to ten thousand rupees for each such default or failure;

(iv) section 272BB relating to failure to apply for tax-deduction account number or to quote such number in certain documents, so as to enhance the penalty and to provide for levy of a fixed amount of penalty of a sum of rupees ten thousand, as against the existing penalty, which could extend to five thousand rupees;

(v) section 271F, to enhance the penalty for failure to furnish return of income as required under section 139(1) before the end of the assessment year, and under the proviso to section 139(1) before the due date, from one thousand rupees to five thousand rupees and from five hundred rupees to five thousand rupees, respectively.

81.3 These amendments take effect from 1st June, 2001.

[Sections 86, 87, 90, 92,93]

82 Rationalisation of time-limits for assessment, re-assessment and re-opening of wealth tax assessments

82.1 As in the case of the Income-tax Act, the Act has introduced certain amendments to rationalise and streamline the provisions relating to time-limits for processing of returns, re-assessments and re-opening of assessments under Wealth-tax Act.

82.2 The Act has amended section 17 (1A) of the Wealth-tax Act to modify the present provisions contained in section 17(1A) to provide that the notice under section 17(1) can be issued only within four years from the end of the relevant assessment year or within six years from the end of the relevant assessment year in cases where the amount of wealth chargeable to tax which has escaped assessments amounts to or is likely to amount to rupees ten lakhs or more for that year.

82.3 The Act has amended section 17A of the Wealth-tax Act to provide that an intimation under section 17A(2) shall be sent within one year from the end of the financial year in which the return of wealth is made. The existing time-limit of two years, will however continue to apply in respect of returns already filed for the assessment year 1999-2000. Sub-section (3) of section 17A has been amended to reduce the time-limit for making orders of assessment, re-assessment or re-computation of wealth in different circumstances to one year. However, where any such order mentioned in section 17A(3) has been received or passed, as the case may be, on or after 1st April, 1999, but before 1st April, 2000, the existing time-limits will continue and such assessment, re-assessment or re-computation may be made at any time upto 31st March, 2002.

[Sections 96 & 97]

83. Rationalization of interest chargeable from the assessee

83.1 Under the existing provisions, the rates of interest chargeable from the assessees for various defaults vary from 15% to 24% per annum. In order to rationalize these rates, the Act has prescribed a uniform rate of 15% per annum for various defaults. Accordingly, the rates have been decreased from 1.5% or 2% for every month or part of a month, as the case may be, to 1.25% for every month or part of a month in respect of interest chargeable under sections 17B and 31 of the Wealth Tax Act.

83.2 The amendments will take effect from 1st June 2001.

[Sections 98 & 99]

84. Rationalization of interest payable to the assessee

84.1 Under the existing provisions of section 34A of the Wealth Tax Act, interest is payable to the assessee at the rate of 1% for every month or part of a month or 15% per annum, as the case may be.

84 .2 As a measure of rationalization the Act has reduced the aforesaid rate of interest payable under section 34A of the Wealth Tax Act from one per cent. to three-fourth per cent. for every month or part of a month and from 15% to 9% per annum, as the case may be.

84.3 The amendments will take effect from 1st June, 2001.

[Section 100]

85 Rationalization of interest chargeable from the assessee

85.1 Under the existing provisions of section 14 of the Expenditure Tax Act, interest is chargeable from the assessee at the rate of 1.5% for every month or part of a month.

85.2 As a measure of rationalization, the Act has reduced the rate of interest chargeable to 1.25% for every month or part of a month.

85.3 The amendment will take effect from 1st June 2001.

[Section 101]

86. National Bank for Agricultural and Rural Development, National Housing Bank and Small Industries Development Bank of India liable to pay income-tax.

86.1 Certain statutory bodies have been exempted from payment of any income-tax or wealth-tax by having a provision for the same in the Act through which these bodies were set up. These entities are claiming exemption not through the provisions of the Direct Tax statutes but by a non-obstante clause in the Act under which they were set up.

86.2 National Bank for Agricultural and Rural Development (NABARD) is exempted from payment of income tax and other taxes on any income, profits or gains derived or any amount received by it, under section 55 of the National Bank for Agricultural and Rural Development Act, 1981. National Housing Bank (NHB) is exempted from payment of income tax and other taxes on any income, profits or gains derived or any amount received by it, under section 48 of the National Housing Bank Act, 1987. Small Industries Development Bank of India (SIDBI) and Small Industries Development Assistance Fund is exempted from payment of income tax and other taxes on any income, profits or gains derived or any amount received by it, under section 50 of the Small Industries Development Bank of India Act, 1989.

86.3 These institutions are in existence for a considerable period and are working on commercial basis and there is no rationale for providing them tax exemption while similar institutions are paying taxes. Finance Act, 2001 has amended these Acts by omitting section 55 of the National Bank for Agricultural and Rural Development Act, 1981, section 48 of the National Housing Bank Act, 1987 and section 50 of the Small Industries Development Bank of India Act, 1989.

86.4 These amendments will take effect from 1st April 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years.

[Sections 140, 141, 142]

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