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# THE UNION BUDGET 2007-2008

## ANALYSIS OF IMPORTANT AMENDMENTS PROPOSED IN THE FINANCE BILL, 2007

• Arvind Dalal	• Narayan Varma	• Dilip Lakhani
• Pinakin Desai	• Rajan Vora	• Kishor Karia
• Govind Goyal	• Shariq Contractor	• Gautam Nayak
• Sanjeev Pandit	• Ameet Patel	• Bharat Shemlani
• Hasmukh Kamdar	• Kirit Kamdar	• Mayur Desai
• Naresh Ajwani	• Naresh Sheth	• Pinky Shah
• Puloma Dalal	• Rajesh Kothari	• Raman Jokhakar
• Saroj Maniar	• Toral Mathuria	• Vijay Agarwal
	• Yogesh Thar	

## DIRECT TAXES

- All amendments proposed in The Finance Bill, 2007 would be effective from A.Y. 2008-09 unless specifically mentioned otherwise.
- In this booklet all proposals of The Finance Bill, 2007 are referred to as actual amendments.

### 1. TAX RATES

**Threshold limit:** There is a nominal increase in the threshold limit of basic exemption for individuals, HUFs, AOPs and BOIs as under:

Assessee	New Threshold	Existing Threshold
Resident Women below 65 years of age	Rs. 1,45,000	Rs. 1,35,000
Resident Individuals of 65 years and above	Rs. 1,95,000	Rs. 1,85,000
Other Individuals, HUFs, AOPs and BOIs	Rs. 1,10,000	Rs. 1,00,000

The slab rates have otherwise remained unaltered.

**Surcharge:** The surcharge of 10% will now apply to firms and companies (for foreign companies at 2.5%) only if their total

income exceeds Rs. 1 crore. For all other assesseees the surcharge remains unchanged.

**Education Cess:** The education cess of 2% on income tax and surcharge continues as before. However, a further additional surcharge called the "Secondary and Higher education cess" at the rate of 1% of income tax and surcharge (not including education cess) will also now be levied, bringing the total education cess to 3%.

## 2. DEFINITION OF INDIA – SECTION 2(25A) of INCOME TAX ACT & SECTION 2(ka) of WEALTH TAX ACT

With a view to provide a comprehensive definition of India, the above sections are amended retrospectively from 25th August, 1976 to define India to mean the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and air space above its territory and territorial waters.

## 3. INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – SECTION 9(1), (v), (vi) & (vii)

The above sections provide that if an Indian resident pays to a non-resident any amount on account of interest, royalty or fees for technical services, the same will be taxable in India. This is irrespective of the fact that the non-resident may not have any operations in India. If the services are paid by a resident and used in India, it is taxable in India. Only if the resident pays for using the services or the loan for earning income from a source outside India, it will not be taxable in India. In the above context, the Supreme Court in the case of *Ishikawaji-Harima Heavy Industries Ltd., (288 ITR 408)* has held that for any such deemed income to be taxable in India, there must be sufficient territorial nexus between such income and the territory of India. It has been held that where any sum is payable to a non-resident by a resident, the deeming sweep of the said section cannot bring to tax, any income of a non-resident received outside India from Indian concerns for services rendered outside India. In regard to fees for technical services, it has been specifically held that for the fees to be taxable in India, the services have not only to be utilised in a business in India, but also have to be rendered in India.

An Explanation has been inserted at the end of Section 9 with a view to overcome the ratio of the above decision and to provide that if any income is deemed to accrue or arise to a non-resident in India on account of Interest, Royalty and Fees for Technical Services, it shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

This Explanation is inserted with **retrospective effect from 1st June, 1976.**

## 4. COMPENSATION RECEIVED ON ACCOUNT OF DISASTER – SECTION 10(10BC)

On account of several natural and man-made disasters that have occurred in recent times, compensation has been granted from time to time to victims and their families by the Central Government, various State Governments and local authorities. BCAS in its earlier representation had brought out that such compensation may be taxable under earlier Section 56(2)(v). Section 10(10BC) is now inserted with **retrospective effect from 1st April, 2005** to provide that any such amount received or receivable by an individual or his legal heir by way of compensation on account of any disaster from the above-mentioned authorities shall be exempt from tax. The exemption is however not allowable to the extent the recipient has been allowed a deduction under the Act on account of loss or damage caused by such disaster.

For this purpose the term "disaster" shall have the meaning assigned to it under Section 2(d) of the Disaster Management Act, 2005.

## 5. EXEMPTION TO VENTURE CAPITAL UNDERTAKING – SECTION 10(23FB)

Presently any income of a venture capital company or a venture capital fund set up to raise funds for investment in a venture capital undertaking is exempt from tax, but such income is directly taxable in the hands of the investors in such venture capital company/fund by virtue of pass-through status under Section 115U. This pass-through status is now substantially curtailed and will be available only in respect of income from investment in venture capital undertakings in certain specified businesses or industries. Venture capital undertaking is now defined to cover companies engaged only in the business of nanotechnology, information technology relating to hardware and software development, seed research development, bio-technology,

research and development of new chemical entities in the pharmaceutical sector, production of bio-fuels, building, and operating composite hotel-cum-convention centre with seating capacity of more than three thousand or dairy or poultry industry. The exemption is now restricted only to income derived from such venture capital undertaking.

## 6. TAX HOLIDAY TO UNITS IN SEZs – SECTION 10AA

The Special Economic Zones Act, 2005 had introduced Section 10AA to the Income-tax Act, 1961 with effect from 10th February, 2006 so as to provide for a tax holiday in respect of profits derived by a unit in a SEZ from manufacture and export of articles or things or from provision of services. As per Section 10AA(4), the benefit is available to a unit that commences manufacture or production of articles or things or provision of services on or after 1st April, 2005.

This provision is amended with **retrospective effect from 10th February, 2006** so as to provide certain further conditions for a unit to become eligible for the tax holiday. These conditions are:

- That the unit is not formed by splitting up or reconstruction of a business already in existence; and
- That it is not formed by transfer to a new business of machinery or plant previously used for any purpose.

For this purpose, imported machinery or plant used by a third party shall not be regarded as 'used' machinery or plant if the following conditions are fulfilled:

- It was never before used in India;
- It is imported into India from a country outside India; and
- No depreciation has been allowed or is allowable in India for any prior period.

Besides, it shall be permissible to install used machinery or plant to the extent of twenty percent of the total value of machinery or plant used in setting up the business.

## 7. APPROVAL FOR CHARITABLE & RELIGIOUS INSTITUTIONS OF IMPORTANCE – SECTIONS 10(23C)(iv) & (v)

Currently, such funds or institutions of importance are required to be notified by the Central Government in order to avail the exemption. With effect from 1st June, 2007, such funds or institutions will have to seek approval of the prescribed authority,

Director General (Exemptions), instead of seeking notification by the Central Government. Such funds or institutions already notified by the Central Government will need to seek such approval of the prescribed authority at the end of the notified period. All pending applications on 1st June, 2007 shall stand transferred to the prescribed authority, who shall process them further.

## 8. REGISTRATION OF CHARITABLE & RELIGIOUS TRUSTS – SECTIONS 12A & 12AA

From 1st June, 2007, the provisions relating to registration of charitable or religious trusts would be governed only by Section 12AA. The Commissioner's power of condonation of delay in making of application for registration is taken away with effect from 1st June, 2007, and therefore trusts making delayed applications for registration would not be able to obtain registration from the date of creation even if the delay was on account of reasonable cause. In order to be eligible for exemption from the date of creation, a trust will have to make the application for registration in the same financial year in which it is created, as the time limit of one year from the date of creation within which the trust could so far make such application is also removed. Registration will henceforth be granted from the first day of the financial year in which the application is made.

## 9. APPEAL AGAINST ORDER UNDER SECTION 80G – SECTION 253

From 1st June, 2007, an order of rejection of approval by the CIT/DIT under Section 80G, which was so far not appealable, is made appealable to the Income Tax Appellate Tribunal. Appeals would lie not only against an order of refusal of approval under Section 80G, but also against orders granting conditional approval, where the conditions of approval are found objectionable by the trust.

## 10. RENT FREE ACCOMMODATION – SECTION 17(2)(ii)

The valuation of perquisite by way of rent free accommodation or by way of concession in the matter of rent provided to the assessee by his employer is taxable under Sections 17(2)(i) & (ii) respectively. In order to provide as to what constitutes concession in the matter of rent, an Explanation is inserted to Section 17(2)(ii) with **retrospective effect from**

**1st April, 2004.** This amendment was made in view of the decision of the Supreme Court in the case of *Arun Kumar & Ors Vs. UOI, 286 ITR 89*. Accordingly, the provisions of Rule 3 relating to valuation of the perquisite both in case of furnished and unfurnished accommodation are now incorporated in Section 17(2)(ii) effectively setting at rest any possible controversy regarding valuation of concession in the matter of rent.

### **11. EXTENSION OF ALLOWANCE OF WEIGHTED DEDUCTION FOR SCIENTIFIC RESEARCH – SECTION 35(2AB)**

Expenditure incurred by companies engaged in certain businesses (like bio-technology, drugs, pharmaceuticals, electronic equipments etc.) on in-house research and development facility approved by prescribed authority is eligible for weighted deduction of 150% of the expenditure under Section 35(2AB). This deduction is presently available only in respect of expenditure incurred on or before 31st March, 2007. This date is extended up to 31st March, 2012.

### **12. OTHER BUSINESS DEDUCTIONS – SECTION 36**

- i) Premium paid by an employer in respect of the medical insurance of his employees is allowable business expenditure under Section 36(1)(ib). Presently, this deduction is allowable if the premium is paid "by cheque". This section is amended so as to provide that premium paid "by any mode other than cash" shall be allowable.
- ii) Presently, deduction is allowable in respect of any provision for bad and doubtful debt made by a scheduled bank or a non-scheduled bank to the extent provided in Section 36(1)(viiia). The benefit of this deduction is now extended to co-operative banks other than a primary agricultural credit society or a primary agricultural and rural development bank. Consequently, the definition of "scheduled bank" in clause (ii) of the Explanation to Section 36(1)(viiia) is also amended so as to include a co-operative bank in its scope. This amendment applies with effect from A.Y. 2007-08.
- iii) Presently, Section 36(1)(viii) provides for a deduction in respect of special reserve created by certain financial corporations. This section has been substantially modified.

One of the major amendments is the reduction in deduction from 40% to 20% of the profits derived from eligible business carried to special reserve.

- iv) A new clause (xiv) is inserted in Section 36(1) so as to provide for a deduction in respect of any contribution made by a public financial institution to a notified credit guarantee fund for small industries.

### **13. DISALLOWANCE OF DEDUCTIBLE BUSINESS EXPENDITURE INCURRED OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE/ BANK DRAFT – SECTION 40A(3)**

Presently there is a disallowance of 20% of business expenditure if payment in respect thereof in a sum exceeding Rs. 20,000/- is made otherwise than by account payee Cheque/ bank draft. If the payment is made in the subsequent year/years, the disallowance is made in the year of incurrence of expenditure by rectifying that assessment.

Now the disallowance of such expenditure is being increased to 100% of the expenditure so paid. Further, if the payment is made in a subsequent year, the amount of payment so made exceeding Rs. 20,000/- will be deemed to be business income in such year of payment, instead of disallowance in the year of incurrence.

The provisions relating to non-applicability of such disallowance/deeming of income under certain prescribed circumstances continues.

### **14. CAPITAL GAINS ON TRANSFER OF PAINTINGS AND OTHER WORKS OF ART – SECTION 2(14)**

Capital gains arising on transfer of personal effects (moveable properties) including archaeological collections, drawings, paintings, sculptures or any work of art or wearing apparel and furniture are not presently liable to tax. Jewellery, though a personal effect is the only exception to this rule, as it is specifically included in the definition of a capital asset. Now the definition of capital asset is extended to also cover archaeological collections, drawings, paintings, sculptures or any work of art. Therefore transfer of such works of art will now attract capital gains tax.

### **15. EXEMPTION FROM CAPITAL GAINS – SECTION 54EC**

Capital gains arising on transfer of long-term capital asset can be exempted from tax if such capital gains are invested in



certain specified assets within a period of six months from the date of such transfer.

The Finance Act, 2006 amended the definition of such specified assets to mean bonds issued by the National Highway Authority of India or Rural Electrification Corporation Limited as notified by the Central Government. The Central Government had accordingly notified certain bonds and had provided that the investment in such bonds will be limited up to Rs. 50/- lakhs per assessee.

The section has now been amended to specifically provide that investment made on or after 1st of April, 2007 in bonds of the above two institutions shall not exceed Rs. 50/- lakhs per assessee during any financial year.

It is also provided that bonds notified before 1st April, 2007 will be eligible for exemption only if the investment in such bonds fulfils the conditions laid down in such notification. As such the earlier notification and the conditions laid therein, including the condition for providing a limit on the amount of investment of Rs. 50/- lakhs is **retrospectively validated**.

#### **16. INCOME FROM OTHER SOURCES – SECTION 56**

Income includes any sum of money (exceeding Rs. 25,000/- up to 31st March, 2006, thereafter Rs. 50,000/- in aggregate) received without consideration by an individual or HUF, with certain exclusions as per the proviso to Section 56(2)(v). The Taxation Laws (Amendment) Act, 2006 substituted clause (v) by clause (vi) w.e.f. A. Y. 2007-08, excluding from charge to tax any sum of money received from a local authority, fund, foundation or university, educational institution, hospital, trust or institution registered under Section 12AA. This exclusion is provided in clause (v) also and will be **retrospective from A.Y. 2005-06**, being the year from which the provisions of taxability of such amounts came into effect.

#### **17. CONTRIBUTION TO PENSION SCHEME, DEDUCTION TO EMPLOYEES & DEEMED INCOME – SECTIONS 80CCD, 7 AND 17(1)(viii)**

Presently, contribution made by an employee of the Central Government under a notified pension scheme is eligible for deduction under Section 80CCD subject to certain limits and conditions. The benefit of this deduction is now extended to employees other than Central Government employees as well.

Besides, contribution made by the Central Government to the account of an employee under a pension scheme referred to in

Section 80CCD is deemed to be the income received by the employee under Section 7(iii). Correspondingly, such contribution is chargeable to tax under the head Salaries in terms of Section 17(1)(viii). These provisions have been amended so as to extend the scope of taxation to contributions made by employers other than the Central Government as well.

These amendments are made **retrospectively with effect from A.Y. 2004-05**.

#### **18. DEDUCTION FOR MEDICLAIM PREMIA – SECTION 80D**

Premium paid in respect of the medical insurance is allowable as a deduction under Section 80D subject to certain limits. Presently, this deduction is allowable if the premium is paid "by cheque". This section is amended so as to provide that premium paid "by any mode other than cash" shall be eligible for deduction.

The deduction is presently available to the extent of Rs. 15,000/- for insurance of senior citizens and Rs. 10,000/- for others. These limits have been increased to Rs. 20,000/- where insured is a senior citizen and Rs. 15,000/- where insured is any other person.

#### **19. DEDUCTION IN RESPECT OF INTEREST ON LOAN FOR HIGHER EDUCATION – SECTION 80E**

Section 80E provides for deduction in respect of interest on loan taken by an individual for his higher education. This section is amended so as to extend the benefit of this deduction to interest on loan taken for higher education of one's spouse and children.

#### **20. ENLARGEMENT OF THE ELIGIBLE INFRASTRUCTURE FACILITIES FOR DEDUCTION – SECTION 80-IA**

Deduction under Section 80-IA is available in respect of the profits derived by an enterprise or an undertaking from certain eligible businesses. The benefits of this section are extended to an undertaking carrying on the business of laying and operating a cross-country natural gas distribution network, including pipelines and storage facilities being an integral part of such network which fulfils the following conditions:

- The undertaking is owned by an Indian company or a consortium of Indian companies or by a statutory corporation or a body;
- It is approved by the Petroleum and Natural Gas Regulatory Board;

- One-third of the total pipeline capacity is available for use on common carrier basis by third parties;
- It starts operating on or after 1st April, 2007; and
- Any other conditions as may be prescribed.

The benefit of the deduction is also extended to an enterprise engaged in development and/or operating and/or maintaining a navigational channel in the sea. Such an enterprise ought to enter into an agreement with the Government or a local authority etc. for development and/or operating and/or maintaining such navigational channel in the sea.

Such undertakings shall be entitled to the deduction for ten consecutive assessment years out of fifteen initial years.

### **21. EFFECT OF DEMERGER, AMALGAMATION – SECTION 80-IA(12A)**

Under Section 80-IA(12), at present an amalgamation or a demerger of an undertaking eligible for deduction under this section does not affect the availability of the deduction for the residual period. A new sub-section (12A) is inserted with a view to disentitle an undertaking from claiming the benefits of deduction for the residual period if the undertaking demerges or the company owning the undertaking amalgamates with another company on or after 1st April, 2007.

### **22. CONTRACTOR NOT ENTITLED FOR DEDUCTION – SECTION 80-IA EXPLANATION**

Section 80-IA provides for deduction to developer of an infrastructure facility. An *Explanation* has been added with **retrospective effect from A.Y. 2000-01** at the end of the section, which provides that a person who executes a works contract entered into with an eligible undertaking or an eligible enterprise shall not be eligible for the benefits of the deduction.

### **23. EXTENSION OF THE LATEST COMMENCEMENT DATE FOR UNITS LOCATED IN THE STATE OF JAMMU AND KASHMIR – SECTION 80-IB**

An industrial undertaking in an industrially backward State specified in the Eighth Schedule is entitled to the tax holiday benefits under Section 80-IB. For the units located in the State of Jammu and Kashmir, to be eligible for the deduction, it was

necessary that the commercial production has commenced on or before 31st March, 2007. This date has now been extended to 31st March, 2012.

### **24. TAX HOLIDAY FOR HOTELS AND CONVENTION CENTRES – SECTION 80ID**

A new section has been introduced so as to provide a hundred percent tax holiday for a period of five consecutive initial years in the case of new hotels and convention centres located in Delhi, Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad. The hotel should be two, three or four star category. The convention centre should be in a building of a prescribed area comprising of convention halls, for holding conferences and seminars, of such size and having such facilities as may be prescribed. The hotel should have been constructed and should start functioning between 1st April, 2007 and 31st March, 2010. Similarly, the convention centre should have been constructed between these two dates. The deduction is subject to conditions specified in the section.

### **25. TIME LIMIT FOR TRANSFER PRICING ASSESSMENT – SECTIONS 92CA, 153 and 153B**

Under Section 92CA, the assessing officer (AO) can refer the computation of Arms Length Price to a Transfer Pricing Officer for transfer pricing assessment.

Currently, there is no extra time available to the AO for completing the assessment or reassessment in cases where such transfer pricing assessment is required.

In order to ensure that the transfer pricing officer as well as the AO get sufficient time to make the audit of transfer price and the assessment in cases involving international transactions, the time limit for completion of assessment or reassessment is increased by 12 months as compared to the regular assessments.

Further, the transfer pricing officer is required to complete the transfer pricing assessment, two months before the due date for regular assessment.

This provision applies where references for transfer pricing assessments are made after 31st May, 2007; or where references have been made before 1st June, 2007, but transfer pricing assessments have not been completed before 1st June, 2007.

It is further provided that the assessing officer has to complete the assessment "in conformity with" the transfer pricing assessment order. This means that the assessing officer is required to accept the

Arms Length Price as computed by the transfer pricing officer and has no discretion in the matter of computation of arms length price.

## 26. MINIMUM ALTERNATE TAX (MAT) – SECTION 115JB

Presently, in computing the book profits for the purposes of MAT, the amount of income to which the provisions of Section 10A and Section 10B apply is eligible for reduction. The provisions of Section 115JB are amended so as to disentitle such reduction from book profits. As a result, profits of the units eligible for deduction under Sections 10A and 10B will henceforth be liable to MAT.

However, income exempt under Section 10AA of units in SEZ commencing operation on or after 1st April, 2005 is not covered by this amendment.

## 27. DIVIDEND DISTRIBUTION TAX – SECTIONS 115-O, 115R

Tax u/s 115-O on dividends distributed by a company is increased to 15% from 12.5%.

Tax u/s 115R on income distributed by money market mutual funds and liquid funds is increased to 25%. Prior to amendment this was 12.5% in case the recipient of distributed income was an individual or HUF and 20% if the recipient was a company.

Income distribution by other non-equity oriented mutual funds will continue to be taxed at 12.5% in case of distribution to an individual and HUF and 20% in case of distribution to others (plus applicable surcharge and education cess). Income distribution by equity oriented funds continues to remain outside the purview of this tax.

The amendments will become applicable from 1st April, 2007.

## 28. FRINGE BENEFIT TAX – SECTIONS 115WB, 115WC, 115WJ, 17(2) and 49(2AB)

Fringe Benefit Tax (FBT) is extended to shares issued under any Employees Stock Option Plan (ESOP) and to Sweat Equity shares. Accordingly, shares issued under an ESOP or shares issued to an employee or a director at discount or for consideration other than cash for providing any intellectual property or value addition will be liable for FBT. The fair market value of such shares on the date of exercise of the option as reduced by the amount paid by the employee for the shares is to be taken as the value of fringe benefit. Mode of determining the fair market value will be prescribed by CBDT.

Simultaneously, proviso to Section 17(2)(iii) is deleted. It appears that now ESOPs, whether according to the prescribed guidelines or otherwise, will not be taxed as perquisites.

For computing capital gains on sale of shares allotted under an ESOP or sweat equity shares, fair market value adopted for FBT will be taken as cost under the newly inserted Section 49(2AB).

## Sales Promotion Expenses

Expenditure on display of products, and samples distributed either free of cost or at a concessional price henceforth will not be regarded as expenditure on sales promotion and will not be chargeable to FBT.

## Payment of Advance FBT

Provisions relating to the due dates for the payment of FBT, amount to be paid in each instalment of FBT and interest for the shortfall in payment of instalment are brought on par with those relating to payment of advance income tax. The FBT will have to be paid based on the estimated amount of FBT liability for the year. Presently, all assesseees have to pay FBT based on actual amount of fringe benefits within 15 days from the end of quarters ending on 30th June, 30th September, 31st December and by 15th March for the quarter ending on 31st March. Due dates and the amount payable as a percentage of total FBT liability after amendment are as under:

Due date	Cumulative amount payable as % total FBT liability	
	Companies	Other than Companies
15th June	15%	–
15th September	45%	30%
15th December	75%	60%
15th March	100%	100%

## 29. INTEREST TO BE CALCULATED ON MONTHLY BASIS – SECTIONS 132B, 201(1A) and 245D(6A)

At present, interest receivable from the Central Government as well as payable by the assessee is generally computed on per month basis except when computation is under Sections 132B(4)(a), 201(1A), 245D(6A), rules 60(1)(a) and 68A(3) of the second schedule and Section 22D(6A) of the Wealth-tax Act. It is now provided that interest under the aforesaid provisions shall also be computed on monthly basis for every month or part of a month comprised in the period for which interest is to be computed instead of the earlier method of computing interest

under the aforesaid sections on per annum basis wherein part of the month was ignored.

### **30. RULES FOR FACILITATING E-FILING OF RETURNS – SECTIONS 139, 139C and 139D**

Presently, a return may be treated as defective if certain documents, receipts, etc. are not enclosed with the return. With the introduction of e-filing of returns, the Scheme does not envisage any attachments to be submitted with the return. A proviso had been inserted to provide that CBDT may dispense with any of the prescribed conditions for a class or classes of persons, so that the return may not be regarded as defective. The proviso to Section 139 has now been deleted and a new Section 139C now empowers the CBDT to make rules providing for certain class or classes of persons who may not be required to furnish documents, receipts, certificates or audit reports required to be furnished alongwith the return under any provision of the Act, but to furnish them before the Assessing Officer on demand.

A new Section 139D also empowers the CBDT to make rules providing for (a) the class or classes of persons required to furnish return in electronic form, (b) the form and manner in which the e-return is to be furnished, (c) the computer resource or the electronic record to which the e-return may be transmitted and (d) the documents which may not be furnished along with the e-return but shall be produced before the Assessing Officer on demand.

The aforesaid amendments are **retrospectively applicable from 1st June, 2006.**

### **31. SPECIAL AUDIT – SECTION 142(2A)**

It is provided that with effect from 1st June, 2007, the Assessing Officer shall give the assessee a reasonable opportunity of being heard before directing the assessee to get his accounts audited under Section 142(2A). This is in pursuance of the Supreme Court decision in the case of *Rajesh Kumar vs. DCIT* (287 ITR 91) wherein the Supreme Court held that the direction under Section 142 (2A) is a quasi-judicial order and the principles of natural justice are required to be applied.

It is also provided that where any direction for special audit is issued on or after 1st June, 2007, the expenses of the special audit including the remuneration of the auditors shall be determined by the Chief Commissioner / Commissioner in

accordance with prescribed guidelines and shall be paid by the Central Government.

### **32. ASSESSMENT IN CASES OF SEARCH OR REQUISITION – SECTION 153D**

A new Section 153D is inserted to provide that no order of assessment or reassessment under Sections 153A and 153B in case of search or requisition shall be made by an Assessing Officer below the rank of Joint Commissioner except with the prior approval of the Joint Commissioner.

The aforesaid amendment is applicable from 1st June, 2007

### **33. TIME LIMIT FOR COMPLETION OF ASSESSMENT FOR SHIPPING BUSINESS OF NON-RESIDENTS – Section 172**

Currently, there is no time limit prescribed for completion of assessment of returns filed under Section 172(4). Now a time limit for completion of assessment is provided as 9 months from the end of the year of filing the return.

In case of returns filed before 1st April, 2007, the time limit for completion of assessment is 31st December, 2008.

### **34. AMENDMENTS IN PROVISIONS RELATING TO TAX DEDUCTION AT SOURCE – SECTIONS 193, 194A, 194C, 194H, 194-I and 194J**

- i) Interest payable on 8% Savings (Taxable) Bonds, 2003 exceeding Rs. 10,000/- during a financial year will be subject to deduction of tax at source under Section 193.
- ii) No tax is required to be deducted under Section 194A in respect of interest payable by (a) a banking company to which the Banking Regulation Act, 1949 applies, (b) a Co-operative society engaged in the business of banking and (c) post offices in respect of notified deposit schemes, if the interest does not exceed Rs. 10,000/- in a financial year as against the earlier limit of Rs. 5,000/-. The limit for others continues at Rs. 5,000/-.
- iii) Individuals and HUFs whose total sales, gross receipts or turnover from business or profession in the preceding year exceed the monetary limit for tax audit (viz. Rs. 40/- lakhs in case of business and Rs. 10/- lakhs in case of profession) are required to deduct tax at source in respect of payments



made during the year to contractors and sub-contractors as specified in Section 194C. However, if the payment is exclusively for the personal purposes of such individual or any member of the HUF, no tax is required to be deducted at source.

- iv) The rate of deduction of tax at source on Commission and brokerage under Section 194H has been increased from 5% to 10%. Commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees shall not attract TDS.
- v) A lower rate of deduction of tax at source of 10% has been prescribed under Section 194-I in respect of rent paid for the use of any machinery, plant or equipment as against the earlier rate of 15% where the payee is an individual or HUF or 20% in case of other payees. In case of other rent the earlier rates continue.
- vi) The rate of deduction of tax at source on fees for professional or technical services under Section 194J has been increased from 5% to 10%.

The aforesaid amendments are applicable from 1st June, 2007.

The rates referred to above would be further required to be increased by applicable surcharge and education cess.

### 35. COLLECTION OF TAX AT SOURCE – SECTION 206C

Section 206C has been amended to provide that mining and quarrying shall not include mining and quarrying of mineral oil and mineral oil has been defined as including petroleum and natural gas. Accordingly, no collection of tax at source would be required in case of mining and quarrying of mineral oil including petroleum and natural gas.

The aforesaid amendment is applicable from 1st June, 2007

### 36. SETTLEMENT OF CASES BEFORE SETTLEMENT COMMISSION – CHAPTER XIX-A

- i) Presently, an assessee is entitled to make application to the Settlement Commission (referred to as commission) provided assessment/reassessment proceeding is pending before any Income-tax authority including CIT or CIT(A). After 31st May, 2007, an assessee can apply to the Commission only if the proceeding for assessment is pending before an assessing officer on the date of making an application.

- ii) The following proceeding for assessment now will not be treated as pendency before the assessing officer and accordingly, application for settlement under Section 245C cannot be made even if pendency is before assessing officer.
  - a) Assessment/reassessment/re-computation under Section 147.
  - b) Assessment/reassessment under Section 153A for six assessment years pursuant to search under Section 132 or requisition under Section 132A.
  - c) Fresh assessment proceeding pursuant to assessment order set aside by the appellate Tribunal under Section 254 or by the Commissioner under Section 263 or Section 264.

In view of above exclusions, the scope of cases taken to settlement Commission is substantially curtailed.

- iii) Minimum additional Income-tax payable on income disclosed in the settlement application is increased to Rs. 3 lakhs from Rs. 1 lakhs for being eligible to apply to the commission. This will apply to application made on or after 1st June, 2007.
- iv) Presently, the income tax on income disclosed in application becomes payable after the application is admitted by the Commission. Now, such tax along with interest is required to be paid on or before the date of making an application and its proof shall be attached with the application.
- v) Copy of application shall now be submitted to the assessing officer on the date of making an application to the Commission.
- vi) Settlement Commission shall follow the following procedure on receipt of application:
  - a) Commission shall issue notice to the applicant asking reasons for admitting application within 7 days of receipt of application.
  - b) Commission shall pass an order either rejecting or allowing application within 14 days of making the application. Now, It will not be necessary to justify complexity of investigation of facts for admission of the application.
  - c) If Commission does not pass order within above period, the application shall be deemed to have been admitted.

- vii) Application made prior to 1st June, 2007 and pending for admission before the Commission shall be admitted only if the tax on income disclosed along with interest is paid on or before 31st July, 2007 failing which application shall be deemed to have been rejected.
- viii) Application admitted prior to 1st June, 2007 and pending for passing order of settlement shall not be proceeded further unless the applicant pays additional tax on income disclosed along with interest on or before 31st July, 2007 failing which application shall be deemed to have been rejected.
- ix) The Commission shall issue a notice to the Commissioner within 30 days from the date of its receipt in case of an application received on or after 1st June, 2007.
- x) The notice to the Commissioner shall be issued on or before 7th August, 2007 in case of an application received prior to 1st June, 2007 and pending before Commission for admission,
- xi) Commissioner shall send his report within 30 days from the date of receipt of communication from the commission.
- xii) On receiving report from the commissioner, the Settlement Commission shall pass an order within 15 days from the date of receipt of commissioner's report on validity of an application after hearing the applicant. If no report is received from the commissioner, the Commission will proceed with the matter.
- xiii) Settlement Commission may direct commissioner to make such inquiry or investigation as found necessary in respect of an application made. In such an event, commissioner shall submit his report within 90 days from the date of receipt of communication from the Settlement Commission.
- xiv) Time limit for making order of settlement is provided at 9 months from the end of the month in which the application was made. But, if the application is received prior to 1st June, 2007, the order shall be passed on or before 31st March, 2008.
- xv) Commission's power to grant immunity from prosecution under the Indian Penal Code or under any Central Act is withdrawn in respect of fresh applications made on or after 1st June, 2007. However, power to grant immunity from prosecution under the Income-tax Act and Wealth-tax Act is retained.

- xvi) Commission will have power to make provisional attachment beyond period of six months after recording reasons in writing. Maximum period of 2 years provided earlier for extending provisional attachment is now done away with.
- xvii) Commission will not have power to reopen completed proceeding in respect of application filed on or after 1st June, 2007.
- xviii) If any application is either rejected or declared invalid or not allowed to be proceeded with or settlement order is not passed within the specified period, the proceeding before the Commission shall abate and the assessing officer shall assume power to complete the assessment. But, he shall grant credit for taxes and interest paid by the applicant during pendency of case before the commission. The period from the date of making an application and date on which proceeding gets abated shall be excluded from the limitation prescribed for completing assessment.
- xix) An assessee can now apply to Settlement Commission only once during his life time. However, an application which is not admitted by the Commission will not be treated as application. This is effective from 1st June, 2007.
- xx) Similar amendments are also carried out in the Wealth Tax Act.

### **37. APPEALABLE ORDERS BEFORE COMMISSIONER (APPEALS) – SECTIONS 246A(1)(ha) and 246A(1B)**

Under Section 206C(6A), a person is deemed to be an assessee in default for failure to collect tax at source or for failure to deposit tax at source after collection in accordance with the relevant provisions. The Assessing Officer is required to pass an order deeming such person to be an assessee in default. Such an order can now be challenged in appeal before the CIT (Appeals) w.e.f. 1st June, 2007. An appeal filed against an order under Section 206C(6A) from 1st April, 2007 gets the benefit of being deemed to have been filed under this section as provided in Section 246A(1B).

### **38. APPEAL BY A PERSON DENYING LIABILITY TO DEDUCT TAX – SECTIONS 248 and 249**

In respect of payments, other than interest, to a non-resident, an appeal to the CIT (Appeals) claiming that no tax was deductible is being restricted only to cases where tax is being borne by the payer as per agreement/arrangement. A pre-

requisite of payment of the disputed tax prior to filing the appeal is also laid down. The time limit of 30 days for filing of appeal is to be counted from the date of payment of the tax. This amendment is with effect from 1st June, 2007.

As a result of this amendment, no appeal can be filed claiming that no tax or lower tax was deductible if tax is to be borne by the non-resident payee; i.e, the payment is made on a subject to tax basis.

### **39. TIME LIMIT FOR GRANT OF STAY BY THE APPELLATE TRIBUNAL – SECTION 254**

Currently, in case of stay granted matters before the Appellate Tribunal, if appeals are not disposed of within a period of 180 days from the date of the stay order, the stay order is automatically vacated after the expiry of 180 days, unless the stay is further extended by the Tribunal for a period not exceeding 180 days at a time. It is now provided that the total stay period shall not exceed 365 days cumulatively from the date on which the stay was first granted. It is also provided that the Tribunal shall dispose of the appeal within the period of such stay, failing which the order of stay shall stand vacated at the expiry of the stay period. This amendment applies from 1st June, 2007.

### **40. CONCEALMENT PENALTY – EXPLANATIONS 3 & 4 TO SECTION 271(1)(C)**

Presently, any person who has failed to furnish return of income within time limit prescribed for completion of assessment under Section 153(1) is liable to pay penalty w.r.t. assessed tax without giving credit for taxes paid under Explanation 3. Now, the amount 'tax sought to be evaded' as per explanation 4 will mean the tax on total income assessed as reduced by the advance tax, TDS/TCS, Self Assessment Tax paid before the issue of notice under Section 148. This is effective retrospectively from 1st April, 2003 and will apply from assessment year 2003-2004.

### **41. CONCEALMENT PENALTY – EXPLANATIONS 5 AND 5A TO SECTION 271(1)(C)**

i) If the assessee is found to be owner of any money, bullion, jewellery or other valuable articles or things (referred to as valuable assets), and he claims that such assets are acquired by utilising his income which is recorded before the date of search or before the end of the previous year which is to end

after the date of search or he declares such assets in the statement under Section 132(4), he gets immunity from penalty for concealment. This Explanation 5 to Section 271(1)(c) is now applicable only to search initiated before 1st June, 2007.

ii) In respect of search conducted on or after 1st June, 2007, newly inserted Explanation 5A to Section 271(1)(c) provides that the assessee who is found to be the owner of valuable assets or any income based on any entry in books of account, etc. and claims that such assets are acquired out of income earned during any previous year ended before the date of search and whose date of filing return has expired and he has not filed the return then even if such income is declared in the return filed subsequently, he shall be deemed to have concealed income and he will be liable to pay concealment penalty at minimum of 100% and maximum of 300% of amount of tax sought to be evaded.

### **42. PENALTY FOR CONCEALMENT – SECTION 271AAA**

i) The assessee shall be liable to penalty under Section 271AAA in respect of undisclosed income of year of search or the preceding year for which due date of filing return of income has not expired, found during search initiated on or after 1st June, 2007 at the rate of 10% of the undisclosed income.

ii) 'Undisclosed income' shall mean :

- a) any money, bullion, jewellery or other valuable articles or thing or any entry in books of account or other documents or transactions found during search which has not been recorded in books of account or has not been disclosed to Chief Commissioner/Commissioner before the search.
- b) any income represented by expenses recorded in the books which are false or could not have been found to be false had the search not been conducted.

iii) No penalty shall be leviable if

- a) the assessee admits undisclosed income in the statement taken under Section 132(4);
- b) substantiates the manner of deriving undisclosed income and
- c) pays tax along with interest on such undisclosed income.

- iv) If penalty is leviable under Section 271AAA, no penalty shall be levied under Section 271(1)(c).

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

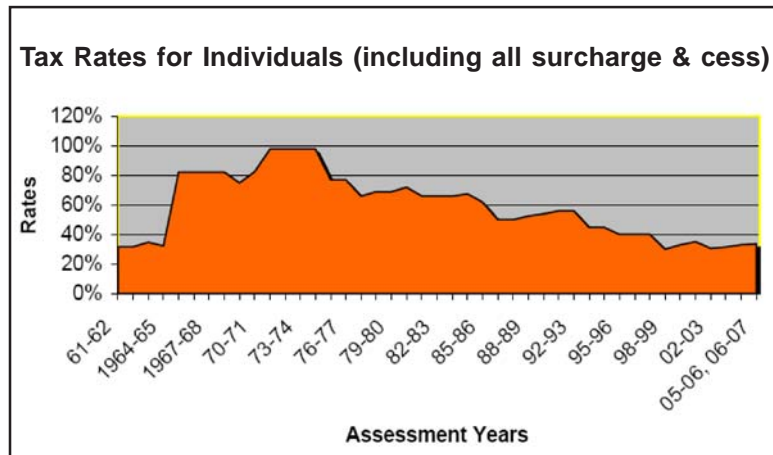
Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing is found in a search in possession of any person, it is presumed under Section 132(4A) that (a) such books of account etc. belong to such person (b) the contents of such books of account are true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

Presently, as held by the Supreme Court in the case of *Metraini vs. CIT (287 ITR 209)* the said presumptions are not available under any other proceedings under the Act.

A new Section 292C provides that the said presumptions will be applicable in any proceeding under the Act. Corresponding amendments have also been made in the Wealth-tax Act.

#### 44. RECOGNISED PROVIDENT FUNDS – SCHEDULE IV

Finance Act, 2006 had provided that in order to continue to enjoy recognition by provident funds and for the assesseees to get deduction in respect of contribution to such funds, the provident funds must comply with certain conditions by 31st March, 2007. This deadline has been extended to 31st March, 2008.



## INDIRECT TAXES

### SERVICE TAX

The provisions discussed here are of Chapter V of the Finance Act 1994, Notifications issued and Rules framed thereunder. The amendments made in the Act and introduction of secondary and higher education cess come into effect from the date of enactment; meaning the date on which the President of India gives assent to the Finance Bill. Introduction of new services and changes in existing services come into effect from the date to be notified by the Government

#### 1. INCREASE IN EFFECTIVE RATE OF TAX

The rate of service tax stays constant at 12%. However, an additional cess of 1% called Secondary and Higher Education cess is levied. Therefore the effective rate increases from 12.24% to 12.36%.

#### 2. INCREASE IN THE THRESHOLD LIMIT

The threshold limit for service providers is increased from Rs. 4 lakhs to Rs. 8 lakhs. Consequently, the limit for obtaining registration is also increased from Rs. 3 lakhs to Rs. 7 lakhs. (Notifications No.4/2007-ST and 5/2007-ST – both dated 1st March, 2007 – Effective from 1st April, 2007).

#### 3. INTRODUCTION OF NEW SERVICES

##### i) Asset Management Services [Section 65 (105) (zzzzc)]

Services in relation to asset management by way of portfolio management or in any form of fund management like monitoring, guiding, planning, restructuring of funds are chargeable under this category. When such services are provided by persons covered under the category of banking and financial services the same are not covered under this category.



**ii) Component of Services included in the works contract [Section 65 (105) (zzzza)]**

In the landmark judgement of Hon. Supreme Court in the case of *CCE vs. Daelim Industrial Company Limited 2004 170 ELT A181 (SC)* it was held that works contract in the nature of turnkey contract cannot be vivisected to levy service tax on the component of service included in the said works contract. This generated tremendous controversy over levying service tax on all composite contracts. To put an end to apprehension over taxability of works contracts, a separate category is introduced.

By insertion of this new category, service component in execution of specified works contracts would be categorically charged to service tax wherein the transfer of property in goods involved in the execution of the contract is leviable to tax as sale of goods. The following services in execution of such contracts are covered:

- a) Erection, commissioning or installation of plant, machinery, equipment etc.;
- b) Construction services for commerce or industry;
- c) Construction services of a new residential complex;
- d) Completion and finishing services, repair, alteration, renovation or restoration or similar services in relation to commercial or industrial construction or construction of complex; and
- e) Turnkey projects including engineering, procurement and construction or commissioning projects.

An optional composition scheme will be notified where service tax will be levied at 2% of the total value of works contract.

**iii) Design Services [Section 65 (36b) & (105) (zzzzb)]**

Services of designing of furniture, products, packages, logos, graphics, websites and corporate identity designing and production of three-dimensional models are covered under this category.

However, the services of an interior decorator and a fashion designer are excluded from this category as they are covered under separate categories.

**iv) Development and Supply of Content [Section 65 (36c) & (105) (zzzzd)]**

Services in relation to development and supply of contents such as mobile value added services, music, movie clips, ring tones, wallpapers, games, data or any information like cricket scores, traffic information etc. for the use in telecommunication services, advertising agency services and on line information and database access or retrieval are covered under this category.

**v) Mining Services [(Section 65 (105) (zzzy)]**

Service tax was payable on services of survey and exploration of minerals, oil or gas. The services of extraction were not covered. The same are now covered under this category of service.

**vi) Renting of Immovable Property [(Section 65 (90a) & (105) (zzzz)]**

Consideration received on account of renting, letting out, leasing, licensing or providing a right to use an immovable property in the course or furtherance of business or commerce including factories, office buildings, warehouses, theatres, exhibition halls, multi purpose buildings etc. is covered under this category.

Renting of immovable property to a religious trust or to an education body except commercial training or coaching centre is excluded. Renting of immovable property by a religious trust is also not liable to service tax.

The term "immovable property" is defined for this purpose to include building, land and facilities incidental thereto. The following are specifically excluded from the definition:

- Vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry and mining purposes.
- Vacant land whether or not having facilities clearly incidental to the use of such land.
- Land used for educational, sports, circus, entertainment and parking purposes.
- Buildings used for residential purposes and for the purpose of hotel, hostels, boarding houses, holiday accommodations, tents, camping facilities.

When an immovable property is partly used for residential purpose and partly for commercial purpose, it will be considered as used for commercial purpose and will be liable to service tax.

**vii) Telecommunication Services [Sections 65 (109a) & (105) (zzzx)]**

Various services provided by a telegraph authority hitherto covered under different categories of services like services in relation to a telephone or a cellular connection, pager, leased circuit, telegraph, telex, fax, etc. are consolidated under one head and a comprehensive definition of telecommunication service is provided including the value added services of call management, private network services, data transmission etc. The services of online information and database access or retrieval, internet telephony and broadcasting continue to be separate categories.

**4. CHANGES IN EXISTING SERVICES**

**i) Banking and Other Financial Services [Section 65(105)(zm)]**

- The expression 'any other person' has been substituted with 'commercial concern'. This curtails the scope of service provider under this category. Services rendered by non-commercial concerns including Government departments are not covered now.
- Services in relation to cash management excluded earlier are now liable to service tax. The Ministry of Finance has clarified that Cash management services include collection of receivables, execution of payment, liquidity management, provision of customized MIS reports by banks to its clients and such other services.
- The term "financial leasing" is now defined to mean a lease transaction as where –
  - a) contract for lease is entered into between two parties for leasing of a specific asset;
  - b) such contract is for use and occupation of the asset by the lessee;
  - c) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and

- d) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;

**ii) Consulting Engineers [Section 65(105)(g)]**

Computer hardware engineering hitherto specifically excluded from the definition of taxable services is now covered under this category.

**iii) Management Consultant [Section 65(105)(r)]**

The service has been renamed as 'Management or Business Consultant Services' and has been amended to include services in relation to management of business in addition to management of organization.

**iv) Management, Maintenance or Repair Services [Section 65(105)(zzg)]**

An explanation is added to clarify that the term 'goods' includes computer software.

Development of computer software is distinct from the maintenance or repair of computer software. The Ministry of Finance has clarified that development of computer software continues to be not liable to service tax being an 'information technology service'. It is still a debatable issue whether up-gradation of the software is further development of software or is maintenance of software.

**v) Mandap Keeper Service [Section 65(105)(m)], Pandal or Shamiana Contractor [Section 65(105)(zzw)] and Event Management Service [Section 65(105)(zu)]**

An explanation is added to clarify that the term 'Social Function' include marriage for the purpose of services of mandap keeper and pandal and Shamiana contractor. Definition of Event Management is also amended to include services provided in relation to marriage.

**vi) Manpower Recruitment or Supply Services [Section 65(105)(k)]**

An explanation is added to clarify that manpower services include services in relation to pre-recruitment screening, verification of the credentials and antecedents of the candidate and authenticity of documents submitted by the candidate.

**vii) Rent-A-Cabs Services [Section 65(105)(o)]**

Renting of motor vehicle having capacity of more than twelve passengers, excluding driver is now liable to service tax under this category. Thus the contract buses provided on hire to any person are covered.

However, hiring or renting of maxicab and motor vehicles to an educational body except commercial coaching and training centre are not covered. Motorcabs having passenger capacity of not more than six, excluding driver will be liable to service tax even for educational body.

**viii) Sale of space or time for advertisement [Section 65(105)(zzzm)]**

Sale of space in business directories, yellow pages and trade catalogues are now liable to service tax under this category

**5. AMENDMENTS IN THE ACT**

- i) Section 70 is amended to prescribe a specified amount of late fee not exceeding Rs. 2,000/- for filing half yearly return in Form ST-3 after the due date. The said late fee would be linked to the period of delay.
- ii) Section 14AA and Section 38A of the Central Excise Act, 1944 are now made applicable to the Service Tax Law.
  - Section 14AA empowers the Commissioner of Central Excise to order a cost audit by Cost Accountant to study the abnormal utilization of CENVAT Credit.
  - Section 38A provides protection by way of savings for all pending actions like issue of show cause notice, adjudication, investigation under Rules and Notifications that are repealed, rescinded or amended.
- iii) The CBEC is being empowered to constitute a committee of:
  - Two Chief Commissioners of Central Excise to review adjudication, penalty or revision orders passed by Commissioner of Central Excise and to file appeal against the said orders to Appellate Tribunal, if required.
  - Two Commissioners of Central Excise to review appeal orders passed by Commissioner of Central Excise (Appeals) and to direct Central Excise Officer to file appeal against the said orders to Appellate Tribunal, if required.

- iv) The Central Government is empowered to issue orders for removal of difficulty in case of classifying, assessing the value of, or implementing any newly introduced taxable service vide the Finance Bill, 2007 within one year from the date of its enactment.
- v) Under the Advance Ruling provisions, for a 'Joint Venture' applicant seeking advance ruling, it is provided that at least one of the joint venture partners is required to be a non resident having a substantial interest and control. It is to be noted that the term 'substantial interest' is not defined.

*(Amendments will be effective from the date of enactment of the Finance Bill, 2007)*

**6. AMENDMENTS IN THE RULES**

- i) Under reverse charge mechanism, service tax in respect of sponsorship services is required to be paid only if the recipient of service is located in India. In case recipient of service is located outside India, service provider is liable to pay tax. This amendment comes into effect from 1st April, 2007.
- ii) For intimating any change in the information furnished at the time of obtaining original registration certificate, instead of submitting original certificate, self certified copy of registration certificate is to be submitted. A fresh registration certificate will be issued after cancelling the earlier certificate.
- iii) Facility of adjustment of excess service tax paid against the liability of subsequent month/quarter is now available to all service tax assesseees subject to the following conditions:
  - Excess tax paid is not on account of reasons involving interpretation of law, taxability, classification, valuation or applicability of any exemption notification.
  - Assessee holding centralized registration can adjust excess service tax paid on account of delayed receipt of details of payments from branches, without any monetary limit.
  - In case of other assesseees, adjustment of excess tax paid should not exceed Rs. 50,000/- for the relevant month/quarter.

- Details of adjustment of excess tax paid is to be intimated to the Superintendent within 15 days from the date of making such adjustment.

- iv) Revised return to correct mistake or omission in half-yearly return in Form ST-3 can be filed within 60 days from the date of submission of the original return as per Rule 7.

*(These amendments are effective from 1st March, 2007)  
(Notification No. 1/2007-ST, dated 1st March, 2007)*

## 7. EXPORT OF SERVICES

Rule 3(2) of the Export Rules is substituted whereby the condition of "service delivered outside India and used outside India" is now reworded as "service provided from India and used outside India". The other condition remains constant.

*This amendment takes effect from 1st March, 2007  
(Notification No.2/2007 – ST dated 1st March,2007).*

## 8. EXEMPTIONS FROM SERVICE TAX

- i) Residential Associations

Services such as maintenance of common area, facilitating payments etc. under Club or Association services provided by Resident Welfare Association to its members not exceeding Rs. 3,000/- per month are exempted.

*(Notification No. 8/2007-ST, dated 1st March, 2007)*

- ii) All taxable services provided by the Technology Business Incubators (TBI) and Science and Technology Entrepreneurship Parks (STEP), recognized by National Science and Technology Entrepreneurship Development Board of Department of Science and Technology are exempted from whole of service tax, subject to the condition that requisite information asked for in Format I & II appended to the Notification is furnished to the AC/DC by 30th June of each financial year.

*(Notification No. 9/2007-ST, dated 1st March, 2007 –Effective from 1st April, 2007)*

- iii) All taxable services provided by an entrepreneur located within the premises of Technology Business Incubators (TBI) and Science and Technology Entrepreneurship Parks (STEP) are exempted from whole of service tax, subject to the

condition that entrepreneur enters into an agreement with TBI or STEP to enable himself to develop and produce hi-tech and innovative products and total business turnover of such entrepreneur does not exceed Rs. 50/- Lakhs during the preceding or current financial year. The exemption is available to an entrepreneur for a period of three years from the date of signing the agreement with TBI or STEP.

*(Notification No.10/2007-ST, dated 1st March, 2007 – Effective from 1st April, 2007)*

- iv) Testing and analysis service provided by Clinical Research Organization approved to conduct clinical trials by the Drug Controller General of India, in relation to newly developed drugs, including vaccines and herbal remedies, on human participants to ascertain the safety and efficacy of such drugs on human participants is exempted.

*(Notification No. 11/2007-ST, dated 1st March, 2007)*

- v) Services provided to the producer or distributor in relation to the delivery of content of cinematograph film in digital form after its encryption for direct transmission to a cinema theater through the use of satellite, microwave or terrestrial communication line and not by any physical means including CD and DVD is exempted. The expressions "cinematograph film" and "cinema theatre" are defined in the Notification.

*(Notification No. 12/2007-ST, dated 1st March, 2007)*

## 9. CENVAT CREDIT RULES , 2004

- i) Rule 6(3) has provided an option to general insurance service provider providing taxable services as well as exempted insurance services to utilize CENVAT Credit on inputs and input services in the ratio of value of exempted services to the value of total services comprising of value of exempted as well taxable services. The general insurance service provider is required to intimate his intention of exercising the option to the Superintendent of Central Excise and also furnish details of the same in the prescribed manner.

- ii) a) Rule 9(2) is substituted to provide that CENVAT Credit under sub-rule (1) shall be taken if requisite particulars prescribed under Central Excise Rules or Service Tax Rules are contained in the documents entitling CENVAT Credit. However, if the documents contain minimum details as listed in the proviso, then DC/ AC, on



satisfying himself as to receipt and accounting of goods or services covered by the documents is empowered to allow the CENVAT Credit.

- b) The sub-rule (3) of Rule 9 which required a manufacturer or a service provider to take reasonable steps to ensure payment of duty or service tax on inputs or input services has been omitted.
- c) The service provider or the input service distributor is allowed to rectify mistakes and file revised return within 60 days from the date of submission of original return.
- iii) In Rule 11, it is provided that when a manufacturer or a service provider opts for an exemption from the whole of the duty or service tax respectively, the CENVAT credit if any taken by him on inputs received for the use in manufacture of final products or for providing taxable service and if such input is lying in stock or in process or is contained in the unsold final product or contained in taxable service pending to be provided on the date of exercising the option, in such case, the manufacturer or provider of service is required to pay the duty or service tax, of an amount equivalent to CENVAT credit taken on such inputs. Further, the balance of the CENVAT credit will lapse and will not be allowed to be taken against duty liability or service tax liability for final products cleared or output services provided for home consumption or exported.
- iv) The maximum penalty prescribed under Rule 15 for wrong availment of CENVAT credit is reduced from Rs. 10,000/- to Rs. 2,000/-.



## CENTRAL EXCISE

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

- i) Definition of 'Special Economic Zone' is substituted so as to adopt the same meaning to SEZ in the manner provided for in Special Economic Zones Act, 2005.
- ii) The relevant date to decide limitation for making application for refund of duty in consequence of judgment, decree, order or direction of appellate authority, Appellate Tribunal etc. is now specified as date of such judgment, decree, order or direction.
- iii) A joint venture in India can apply for Advance Ruling only if at least one of the partners in joint ventures is a non-resident with substantial interest.
- iv) Provisions relating to Settlement Commission are amended to provide certain measures relating to application, pre-deposit of duty, minimum amount for settlement, time limit for disposal of application, granting of immunity from prosecution etc. An assessee will be allowed to approach the Settlement Commission only once.
- v) The Committee of Chief Commissioners is now required to give directions, within a period of three months instead of one year, to the proper officer to file an Appeal in respect of any Order.
- vi) For the purpose of pre-deposit of "duty demanded" before filing an Appeal, the term "duty demanded" now includes, duty collected from buyers, wrong availment of CENVAT credit, amount required to be paid on exempted goods under Rule 6 of CENVAT Credit Rules, 2004 and the interest payable under the provisions of the Act.
- vii) Penalty for manufacturing, removal, storage, and non accounting of excisable goods by any person in contravention of any provisions of Central Excise Act, or Rules is amount equal to duty leviable on such goods or Rs. 10,000/- whichever is higher. The amount of Rs. 10,000/- is now reduced to Rs. 2,000/-.
- viii) Penalty for transporting, storage, purchasing, selling or dealing in any manner any excisable goods by any person which, he knows or has reason to believe is liable for

confiscation under provisions of Central Excise Act, or Rules is amount equal to duty leviable on such goods or Rs. 10,000/- whichever is higher. The amount of Rs. 10,000/- is now reduced to Rs. 2,000/-.

- ix) Any person who makes excise invoice without delivery of excisable goods and CENVAT credit is taken on the basis of such invoice, then such a person is liable for penalty equal to amount of CENVAT taken or Rs. 5,000/- whichever is higher.
- x) A manufacturer who has paid excise duty exceeding Rs. 50/- lakhs during financial year 2006-07 is required to pay excise duty electronically through internet banking.
- xi) Manufacturers are now required to mention address of the jurisdictional division office on the Invoice.
- xii) In case of goods manufactured by a job worker on behalf of his principal manufacturer, the valuation for payment of excise duty will be on the basis of sale value at which the principal manufacturer sells the goods as against the existing provision where value is taken as cost of materials plus the job charges.
- xiii) A manufacturer can now file revised monthly/quarterly return within 60 days of filing original return.

## 2. SMALL SCALE INDUSTRIES (SSI) EXEMPTION

With effect from 1st April, 2007, the exemption limit for Small Scale Industries is increased from Rs. 1 Crore to Rs. 1.5 Crore.

## 3. SECONDARY AND HIGHER EDUCATION CESS

In addition to the existing education cess of 2% imposed in Budget 2004, an additional Secondary and Higher Education Cess of 1% of the aggregate duties of excise is imposed. The Cess will be calculated by excluding existing cess.

## 4. MANUFACTURE

In case of cement, packing or repacking in unit container, labeling or re-labelling of packages, including declaration or alteration of RSP on it or adoption of any other treatment to render the product marketable to consumer shall amount to manufacture.

## 5. EXEMPTIONS

Following goods are now exempted subject to conditions specified:

- i) Components, raw materials, tools, lubricants, scientific and technical instruments, apparatus for systems and sub systems of launch vehicles and satellite project meant for Indian Space Research Organisation.
- ii) Specified equipment, apparatus, accessories, parts, consumables, prototypes, etc. supplied to all research institutions registered with Department of Scientific and Industrial Research.
- iii) Pipes used as integrated part of drinking water supply projects.
- iv) Hand made biries.

Exemption to certain tobacco products manufactured by specified units located in North East Region is withdrawn for goods cleared on and after 1st March, 2007

## 6. MRP BASED ASSESSMENT

MRP based assessment is extended to certain goods such as personal computers, printers, monitors and other peripherals as specified, from a date to be notified.

## 7. CHANGES IN THE CENTRAL EXCISE RATES

Comparative chart showing Excise rates is available on the BCAS website.



## CUSTOMS

### 1. AMENDMENTS TO BE EFFECTIVE FROM 1st MARCH, 2007

- New levy of 'Secondary and Higher Education Cess' of 1% introduced to be computed in the same manner as Education Cess of 2%.
- Peak rate of basic customs duty ('BCD') on non-agricultural products reduced from 12.5% to 10%.
- Export duty imposed on iron at Rs. 300/- per MT and chromium ores and their concentrates at Rs. 2,000/- per MT.
- Comparative chart showing reduction of the Basic Customs duty rates is available on BCAS website.

### 2. OTHER DUTY RATE CHANGES

- Project import benefit extended to Digital Cinema Development Projects.
- Benefit of 5% BCD and Nil CVD extended to import of 15 additional machineries required for Research and Development (R & D) in pharmaceutical and bio-technology sectors for imports by independent R & D units or R & D units of manufacturer registered with Department of Scientific and Industrial Research.
- Existing concessional rate of 5% basic customs duty and Nil CVD and excise duty exemption applicable to public funded and non-commercial research institutions extended to all research institutions (other than hospitals) registered with Department of Scientific and Industrial Research.
- Exemption of additional duty of customs on parts, components and accessories of cellular phones extended till 30th June, 2009.
- Benefit of concessional customs duty available to specified machinery for plantation sector extended till 30th April, 2009.
- All edible grade vegetable oils and their edible grade fractions oils, crude and refined, exempted from additional duty of customs of 4%.
- Exemption from additional customs duty of 16% withdrawn on specified parts of set top boxes.

- Exemption of BCD is withdrawn on aircrafts and parts imported by other than a Scheduled Operator or his authorized agent, Government and PSUs.

*Amendments to be effective from enactment of Finance Bill, 2007*

### 3. OTHER CHANGES

- Valuation provisions to be amended for charging customs duty on transaction value instead of current practice of charging duty on deemed value; i.e., international price of similar goods.
- Relevant date for filing refund claim of customs duty arising out of any judgment/order to be determined from the date of such judgment/order.
- Concept of "Joint Venture" for applicant seeking Advance Ruling requires that one of the joint venture partners required to be a non-resident with substantial interest and control.
- Important provisions governing Settlement Commission to be revised:
  - Application can be filed only in cases pending before adjudicating authority.
  - A person will be allowed to approach the Settlement Commission only once.
  - Power to grant immunity from prosecution will be available only for offences under Customs Act and not under other Act.
  - No power to reduce interest rate.



## CENTRAL SALES TAX

### 1. DECLARED GOODS

Section 14 of the Central Sales Tax Act, 1956 contains a list of certain goods considered to be of special importance in inter-state trade or commerce (Declared Goods).

Clause (iid) of Section 14 has been amended so as to provide that 'Aviation Turbine Fuel', sold to an aircraft with a minimum take off mass of less than forty thousand kilograms operated by scheduled airlines, shall be included in the list of Declared Goods.

'Scheduled Airlines' for the purpose has been defined to mean the airlines which have been permitted by the Central Government to operate any scheduled air transport service.

### 2. RATE OF TAX

Section 8(i) of the CST Act provides for the rate of CST at 4% on sale of goods against forms 'C' and 'D' and Section 15 of the CST Act provides for a restricted rate of sales tax as well as state level VAT at not more than 4 %.

The Finance Minister in his budget speech, has stated "I am glad to report that the Central Government has reached an agreement with State Governments to phase out CST consequently, the CST rate will be reduced from 4% to 3% with effect from 1st April, 2007".

Although relevant sections have not been amended, it seems a separate notification will be issued for the purpose.



## ABOUT BCAS

Bombay Chartered Accountants' Society (BCAS) was established as a voluntary organization on 6<sup>th</sup> July, 1949 and presently has over 8,000 members from all over the country. It caters to the needs of its members in particular and the tax paying public in general. It ensures that its members keep pace with the changing times. It also provides courses for self-development for its members and CA students.

Every year the Society publishes a Diary and Referencer along with a CD, which has proved to be an invaluable guide to all professionals and others in the industry. BCAS also publishes its monthly journal titled 'BCA Journal', has a subscription of more than 12,000. It is subscribed by not only its members but also by various corporates and the Tax Department.

BCAS makes representations to various authorities on different laws as well as on procedural issues, with a view to making them just and friendly to the general public. The representations include pre and post budget memoranda to the Ministry of Finance, Government of India, Ministry of Company Affairs, etc. Senior officials of these ministries also visit BCAS regularly for interaction on proposed changes in the laws and for an effective implementation of the changes effected in these laws.

BCAS runs a 100 hour educational programme of Internal Audit Studies in association with Wellingkar Institute of Management Development and Research, a 2 month course on Double Taxation Avoidance Agreements, a 2 month intensive study course on Accounting Standards along with Indian Merchants Chamber, a 3 month course called Professional Accountant course to train graduates and semi-qualified professionals to improve their job prospects along with H.R. College of Commerce & Economics and a 3 month course for Independent Directors in collaboration with S.P. Jain Institute of Management Research. It has also conducted the Independent Directors Course for the Ministry of Defence to train their senior officers on this subject. BCAS has conducted 8 batches of the 6 month formal Education Program of Business Consultancy Studies in collaboration with Jamnalal Bajaj Institute of Management Studies, culminating with a certificate from the University of Mumbai. BCAS has also conducted a 3 month course on Arbitration, Conciliation and Mediation. Other similar long duration courses which would sharpen the skills of members and others are also under active consideration by BCAS.

Apart from a large number of seminars, workshops, lecture meetings, BCAS runs clinics for solving problems of non-profit making organizations, for guiding people on Right to Information Act and also for solving difficulties of young Chartered Accountants arising in conduct of audit. BCAS besides holding revision classes for CA students in association with the Regional Council of the Institute of Chartered Accountants of India, also holds regular training sessions for them to develop their skills on professional and other subjects.

The website of BCAS viz. [www.bcasonline.org](http://www.bcasonline.org), apart from giving the latest news, circulars and notifications relevant for professionals, also contains a "Knowledge Portal", which serves as an excellent source of information for its members and others.

### Our Vision

BCAS shall be principle-centred and learning-oriented organisation to promote quality service and excellence in the profession of Chartered Accountancy and shall be proactive to change.

BCAS shall harness talent of and disseminate knowledge to members, build skills and networks amongst them and encourage them to adhere to highest ethical standards and professional integrity.

BCAS shall provide to students an environment conducive to the pursuit of knowledge and encourage them to achieve their potential to become complete Chartered Accountants. BCAS shall also conduct citizens' education programmes.

BCAS shall be a catalyst for bringing out better and more effective Government policies & laws and for clean & efficient administration and governance.



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