FINANCE BILL, 2001

PROVISIONS RELATING TO DIRECT TAXES

The provisions in Finance Bill, 2001, in the sphere of direct taxes relate to the following matters:-

(i) Prescribing the rates of income-tax on incomes liable to tax for the assessment year 2001-2002; the rates at which tax will be deductible at source during the financial year 2001-2002 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, card games and other categories of income liable to deduction of tax at source under the Income-tax Act; rates for computation of "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, interalia, with a view to providing incentives for infrastructure development, housing, tea industry, providing measures for social welfare, industrialization, measures for development of capital markets, widening of tax base, checking tax evasion and avoidance, rationalization of certain provisions and tax payer friendly measures.

(iii) Amendment of the Wealth-tax Act, 1957.

(iv) Amendment of the National Bank for Agriculture and Rural Development Act, 1981.

(v) Amendment of the Expenditure-tax Act, 1987.

(vi) Amendment of the National Housing Bank Act, 1987.

(vii) Amendment of the Finance Act, 2000.

(viii) Amendment of the Small Industries Development Bank of India Act, 1989.

2. Subject to certain exceptions, which have been indicated while dealing with the relevant provision, the Bill follows the principle that changes in the provisions of the tax laws, should ordinarily be made operative prospectively in relation to current incomes and not in relation to incomes of past years. The substance of the main provision in the Bill relating to direct taxes is explained in the following paragraphs: -

INCOME-TAX

I. 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 Bill and are the same as those laid down in Part III of the First Schedule to the Finance Act, 2000, for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases during the financial year 2000-2001. It is also specified that in the case of individuals, Hindu undivided families, association of persons and body of individuals having total income above Rs. 60,000 but not exceeding Rs. 1,50,000, the tax so computed after rebate under Chapter VIII-A shall be enhanced by a surcharge of twelve percent. It is further specified that in the case of individuals, Hindu undivided families, association of persons and body of individuals having total income above Rs. 1,50,000, the tax so computed, after rebate under Chapter VIII-A shall be increased by a surcharge of seventeen per cent. In the case of an artificial juridical person, a firm, a local authority, and a co-operative society, the tax so computed shall be increased by a surcharge of twelve per cent. In the case of domestic company, the tax so computed shall be enhanced by a surcharge of thirteen per cent.

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

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 Bill. 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). 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 crossword puzzles and winnings from horse races has been reduced from forty per cent. to thirty per cent. Tax will be deducted at source also from winnings from card games and other games of any sort at the rate of thirty per cent. The tax deducted at source in each case shall be enhanced by a surcharge of two per cent. However, no surcharge will be payable by a foreign company.

III. 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 Bill. 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:-

A. 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.

No change is proposed 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) 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/-.

The Table below 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 Bill; and column (b) specifies the rates given in Paragraph A of Part III of the First Schedule to the Bill.

TABLE

(a)		(b)	
Income slab	**Rates as specified in Part I of First Schedule to the Bill (i.e., existing rates)**	**Income slab**	**Rates as specified in Part II of First Schedule to the Bill (i.e., proposed rates)**
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. surchage 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. surchage 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.*

The impact 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
60,200	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	21,380 @	19,411	1,969	9.21
1,50,500	21,780 @	19,533	2,247	10.32
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	41,100	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.1,50,000/- is limited to the amount by which the income is more than Rs.1,50,000/-.*

B. 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 Bill. These rates are the same as those specified in the corresponding Paragraph of Part I of the First Schedule to the Bill, 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.

C. 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 Bill. 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.

D. 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 Bill. This rate is the same as that specified in the corresponding Paragraph of Part I of the First Schedule to the Bill. 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.

E. 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 Bill. 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 for the purposes of the Union at the rate of two per cent. of the tax payable.

[Clause 2 & First Schedule]

MEASURES TO ACCELERATE ECONOMIC DEVELOPMENT

Liberalisation of tax holiday provisions for Infrastructure

Under the existing provisions of section 80-IA, roads, highways, bridges, airports, ports and rail systems are regarded as infrastructure facilities 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. The benefit may be availed by an enterprise in ten consecutive years out of fifteen years beginning with the year in which such enterprise develops the infrastructure facility.

An 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, to 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, Own, Transfer) or BOOT (Build, Own, Operate and Transfer) schemes has to be met.

Investments in infrastructure has to compete with investment in other sectors and must therefore, 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.

The Bill therefore, proposes to relax the existing two tier benefit to provide a ten year tax holiday. Keeping in view the capital intensive nature, the higher allowances of depreciation in the initial years in such enterprise and the need for improved cash flows, it is further proposed that for 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 in place of two-tier tax holiday, a ten year tax holiday may be availed consecutively out of twenty years beginning from the year in which the undertaking begins operating the infrastructure facility. In the case of other infrastructure, namely, for airport, port, inland port and inland waterways, it is also proposed to relax the existing two tier fiscal incentive. The Bill proposes an identical ten year tax holiday that may be availed in a block of fifteen years. It is also proposed to do away with the mandatory requirement that such infrastructure facility shall be transferred to the Central Government, State Government, local authority or any other statutory authority.

The proposed amendment will take effect with effect from 1st April, 2002, and will, apply in relation to assessment years 2002-2003 and subsequent years. *[Clause 40]*

Tax holiday for broadband networks and internet services

Under the existing provisions of section 80-IA, a five year tax holiday in respect of profits and gains of an undertaking set up on or before 31.3.2000 and engaged in providing telecommunication services is allowed with a further deduction of 25% of profits (30% in case of companies) of such business in the next five years.

The country's telecommunication services are modernizing rapidly. In light of these developments, it is proposed to re-introduce the two-tier benefit available to undertakings, and to extend it to internet service providers and broadband networks, with a view to promoting communication capacity and convergence by encouraging investment levels in these segments. The Bill proposes that all undertakings, which provide these services on or before 31.3.2003 shall be eligible for the benefit.

The proposed amendment will take effect retrospectively from 1st April, 2001 and will apply in relation to assessment year 2001-2002 and subsequent years. *[Clause 40]*

Tax holiday for power generation, transmission and distribution networks

Under the provisions of section 80-IA, a five year tax holiday and a deduction of 25% (30% in 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.

As the generation of power is still to reach targeted levels, it is proposed to extend the tax holiday period 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 be entitled to a ten year tax holiday in place of the existing two-tier tax benefit out of initial fifteen years.

The proposed amendment will take effect from 1st April, 2002 and will apply in relation to assessment year 2002-2003 and subsequent years. *[Clause 40]*

Tax holiday to developers of Special Economic Zones and Industrial Parks

Under the provisions of section 80 -IA, any undertaking which begins to develop or develop and operate or operate and maintain an industrial park after 1st April, 1997 but before 31st day of March, 2002, is entitled to a five year tax holiday and a deduction of 30% out of profits in the subsequent five years. The two-tier benefit may be availed within a period of any ten consecutive assessment years out of fifteen years beginning from the year in which the undertaking develops an industrial park.

As part of a medium term strategy to provide an export thrust by creating new infrastructure, it is proposed to extend this benefit 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 developed on or before 31.3.2006. The existing two tier benefit has also been further liberalized to provide a ten year tax holiday, which may be availed in ten consecutive assessment years in a block of fifteen years.

The proposed amendment will take effect from 1st April, 2002 and will, accordingly apply in relation to assessment years 2002-2003 and subsequent years. *[Clause 40]*

Co-operative Banks to be eligible investors under section 10(23G)

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.

It is proposed to amend clause (23G) of section 10 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.

The proposed 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. *[Clause 5(g)]*

Income by way of fee or guarantee commission received by financial institutions for providing financial guarantee to be exempt under section 10(23G)

It is further proposed to amend 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 providing credit enhancements or financial guarantees to an approved enterprise.

The proposed 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. *[Clause 5(g)]*

Housing

Under the existing provisions contained in section 24, interest payable on capital borrowed on or after 1st April, 1999 for acquiring or constructing one self-occupied house is deductible upto Rs. 1 lakh where such acquisition or construction is completed before 1st April, 2003.

It is proposed to increase the limit on deduction of such interest payable on housing loans for self-occupied houses from the existing rupees one lakh to rupees one lakhs fifty thousand.

This amendment will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 15]*

Enhanced tax incentive for tea industry

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.

With a view to enable the tea industry to generate resources for rejuvenation and re-plantation and modernization of processing facilities so as to enhance its productivity and competitiveness, it is proposed to enhance the limit for the purpose of deduction from the existing twenty per cent. to forty per cent.

The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to assessment year 2002-2003 and subsequent years. *[Clause 22]*

Tax concessions for scientific research

Under the existing provisions of sub-section (2AA) of section 35 of the Income-tax Act, any 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 is eligible for weighted deduction of one and one-fourth times of the sum so paid.

The Bill proposes to make this deduction also 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.

The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 23]*

Weighted deduction in respect of expenditure on in-house Research & Development

Under the existing provisions contained in clause (1) of sub-section (2AB) of section 35 of the Income-tax Act, 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 is allowed 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.

With a view to give further boost to research and development activities and provide impetus to economic growth, it is proposed to provide that the weighted deduction on expenditure for research and development shall also be available for the business of bio-technology. It is further proposed to provide that for the purpose of the said sub-section, expenditure on scientific research shall include expenditure incurred on clinical trial, regulatory approval and filing of patent.

The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 23]*

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

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 taxable at the rate of ten per cent.

It is proposed 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 as may be notified by the Central Government. The concessional rate of taxation is also proposed to be extended to income from the GDRs purchased by employees of subsidiary companies, whether domestic or foreign, of the above-mentioned companies.

These proposed amendments will take effect retrospectively from 1st April, 2001 and will accordingly, apply in relation to the assessment year 2001-2002 and subsequent assessment years. *[Clause 48]*

Rural Infrastructure

Exemption under section 54EC to be extended to investment in bonds issued by the Rural Electrification Corporation Ltd.

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 April, 2000 by the National Bank for Agriculture and Rural Development (NABARD) or by the National Highways Authority of India (NHAI).

Since rural electrification, including electrification of villages and energization of pump sets in rural areas, is a matter of priority for the Government, it is proposed to amend 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 1st April, 2001 by the Rural Electrification Corporation Ltd.

This amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 29]*

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

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. 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 in which introduction of modern technology would bring greater efficiency in the grain management system and minimize post harvest foodgrain losses.

The Bill proposes to encourage building of storage capacities, by providing that any undertaking engaged in integrated bulk handling, storage and transportation would be allowed hundred per cent deduction for the first five years and thirty per cent deduction for the next five years.

The proposed amendment will come into effect from 1st April, 2002 and will, accordingly, apply in relation to assessment year 2002-2003 and subsequent years. *[Clause 41]*

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

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. One of the conditions provided in the new provisions is that an undertaking would lose the benefit of deduction if its ownership or beneficial interest is transferred to another person. 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.

The Bill proposes to clarify that the Explanation to sub-section (9) would not be applicable to companies in which public are substantially interested. In other words, such companies would not lose the benefit of these provisions, even if there is a change in the shareholding pattern.

The Bill further proposes to clarify that export of computer software shall include development of software at the client's site abroad which would also be eligible for the benefit under these provisions. A similar amendment is being made to the provision of section 80 HHE of the Act.

The proposed amendments being clarificatory, will take retrospective effect from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-02 and subsequent years. *[Clauses 6,7 and 39]*

Amendment for providing level playing field to private insurers

Under sections 80CCC, 80D, 80DD of the Income-tax Act, deduction in respect of contribution 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, the Bill proposes to amend these provisions, 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. Consequential amendments are made to define "insurer" for the purposes of the Income-tax Act in section 2(28BB) and amend section 10 (23AAB) of the Act related to exemption to the income of a pension fund of any approved insurer.

The amendments will take effect from the 1st April, 2002, and will, accordingly apply in relation to the assessment year 2002-2003 and subsequent years. *[Clauses 3,5, 34,35,36 and 43]*

MEASURES FOR DEVELOPMENT OF CAPITAL MARKET

Tax on distributed profits of Domestic Companies

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.

To provide a boost to the capital market, it is proposed to amend Section 115-O so as to reduce the tax on distributed profits of domestic companies from twenty per cent. to ten per cent.

This amendment will take effect from the 1st day of June, 2001. *[Clause 50]*

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

Under the existing provisions, 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.

To provide a boost to the capital market, it is proposed to amend Section 115R 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.

This amendment will take effect from the 1st day of June, 2001. *[Clause 52]*

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

In order to improve the sentiment in the capital markets, and to promote development of the primary market, it is proposed to insert 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 unit 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.

It is further proposed to provide for a lock-in period of one year and if the newly acquired shares 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.

It is also proposed to provide that where the cost of the new equity shares has been taken into account for the purposes of this section, a deduction from the amount of income-tax with reference to such cost shall not be allowed under section 88.

The proposed amendment will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 30]*

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

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 dividend (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 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%.

It is proposed to substitute the existing section 115AC with a new section. Presently, the concessional rate of taxation is available with reference to the bonds or shares of an Indian company issued in accordance with Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 which refers to shares issued by way of Global Depository Receipts (GDRs). Under the new substituted section, it is, therefore, proposed to use the term 'Global Depository Receipts' in place of 'share'.

It is proposed to extend the concessional tax rate to GDRs issued under other notified schemes of the Central Government also. These include :-

(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;

(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;

(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;

(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.

Consequential amendments are also proposed to made in sections 47 and 196C of the Income-tax Act.

The proposed amendments will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clause 27, 47 & 67]*

MEASURES TO WIDEN THE TAX BASE

Compulsory filing of returns by companies

Under the existing provisions contained in sub-section (1) of section 139 of the Income-tax Act, every person, if his total income, or the total income of any other person 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 which have incurred losses are not filing returns on the plea that they have not earned any income. It is, therefore, proposed to amend section 139(1) to provide that every company is required to file a return of income, even if it incurs a loss.

This amendment will take effect retrospectively from 1st April, 2001. *[Clause 54]*

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 (PAN) 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 unearthing undisclosed income and discovering new taxpayers, it is proposed to insert new sub-sections (5A), (5B), (5C) and (5D) in section 139A 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 proposed to be provided for vide clause 63 of the Bill. The requirement will not apply in respect of certain persons who are not required to file returns of income. Further, the Government may notify separately the dates from which such requirement will apply in respect of any class or classes of persons.

The proposed amendment will take effect from 1st June, 2001. *[Clause 55]*

Sunset clause for exemption of interest on certain External Commercial Borrowings

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.

It is, therefore, proposed to amend parts (a), (c), (d) and (e) of section 10(15)(iv) so as to provide that the exemptions under these parts shall not be available for any moneys borrowed on or after the 1st day of June, 2001. Similarly, parts (b) and (f) of section 10(15)(iv) are proposed to be amended so as to provide that interest paid on moneys borrowed in pursuance to an agreement that has been entered into on or after the 1st day of June, 2001 will be includible in computing the total income.

The proposed amendments will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clause 5(b)]*

TDS on winnings from game shows

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.

The proposed amendment seeks to widen the scope of the section so as to make it applicable to any income by way of winnings from card game and other game of any sort.

The proposed amendment will take effect from the 1st June, 2001. *[Clause 65]*

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

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.

It is proposed to revise the above monetary limits to Rs.2,500/- in all cases.

The amendment will take effect from 1st June, 2001. *[Clause 64]*

Deduction of tax at source from income in the nature of commission or brokerage

Income by way of commission (not being insurance commission referred to in section 194D) and brokerage is, at present, not subject to deduction of tax at source. The Bill seeks to insert a new section 194H relating to deduction of tax at source. Under the proposed 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” are being defined in the Explanation to the proposed section.

The amendment will take effect from 1st June, 2001. *[Clause 66]*

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

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.

National Bank for Agriculture 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 Agriculture 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.

These institutions are in existence for a considerable period now and are working on commercial basis and there is no rationale for providing them tax exemption while similar institutions are paying their taxes.

It is, therefore, proposed to amend these Acts by omitting section 55 of the National Bank for Agriculture 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.

The proposed amendments will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clauses 133, 134 & 135]*

WELFARE MEASURES

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

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

For alleviating the suffering of those with autism, cerebral palsy, mental retardation and multiple disabilities, it is proposed to provide 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.

The proposed amendment will take effect from the 1st day of April, 2002, and will, accordingly apply to assessment year 2002-2003 and subsequent years. *[Clause 37]*

TAX-PAYER FRIENDLY MEASURES

Relief for low paid salaried employees

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.

With a view to provide greater incentive for the marginal savings, the Bill proposes to provide that in the case of a taxpayer having a gross salary income which does not exceed rupees one lakh (before allowing deduction under section 16) and which is not less than 90% of his gross total income from all sources, the amount of rebate on savings would be 30% instead of normal rebate of 20%.

The proposed amendment will take effect from 1st April, 2002 and will, accordingly, apply in realtion to the assessment year 2002-2003 and subsequent years. *[Clause 43]*

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

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, or in a property valued at more than five lakh rupees, cannot be registered unless the Assessing Officer certifies 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.

With a view to removing the hassle of obtaining a prior clearance from the Income-tax Department and to simplify procedures, it is proposed to omit the said section.

This amendment will take effect from 1st June, 2001. *[Clause 71]*

Time-limits for issue of refunds, re-assessment, rectification and re-opening of assessments to be reduced

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). In view of the computer aids now available in the Department, it is proposed to amend the second proviso to sub-section (1) of section 143 to provide that such intimation shall be sent within one year from the end of the financial year in which the return of income is made. The time-limit of two years, however, will continue to apply in respect of returns already filed for the assessment year 1999-2000.

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, it is proposed to amend 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.

Sub-sections (2) and (2A) of section 153 of the Income-tax Act provide for time-limits for completion of assessments, re-assessments or re-computation of income in different circumstances. With a view to bringing about an early finalisation of such proceedings, it is proposed to amend sub-sections (2) and (2A) of section 153 to reduce the time-limits specified therein for making such orders of assessment, re-assessment or re-computation from two years to one year. However, where the notice under section 148 has been served, or any such 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, such assessment, re-assessment or re-computation may be made at any time upto 31st March, 2002.

It is also proposed to omit clause (i) of sub-section (3) of section 153, which is consequential in nature.

Similar amendments are proposed in sections 17 and 17A of Wealth-tax Act, 1957.

Considering the absence of any specific time-limits in respect of disposal of applications for rectification under section 154, it is proposed to insert a new sub-section (8) in section 154 to provide that where an application for amendment under this sub-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.

These amendments will take effect from 1st June, 2001. *[Clauses 57, 58, 59, 60, 90 & 91]*

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

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 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 voluntary retirement scheme or a voluntary separation scheme framed by the employer as per the prescribed guidelines.

It is, proposed to amend clause (10C) of section 10 so as to extend the exemption to the employees of Central and State Governments also.

This proposed amendment will take effect from 1st 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 will take retrospective effect from 1st April, 2001 relevant to the assessment year 2001-2002 and subsequent years. *[Clause 5(a)]*

MEASURES TO CURB TAX AVOIDANCE

New Legislation to curb tax avoidance by abuse of transfer pricing

The increasing participation of multinational 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 multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, by manipulating the prices charged and paid in such intra-group transactions, thereby, leading to erosion of tax revenues.

With a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises, new provisions are proposed to be introduced in the Income-tax Act. These provisions relate to computation of income from international transactions having regard to the arm's length price, meaning of associated enterprise, meaning of international transaction, determination of arm's length price, keeping and maintaining of information and documents by persons entering into international transactions, furnishing of a report from an accountant by persons entering into such transactions and definitions of certain expressions occurring in the said sections.

It is proposed to substitute section 92 with a new section to provide that any income arising from an international transaction shall be computed having regard to the arm's length price. It further provides that the costs or expenses allocated or apportioned between two or more associated enterprises shall be at arm's length prices.

The proposed 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.

The proposed new section 92C provides for computation of arm's length price. The section 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. One of these methods shall be the most appropriate method which shall be applied for computation of arm's length price in the manner as may be specified by the rules to be made by the Board in this behalf. In a case where more than one price can be determined by the most appropriate method, the arm's length price shall be the arithmetical mean of such two or more prices. The new section further provides that where during the course of any proceeding for the assessment of income the Assessing Officer is, on the basis of material or information or documents 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 in this behalf, 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, the Assessing Officer may proceed to determine, after giving an opportunity of being heard to the assessee, the arm's length price in relation to the said transaction in accordance with sub-sections (1) and (2) of this section, on the basis of such material or information or documents available with him, and compute the total income of the assessee accordingly.

The new section 92D seeks to provide 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. 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.

The new section 92E seeks to provide 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.

The new section 92F defines the expressions "accountant" "arm's length price", "enterprise", "specified date" and "transaction" used in the proposed new sections 92, 92A, 92B, 92C, 92D and 92E.

With a view to ensure that multinational enterprises comply with the requirements of the new sections, it is also proposed to amend section 271 and insert 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 the procedural requirements, and in cases of understatement of profits through fraud or willful negligence.

It is proposed to insert a new Explanation 7 in sub-section (1) of section 271 to provide that where in the case of an assessee who has entered into an international transaction defined in section 92B, any amount is added or disallowed in computing the total income under sub-section (4) of section 92C, 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, the provisions of this Explanation shall not apply 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.

It is further proposed to insert a new section 271AA to provide that if any person who has entered into an international transaction as defined in section 92B fails to keep and maintain any such information and documents as required by sub-section (1) or sub-section (2) of 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 each such international transaction entered into by such person.

It is also proposed to insert a new section 271BA to provide 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.

It is also proposed to insert a new section 271G to provide that if any person who has entered into an international transaction fails to furnish any such information or documents 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.

It is also proposed to amend section 273B to provide that no penalty under sections 271AA, 271BA and 271G shall be imposable if the assessee proves that there was reasonable cause for such failures.

These amendments will take effect from 1st April, 2002 and will accordingly apply to the assessment year 2002-2003 and subsequent years. *[Clauses 44, 80, 82, 83, 85 & 88]*

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

Under the existing provision contained in section 94, transactions of sale and purchase of securities which result in the interest or dividend in respect of such securities being received by a person not being the owner of the securities, are to be ignored and the interest or dividend from such securities is required to be included in the total income of the owner. It has been pointed out that the purchase and resale of securities, including units of equity oriented mutual funds, is being carried on for the purposes of creating short-term losses. These losses are set off against other incomes and thus an unintended benefit flows to the taxpayer. This practice popularly known as dividend stripping is being widely used to reduce the tax which would have been otherwise payable by the taxpayers.

It is proposed to insert a new sub-section (7) in the said section to provide that where any person buys or acquires securities or unit 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 unit, 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 income, in the computation of the income, chargeable to tax, of such person.

Definitions of the terms “record date” and “unit” are also proposed to be provided.

The proposed amendment will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 45]*

MEASURES FOR RATIONALIZATION AND SIMPLIFICATION

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

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 from profits and gains of business derived by an undertaking engaged in the manufacture 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 Bill proposes to amend the definition of “export turnover” 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 and to further clarify 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 proposed amendments being clarificatory, will take effect from 1st April, 2001 and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years.

The Bill also proposes to omit the provision which provides for deduction of profits on sales made in domestic tariff area.

The proposed amendment will take effect from assessment year 2002-2003. *[Clauses 6 and 7]*

Tax on winnings from lottery, crossword puzzle, etc.

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%.

As a measure of rationalisation, it is proposed to reduce the rate of tax on such winnings from forty per cent. to thirty per cent.

It is also proposed 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 is further proposed to clarify that the “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.

These amendments will take effect from 1st April, 2002 and will, accordingly, apply in relation to assessment year 2002-2003 and subsequent years. *[Clause 3 and 49]*

Insertion of provisions of section 10BB of the Income-tax Act.

Under section 10B of the Income-tax Act, newly established hundred per cent export oriented undertakings are entitled to a 100% deduction of export profits. Prior to its substitution, section 10B has been operative from 1.4.1989. With a view to enlarging the scope of the tax holiday to hundred per cent EOUs approved by the prescribed authority, an Explanation for the term "produce" had been inserted in section 10B to include production of computer programmes by the Finance Act, 1994. Doubts have been raised whether companies engaged in the activity of processing and management of electronic data, would be covered by the aforesaid explanation.

With a view to clarify the matter beyond doubt and to reflect the policy of the Central Government, a retrospective amendment is proposed to section 10B, as it stood prior to its amendment by the Finance Act, 2000 by inserting new section 10BB.

The amendment proposes to clarify that the term "produce" in section 10B, as it stood prior to its substitution by the Finance Act, 2000 would include "processing and management of electronic data".

The proposed amendment will take effect from 1st April, 1994 and will apply in relation to assessment year 1994-95 and subsequent years. *[Clause 8]*

Consequential amendment of section 54H

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, provisions of sections 54EA and 54EB were omitted. However consequential amendments remained to be made in section 54H.

It is therefore proposed to amend section 54H by deleting reference to sections 54EA and 54EB and inserting reference to section 54EC.

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. *[Clause 31]*

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

Under the existing provision contained in sub-section (1) of section 72A, 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. It has been pointed out that interpretation of this term could become the subject matter of litigation.

It is proposed to provide such a definition, consistent with the intention underlying section 72A, by which the term "industrial undertaking" shall 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.

This amendment will take effect retrospectively from 1st April, 2000, and will, accordingly, apply in relation to assessment year 2000-2001 and subsequent years. *[clause 33]*

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

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.

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 and income from long term investment 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 section 10(23G) as well.

Thus, as a measure of rationalisation, it is proposed 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 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.

The proposed amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to assessment year 2002-2003 and subsequent assessment years. *[Clause 5(g)]*

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

Penalties are prescribed under the Income-tax Act for failure to comply with 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, it is proposed to replace the range of amounts of penalty prescribed in these provisions by definite but reasonable amounts.

It is, accordingly, proposed –

i) to amend 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) to amend section 271A relating to failure on the part of certain persons carrying on profession or business to keep, maintain, or retain the prescribed books of account and documents, 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) to amend 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) to amend 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 ten thousand rupees, as against the existing penalty, which could extend to five thousand rupees.

With a view to rationalize the amounts of penalty prescribed for failure to furnish returns of income within certain periods, it is proposed to amend 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.

These proposed amendments will take effect from 1st June, 2001. *[Clauses 80, 81, 84, 86 and 87]*

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

With the passing of the Information Technology Act, 2000, it is accordingly proposed to insert definitions of 'books or books of account' and 'document' in section 2 of the Income-tax Act, as follows:

"books or books of account" include 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;

"document" includes an electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000.

The proposed amendment will take effect from 1st June, 2001. *[Clause 3]*

Rationalising the definition of block period

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 year relevant to ten assessment years preceding the previous year in which the search was conducted under section 132 or 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.

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, it is proposed to amend 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 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.

The proposed amendment will take effect from 1st June, 2001, and will apply in relation to searches initiated or requisitions made on or after that date. *[Clause 61]*

Due dates for filing returns to be rationalized

Under the existing provisions contained in sub-section (1) of section 139, the due date for filing of return of income is 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 is 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.

The accounting year in all such cases ends on 31st March of every year. A period of three to four months (other than in the case of a company) is adequate for finalization of accounts and filing of the return. It is, therefore, proposed to reduce the number of due dates from four to two, and to provide that in the case of a company, 31st October of the assessment year shall be the due date for filing the return. In case of a person other than a company, referred to in the first proviso to sub-section (1) of section 139, 31st October of the assessment year and in case of any other assessee, 31st July of the assessment year shall be the due date for filing the return.

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. *[Clause 54]*

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

Under the existing provisions contained in clause (ii) of the *Explanation* below section 44AB of the Income-tax Act, the "specified date", in relation to the accounts of the previous year relevant to an assessment year means the 30th day of November of the assessment year, where the assessee is a company, and 31st day of October of the assessment year in any other case.

In line with the proposed revision of due dates for filing of returns of income it is proposed to revise the specified dates for getting the accounts audited by different classes of assessees and to provide that in case of a company, 31st October of the assessment year shall be the specified date, and in case of a person other than a company, 31st July of the assessment year.

The proposed amendment will take effect from 1st June, 2001, and will, accordingly, apply in relation to the assessment year 2001-2002 and subsequent years. *[Clause 26]*

Providing for cost of acquisition of certain intangible capital assets

Sub-section (2) of section 55 of the Income-tax Act provides that 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, shall be the purchase price in case the asset is purchased by the assessee from a previous owner, and nil in any other case. It has been pointed out that certain similar intangible assets like brand name or a trade mark may not be considered to form part of the goodwill of a business.

It is therefore proposed to amend 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.

This amendment will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 32]*

Rationalisation of provisions relating to income from house property

The existing provision contained in section 23 of the Income-tax Act provides 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 is 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 cannot be realised. With the various amendments made over the years in this section, the provisions have become quite complicated and difficult for the taxpayer to understand.

It is therefore proposed to substitute the said section so as to provide for a simplified determination of annual value in certain circumstances specified in the proposed new section, after allowing deductions in computing the annual value on account of vacancy and unrealised rent.

Under the existing provisions contained in section 24, the income chargeable under the head “Income from house property” is, in certain cases, computed after making deductions of one-fourth of the annual value in respect of repairs or collection charges, interest on capital borrowed for acquiring, constructing, repairing, renewing or reconstructing the property, and other deductions on account of insurance premium, ground rent, annual charge, etc.

It is proposed to substitute the said section so as to provide for only two deductions, namely an amount equal to thirty percent of the annual value, and the interest paid on capital borrowed for acquiring, constructing, repairing, renewing or reconstructing the property.

It is also proposed to make consequential amendments by inserting a new section 25AA and amending section 25, 25A, 25B, 27 and 80GG of the Income-tax Act.

These amendments will take effect from 1st April, 2002, and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clauses14, 15, 16, 17, 18, 19, 20 and 38]*

Collection of short TDS from payer of income

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 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.

The Bill seeks to clarify 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.

This amendment will take effect retrospectively from 1st April, 1962. *[Clause 68]*

Withdrawal of power to withhold refunds

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.

As a measure of rationalisation, the Bill proposes to omit the said section so as to withdraw the powers conferred upon the Assessing Officers to withhold the refund.

This amendment will take effect from 1st June, 2001. *[Clause 75]*

Modification of provisions relating to interest chargeable in certain cases

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.

It is proposed 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 is further proposed to clarify that for the purposes of section 140A, interest payable under sections 234A and 234B shall be computed with reference to tax on returned income.

The proposed amendments will take effect retrospectively from 1st April, 1989. *[Clauses 56,72 and 73]*

Rationalisation of interest chargeable from the assessees

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 rationalise these rates the Bill proposes to prescribe a uniform rate of 15% per annum for various defaults. Accordingly, it is proposed to decrease the rate 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. It is further proposed to reduce the rate from 18% to 15% per annum in respect of interest chargeable under sub-section (1A) of section 201.

Similar amendments are also proposed in sections 17B and 31 of the Wealth Tax Act and section 14 of the Expenditure Tax Act.

The proposed amendments will take effect from 1st June, 2001. *[Clauses 51,53,62,68,69,70,72,73,74,92,93 and 95]*

Modifications of the provisions relating to interest payable to the assessee

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.

The Bill seeks to reduce 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, it is proposed to amend section 244A and sub-rule (3) of rule 68A of the Second Schedule to the Income-tax Act.

Similar amendments are also proposed in section 34A of the Wealth-tax Act.

The proposed amendments will take effect from 1st June, 2001. *[Clauses 76,89 and 94]*

Modification of provisions relating to allowance of depreciation

Under the existing provisions of sub-section (2) of section 32 of the Income-tax Act, carry forward and set off of unabsorbed depreciation is allowed for 8 assessment years.

With a view to enable the assessees to conserve sufficient funds to replace capital assets, specially in an era where obsolescence takes place so often, the Bill proposes to dispense with the restriction of 8 years for carry forward and set off of unabsorbed depreciation.

It is further proposed to clarify that in computing the profits and gains of business or profession for any previous year, deduction of depreciation under section 32 shall be mandatory.

The proposed amendments will take effect from the 1st April, 2002, and will, accordingly, apply in relation to assessment year 2002-2003 and subsequent years. *[Clause 21]*

Amortization of expenditure incurred under Voluntary Retirement Scheme

The Bill proposes to insert a new provision to provide for amortization of expenditure incurred on payments to employees on their voluntary retirement under voluntary retirement scheme framed in accordance with the guidelines prescribed under clause (10C) of section 10. The deduction shall be allowed over a period of 5 years.

The amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 24]*

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

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.

It is proposed to amend 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.

This amendment will take effect from 1st April, 2002 and will, accordingly, apply in relation to the assessment year 2002-2003 and subsequent years. *[Clause 25]*

Modification of provisions relating to audit of accounts of certain persons

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.

It is proposed to amend 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.

The amendment will take effect from 1st April, 2001 and will, accordingly, apply in relation to assessment year 2001-2002 and subsequent years. *[Clause 26]*

Clarifications in respect of Stock Options

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 exercise price 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.

The Bill proposes to clarify that in cases where tax has been levied as perquisite at the time of the exercise of the option by the employees, its fair market value at the time of exercise of option shall be the cost of the share for working out the capital gain.

The proposed amendment will take effect w.e.f. 1st April, 2001 and will, accordingly apply in relation to the assessment year 2001-2002 and subsequent years. *[Clauses 13,27 and 28]*

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

Under the existing provisions of sub-section (1) of section 80L of the Income-tax Act, 1961, deduction is allowed in computing gross 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 Central or State Government.

The Bill proposes to reduce the limit of Rs.12,000/- to Rs.9,000/-. The deduction of Rs.3,000 for government deduction separately available is proposed to be omitted.

The proposed amendment will come into effect from 1st April, 2002 and will, accordingly, apply in relation to assessment years 2002-2003 and subsequent years. *[Clause 42]*

Modifications in respect of provisions relating to salaries and perquisites

Under the existing provision of section 16, certain deductions from salaries are allowed. 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 who is in receipt of entertainment allowance continuously in the same employment since the 1st April, 1955. Under the provisions of section 17, perquisites are taxable for employees in receipt of a monetary salary exceeding twenty-four thousand rupees, and other specified employees, who are directors or persons with substantial interest. Under the existing provisions certain perquisites are specified as taxable.

The Bill proposes to omit the provision relating to deduction of entertainment allowance in the case of employees in continuous employment since the 1st April, 1955 under section 16. It also proposes to revise the limit of taxing perquisites in the case of employees where the monetary payment of salary is in excess of fifty thousand rupees. To avoid ambiguity, the Bill proposes that details of perquisites are to be fixed in the manner prescribed in the Income-tax Rules. It also proposes to provide that 'profits in lieu of salary' include amounts received in lumpsum or otherwise, prior to employment or after cessation of employment for the purposes of taxation.

An obligation is cast on the person responsible for paying income under the head "salaries" to file details of perquisite and profits in lieu of salary. In consequence of failure to make compliance, a penal provision is provided under section 272A.

The proposed amendment shall come into effect from 1st April, 2002 and shall, accordingly, apply to assessment year 2002-2003 and subsequent years. *[Clauses 12,13,63 and 86]*

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

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.

It is proposed to insert a new section 14A 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.

The proposed amendment will take effect retrospectively from 1st April, 1962 and will accordingly, apply in relation to the assessment year 1962-1963 and subsequent assessment years. *[Clause 11]*

Exemption of income received in respect of Units of UTI and mutual funds not to include income arising on transfer of such Units.

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.

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 funds by the unit holders in the secondary market by treating the same as income received in respect of units of UTI or mutual funds.

It is proposed to amend section 10(33) 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 by the unit-holders to persons other than UTI or such Mutual Fund.

The proposed amendment will take effect retrospectively with effect from 1st April, 2000 and will accordingly, apply in relation to the assessment year 2000-2001 and subsequent assessment years. *[Clause 5(h)]*

Modifications of provisions relating to charitable trusts

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, 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.

It is proposed to amend the provisions of sub-section 2 of section 11 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.

In order to promote transparency in the functioning of charitable trusts, it is proposed to amend section 12A to provide that the exemption under section 11 will be allowed to the charitable or religious trusts only if they publish their accounts in a local newspaper and a copy of such newspaper is enclosed along with the return of income. To mitigate hardship, to smaller trusts, it is proposed to apply this requirement only to trusts having total income, before giving effect to the exemption available under sections 11 and 12, exceeding rupees ten lakhs in the relevant previous year.

The proposed amendments will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clauses 9 & 10]*

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 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.

It is proposed to amend the third proviso of clause (23C) of section 10 so as to provide that the maximum period of accumulation of income, that is accumulated after the 1^{st} 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 institution, as the case may be, will be five years only.

To promote transparency in the functioning of these funds, trusts or institutions, it is proposed to make necessary amendments in section 10(23C) so as to require the fund, trust or institution to publish their accounts in a local newspaper and to furnish a copy of the same with the form of application for exemption or continuance thereof. To mitigate hardship to smaller trusts or funds or institutions, it is proposed to provide that such requirements will be applicable only for educational or medical institutions referred to in sub-clauses (vi) and (via) where the annual receipt is above one crore rupees, and in case of funds, trusts or institutions, as the case may be, referred to in sub-clauses (iv) & (v) having total receipts above ten lakh rupees.

The proposed amendment will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clause 5(e)]*

In order to mitigate the hardships being faced by universities or educational institutions or hospitals or medical institutions referred to in sub-clauses (vi) & (via), it is proposed to provide that any asset in the form of equity shares of a public company along with accretions by way of bonus shares thereof, held by such institutions as on the 1st day of June, 1998 and which form part of their corpus, will not be required to be re-invested in the specified modes under section 11(5).

This proposed amendment will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clause 5(e)]*

Exemption to continue for a venture capital company or venture capital fund if the shares of venture capital fund get listed

A new section 10(23FB) was introduced in the Income-tax Act through 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.

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/VCFs may lose the tax exemptions by virtue of this Explanation, if their investments continue in such listed VCUs.

It is proposed to amend section 10(23FB) 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 recognised stock exchange in India.

The proposed amendment will take retrospective effect from 1st April, 2001 and will accordingly, apply in relation to the assessment year 2001-2002 and subsequent assessment years. *[Clause 5(f)]*

Exemption to be available to venture capital schemes of UTI

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 the Unit Trust of India is presently not covered within the definition of VCF.

It is, therefore, proposed to amend clause (23FB) of section 10 so as to provide that a venture capital scheme made by the UTI will also be covered within the definition of VCF in section 10 (23FB).

The proposed amendment will take retrospective effect from 1st April, 2001 and will accordingly, apply in relation to the assessment year 2001-2002 and subsequent assessment years. *[Clause 5(f)]*

SEBI to be approving authority for "overseas financial organisation"

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.

As the Securities and Exchange Board of India (SEBI) is the regulatory authority, 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 proposed to provide 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.

The proposed amendment will take effect from 1st June, 2001. *[Clause 46]*

Exemption of penal interest upto 2% under external commercial borrowing

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.

It is proposed to amend sub-clause (iv) of clause (15) of section 10 so as to provide that interest paid at penal or default rate upto 2% per annum over the original interest rate contracted will be eligible for exemption under the said sub-clause.

The proposed amendment will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clause 5(b)]*

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

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.

The definition of the term "royalty" as used in the Double Taxation Avoidance Agreements 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 takes shelter under the definition of the term "royalty" as provided in the Income-tax Act since the same is more beneficial to him.

It is therefore, proposed to amend section 9 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.

The proposed amendment will take effect from 1st April, 2002 and will accordingly, apply in relation to the assessment year 2002-2003 and subsequent assessment years. *[Clause 4]*

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

It is proposed to exempt 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.

The proposed amendment will take effect retrospectively from 1st April, 2001 and will, accordingly, apply in relation to the assessment years 2001-2002, 2002-2003 and 2003-2004. *[Clause 5(d)]*

MEASURES TO REDUCE LITIGATION

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

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, it is proposed to amend 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 or refer the case back to the Assessing Officer for making fresh assessment.

The proposed amendment will take effect from 1st June, 2001. It will be applicable to appellate orders passed by Commissioner (Appeals) on or after 1.6.2001. *[Clause 77]*

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

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 by the Tribunal on recovery of demand till the disposal of appeal, makes the demand irrecoverable for several months or even years.

It is therefore proposed 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.

The proposed amendment will take effect from 1st June, 2001, and will apply in relation to stay granted on or after that date. *[Clause 78]*

Enhancement of fee for filing revision applications

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), it is proposed to amend 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.

The proposed amendment will take effect from 1st June, 2001. *[Clause 79]*