

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to amend section 10 of the Income-tax Act relating to incomes not included in total income.

The proposed amendment seeks to insert a new clause (42) in the said section so as to exempt any specified income arising to a body or authority if such body or authority has been established or constituted or appointed under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government and the body or authority is not for the purposes of profit. Only such bodies or authorities, which are notified by the Central Government in the Official Gazette would be exempt under the said clause. The Explanation to the aforesaid clause defines the expression "specified income" to mean the income, of the nature and to the extent, arising to the body or authority referred to in this clause, which the Central Government may notify in the Official Gazette in this behalf.

It is proposed to confer power upon the Central Government to notify the body or authority for the purposes of exemption of any specified income arising to such body or authority under the proposed new clause (42). It is further proposed to confer power upon the Central Government to notify in the Official Gazette the nature and the extent of the income arising to such body or authority for the purposes of the said new clause.

Clause 7 of the Bill seeks to amend section 14A of the Income-tax Act relating to expenditure incurred in relation to income not includible in total income.

The proposed amendment seeks to insert a new sub-section (2) in the said section so as to provide that where, having regard to the accounts of the assessee, the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of expenditure in relation to income which does not form part of the total income under the Act, the Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income, in accordance with such method as may be prescribed.

It is proposed to confer power upon the Central Board of Direct Taxes to make rules to lay down the method for determining the amount of expenditure incurred in relation to such income which does not form part of the total income under the Act, for the purposes of the said section.

Clause 9 of the Bill seeks to amend section 36 of the Income-tax Act relating to other deductions.

The proposed amendment, *inter alia*, seeks to define the expression "infrastructure facility".

It is proposed to confer power upon the Central Board of Direct Taxes, to notify in the Official Gazette, any other public facility which is of similar nature to the infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA.

It is further proposed to confer power upon the Central Board of Direct Taxes to lay down by rules the conditions to be fulfilled by such public facility for being notified.

Clause 13 of the Bill seeks to amend section 54EC of the Income-tax Act relating to capital gain not to be charged on investment in certain bonds.

The proposed amendment seeks to substitute clause (b) in the Explanation to the said section, so as to include in the definition of "long-term specified asset" those bonds which are redeemable after three years and are issued on or after 1st April 2006, by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 and notified as such by the Central Government or by the Rural Electrification Corporation Limited, being a company formed and registered under the Companies Act, 1956 and notified by the Central Government for the purposes of the said section.

It is proposed to confer power upon the Central Government to notify in the Official Gazette the bonds redeemable after three years, issued on or after 1st April 2006, by the National Highways Authority of India constituted under section 3 of the National Highways Authority of India Act, 1988 or by the Rural Electrification Corporation Limited, being a company formed and registered under the Companies Act, 1956 for the purposes of the said section.

Clause 20 of the Bill seeks to insert a new section 90A in Chapter IX of the Income-tax Act relating to adoption by the Central Government of agreements entered between specified associations for double taxation relief.

The proposed new section 90A seeks to provide that any specified association in India may enter into an agreement with any specified association outside India and the Central Government may, by notification in the Official Gazette, make the necessary provisions for adopting and implementing such agreement for grant of double taxation relief, for avoidance of double taxation, for exchange of information for the prevention of evasion or avoidance of income-tax or for recovery of income-tax. It is further proposed to provide that in relation to any assessee to whom the agreement referred to in the said section applies, the provisions of the Income-tax Act shall apply to the extent they are more beneficial to that assessee. It is also proposed to provide that any term used but not defined in the Income-tax Act or in the said agreement shall have the same meaning as assigned to it in the notification issued by the Central Government, unless the context requires otherwise and it is not inconsistent with the provisions of the Income-tax Act or the said agreement. The expression "specified association" is defined to mean any notified institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India. The expression "specified territory" is defined to mean any area outside India notified in the Official Gazette by the Central Government for the purposes of the said section.

It is proposed to confer power upon the Central Government to make necessary provisions, by notification in the Official Gazette, for adopting and implementing the agreement entered into by any specified association in India with any specified association outside India. It is further proposed to confer power upon the Central Government to notify the institution, association or body as "specified association" and also notify in the Official Gazette any area outside India as "specified territory" for the purposes of the said section.

Clause 22 of the Bill seeks to insert a new section 115BBC in Chapter XII of the Income-tax Act relating to anonymous donations to be taxed in certain cases.

The proposed amendment seeks to insert a new section 115BBC in the said Chapter to provide that any income comprising of anonymous donation received by any assessee on behalf of any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, shall be included in the total income of such assessee and income-tax shall be payable by him thereon at the rate of thirty per cent. It is further proposed to provide that the provisions of said new section 115BBC shall not apply to any anonymous donation received by (a) any trust or institution created or established wholly for religious purposes and (b) any trust or institution created or established wholly for religious and charitable purposes, other than any anonymous donation made with a specific direction that such anonymous donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution. It is also proposed to provide that the anonymous donation shall mean any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a

person receiving such contribution does not maintain a record of the identity indicating the name, address and such other particulars as may be prescribed of the person making such contribution in the prescribed manner.

The proposed new section confers power upon the Central Board of Direct Taxes to specify, by rules made by it, the other particulars of the persons making contribution for the purpose of said section 115BBC.

Clause 31 of the Bill seeks to amend section 139 of the Income-tax Act relating to return of income.

The proposed amendment seeks to insert a new proviso in the *Explanation* to sub-section (9) of the said section so as to provide that the Central Board of Direct Taxes may, by rules, dispense with any of the conditions specified in clauses (a) to (f) of the *Explanation* to the said sub-section in respect of any class or classes of persons. It is also proposed to provide that the Board may by way of such rules include any of the conditions specified in clauses (a) to (f) of the said *Explanation*, in the forms of return prescribed under sub-section (1) or sub-section (6) of section 139.

It is proposed to confer power upon the Central Board of Direct Taxes to make rules to dispense with any of the conditions specified in clauses (a) to (f) of the *Explanation* to sub-section (9) in respect of such class or classes of persons as may also be notified for the purposes of the said section. It is further proposed to empower the Board to make rules so as to include any of the conditions specified in clauses (a) to (f) of the *Explanation* in the form of return of income prescribed under sub-section (1) or sub-section (6) of section 139 for the purposes of the said section.

Clause 32 of the Bill seeks to amend section 139A of the Income-tax Act relating to permanent account number (PAN).

The proposed amendment seeks to insert a new sub-section (1B) in the said section so as to provide that for the purpose of collecting any information which may be useful for, or relevant to, the purposes of this Act, the Central Government may, by notification in the Official Gazette specify any class or classes of persons, and such persons shall within the prescribed time apply to the Assessing Officer for allotment of a permanent account number. It is further proposed to substitute sub-section (2) so as to provide that the Assessing Officer may, having regard to the nature of transactions as may be specified by the rules made by the Central Board of Direct Taxes, also allot a permanent account number to any other person (whether any tax is payable by him or not), in accordance with the procedure as may be specified by such rules.

It is proposed to confer power upon the Central Government to specify, by notification, any class or classes of persons for the purpose of the newly inserted sub-section (1B). It is further proposed to confer power upon the Central Board of Direct Taxes to specify, by rules made by it, the time within which such persons shall apply to the Assessing Officer for allotment of PAN. It is also proposed to confer power upon the Central Board of Direct Taxes to specify, by rules made by it, the nature of transactions and also the procedure for allotment of PAN by Assessing Officer for the purposes of sub-section (2).

Clause 33 of the Bill seeks to insert a new section 139B in Chapter XIV of the Income-tax Act relating to Scheme for submission of returns through Tax Return Preparers.

Sub-section (1) of the proposed new section provides that for the purposes of enabling any specified class or classes of persons in preparing and furnishing returns of income, the Board may by way of notification in the Official Gazette, frame a Scheme so as to provide that such persons may file their returns of income through a Tax Return Preparer. It is further provided that every Tax Return Preparer shall assist the persons furnishing the return of income in such manner as may be specified in the Scheme. It is also proposed to provide that a Tax Return Preparer may be an individual other than a person referred to clause (ii) or clause (iv) of sub-section (2) of section 288 or an employee of the specified class or classes of persons, who has been authorised to act as a Tax Return preparer under the Scheme framed under the said section. It is also proposed

that any such Scheme, as notified by the Central Board of Direct Taxes in the Official Gazette, may provide for (1) the manner in which and the period for which a Tax Return Preparer shall be authorised under the Scheme, (2) the educational and other qualification to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer, (3) the code of conduct for the Tax Return Preparer, (4) the duties and obligations of the Tax Return Preparer, (5) circumstances under which the authorisation given to a Tax-Return preparer may be withdrawn and (6) any other matter which is required to be, or may be specified by the Scheme for the purposes of the section.

The Scheme is required to be laid before Parliament.

Clause 56 of the Bill seeks to amend Part A of the Fourth Schedule to the Income-tax Act relating to recognised provident funds.

The proposed amendment seeks to insert a proviso in sub-rule (1) of rule 3 of Part A of the Fourth Schedule so as to provide that in a case where recognition has been accorded to any provident fund on or before 31st March, 2006 and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 of Part A of the Fourth Schedule, and any other conditions which the Board may, by rules specify in this behalf, the recognition to such fund shall be withdrawn, if such fund does not satisfy such conditions on or before 31st March, 2007. It is proposed to insert a new clause (ea) in the said rule so as to provide for one more condition that the fund of an establishment shall be such to which the provisions of sub-section (3) or sub-section (4) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are applicable and such establishment has been exempted under section 17 of the said Act from the operation of any or all of the provisions of any Scheme referred to in that section.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules made by it, any other conditions in addition to the conditions set out in clause (ea) of rule 4 of Part A of the Fourth Schedule for the purpose of said proviso.

Clause 68 of the Bill seeks to amend Chapter V of the Finance Act, 1994, relating to service tax, in the following manner:—

(a) sub-clause (D) of the said clause seeks to amend section 67 of the said Finance Act which empowers the Central Government to make rules for providing the manner of determination of amount and value of taxable services where the provision of service is for a consideration which is not ascertainable and sub-section (2) also empowers the Central Government to make rules for the purpose of determination of value;

(b) sub-clause (F) of the said clause seeks to insert a new section 73B which empowers the Central Government to fix, by notification, the rate of interest on the amount collected in excess by the service provider from the recipient of the service at such rate not below ten per cent. and not exceeding twenty-four per cent. per annum;

(c) further the said sub-clause also seeks to insert new sections 73C and 73D which empower the Central Government to make rules for providing the manner of provisional attachment of any property and publication of name and particulars of proceedings;

(d) sub-clause (J) of the said clause seeks to amend section 95 of the said Act so as to empower the Central Government to issue order for removal of any difficulty which may arise in implementing, classifying or assessing the value of any taxable service incorporated by the proposed legislation. The proviso to the said sub-section seeks to provide that any such order shall not be made beyond a period of one year from the date of the assent to the Bill.

2. The matters in respect of which notifications may be issued or rules may be made or Scheme may be framed in accordance with the aforesaid provisions of the Bill are matters of procedure and detail and it is not practicable to provide for them in the Bill itself.

3. The delegation of legislative power is, therefore, of a normal character.