

FINANCE BILL, 2007

PROVISIONS RELATING TO DIRECT TAXES

The provisions of the Finance Bill, 2007 in the area of direct taxes relate to the following matters:—

- (i) Prescribing the rates of income tax on income liable to tax for the assessment year 2007-08, the rates at which tax will be deductible at source during the financial year 2007-08 from interest (including interest on securities), winnings from lotteries or cross-word puzzles, winnings from horse races, card games and other categories of income liable to deduction or collection of tax at source under the Income-tax Act; rates for computation of “advance tax”, deduction of income tax from or payment of tax on ‘Salaries’ and charging of income tax on current income in certain cases for the financial year 2007-08.
 - (ii) Amendment of income-tax, inter-alia, with a view to provide incentives for infrastructure development, socio-economic development, widening of tax base, checking tax evasion and avoidance, rationalization of certain provisions and provide for a revised settlement scheme.
 - (iii) Amendment of Wealth-tax Act, 1957, inter-alia, to provide for a revised settlement scheme.
 - (iv) Amendment of Finance Act, 2005 to rationalize the provisions of Banking Cash Transaction Tax.
2. The substance of the main provisions in the Bill relating to direct taxes is explained in the following paragraphs:-

INCOME-TAX

RATES OF INCOME-TAX

I. Rates of income-tax in respect of income liable to tax for the assessment year 2007-08.

In respect of income of all categories of tax payers (corporate as well as non-corporate) liable to tax for the assessment year 2007-2008, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance Act, 2006, for the purposes of computation of “advance tax”, deduction of tax at source from “Salaries” and charging of tax payable in certain cases. It has also been specified that in the case of individuals, Hindu undivided families, association of persons and body of individuals having total income exceeding Rs. 10,00,000/-, the tax so computed after rebate under Chapter VIII-A shall be enhanced by a surcharge at the rate of ten per cent. for purposes of the Union. Marginal relief shall be provided. In the case of every artificial juridical person, firm and domestic company, the tax so computed shall be enhanced by a surcharge of ten per cent. In the case of local authority and co-operative society, no surcharge is levied. In the case of every company, other than a domestic company, the tax so computed shall be enhanced by a surcharge of two and one-half per cent.

An additional surcharge, called the “Education Cess on income-tax” so as to fulfil the commitment of the Government to provide and finance universalised quality basic education, shall continue to be levied at the rate of two per cent. on the amount of tax payable, inclusive of surcharge, in all cases.

II. Rates for deduction of income-tax at source during the financial year 2007-08 from certain incomes other than “Salaries”.

The rates for deduction of income-tax at source during the financial year 2007-2008 from certain incomes other than “Salaries” have been specified in Part II of the First Schedule to the Bill. The rates are the same as those specified in Part II of the First Schedule to the Finance Act, 2006, for the purposes of deduction of income-tax at source during the financial year 2006-2007.

The amount of tax so deducted shall be increased by a surcharge:—

- (i) in the case of every individual, Hindu undivided family, association of persons and body of individuals, whether incorporated or not, at the rate of ten per cent., of such tax where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds ten lakh rupees;
- (ii) in case of every artificial juridical person referred to sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, at the rate of ten per cent. of such tax;
- (iii) in the case of every firm and domestic company, at the rate of ten per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees;
- (iv) in the case of every company other than a domestic company at the rate of two and one-half per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

No surcharge shall be levied in the case of any cooperative society or local authority.

The additional surcharge, called the “Education Cess on income-tax” for purposes of the Union, shall continue to be levied at the rate of two per cent. of income-tax and surcharge in all cases so as to fulfil the commitment of the Government to provide and finance universalised quality basic education.

It is proposed to levy an additional surcharge, called the “Secondary and Higher Education Cess on income-tax”, at the rate of one per cent. of income-tax and surcharge (not including the “Education Cess on income-tax”) in all cases so as to fulfil the commitment of the Government to provide and finance secondary and higher education.

III. Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in certain cases during the financial year 2007-2008.

The rates for deduction of income-tax at source from "Salaries" during the financial year 2007-2008 and also for computation of "advance tax" payable during that year in the case of all categories of taxpayers 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 2007-2008 on current incomes in cases where accelerated assessments have to be made. These include provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration etc.

The salient features of the rates specified in the said Part III are indicated in the following paragraphs-

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical persons

The rates of income-tax in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, or artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act (not being a case to which any other Paragraph of Part III applies) have been specified in Paragraph A of Part III.

- I. The basic exemption limit for persons other than those specified in items II and III below, is proposed to be increased from Rs. 1,00,000/- to Rs. 1,10,000/-. In such cases, the rates of income-tax on total income shall be as follows-

Upto Rs. 1,10,000/-	Nil.
Rs. 1,10,001/- to Rs. 1,50,000/-	10 per cent.
Rs. 1,50,001/- to Rs. 2,50,000/-	20 per cent.
Above Rs. 2,50,000/-	30 per cent.

- II. In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the previous year, the exemption limit is proposed to be raised from Rs. 1,35,000/- to Rs. 1,45,000/-. The rates of income-tax on total income in such cases shall be as follows-

Upto Rs. 1,45,000/-	Nil.
Rs. 1,45,001/- to Rs. 1,50,000/-	10 per cent.
Rs. 1,50,001/- to Rs. 2,50,000/-	20 per cent.
Above Rs. 2,50,000/-	30 per cent.

- III. In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year, the exemption limit is proposed to be raised from Rs. 1,85,000/- to Rs. 1,95,000/-. The rates of income-tax on total income in such cases shall be as follows-

Upto Rs. 1,95,000/-	Nil.
Rs. 1,95,001/- to Rs. 2,50,000/-	20 per cent.
Above Rs. 2,50,000/-	30 per cent.

The amount of income-tax computed shall, in the case of every individual or Hindu undivided family or association of persons or body of individuals, whether incorporated or not, having total income exceeding ten lakh rupees, be reduced by the amount of rebate of income-tax calculated under Chapter VIII-A. The income-tax as so reduced shall be increased by a surcharge for purposes of the Union calculated at the rate of ten percent of such income-tax. However, marginal relief shall be available and the total amount payable as income-tax and surcharge on total income exceeding ten lakh rupees shall not exceed the total amount payable as income-tax on a total income of ten lakh rupees by more than the amount of income that exceeds ten lakh rupees.

In the case of every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, the amount of income-tax computed shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income-tax.

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 shall continue to be the same as those specified for assessment year 2007-2008. No surcharge shall be levied.

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 shall continue to be the same as that specified for assessment year 2007-2008.

It is proposed to provide in Paragraph C that the amount of income-tax computed shall, in the case of every firm having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income tax. Marginal relief shall be available and the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

No surcharge shall be levied in the case of firms having total income of one crore rupees or less.

Surcharge shall be levied at the existing rates on tax on fringe benefits, irrespective of the amount of fringe benefits.

D. Local authorities

The rate of income-tax in the case of every local authority is specified in Paragraph D of Part III of the First Schedule to the Bill. This rate shall continue to be the same as that specified for the assessment year 2007-2008. No surcharge shall be levied.

E. Companies

The rates of income-tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as those specified for the assessment year 2007-08.

The amount of income-tax computed in Paragraph E shall, in the case of every domestic company having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income tax.

The amount of income-tax computed in Paragraph E shall, in the case of every company, other than a domestic company, having total income exceeding one crore rupees, be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income tax.

Marginal relief shall be available and, in such cases, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

No surcharge shall be levied in the case of companies having total income of one crore rupees or less.

Surcharge shall be levied at the existing rates on tax on fringe benefits, irrespective of the amount of fringe benefits.

The additional surcharge, called the "Education Cess on income-tax" for the purposes of the Union, shall continue to be levied at the rate of two per cent. of income-tax and surcharge in all cases so as to fulfil the commitment of the Government to provide and finance universalised quality basic education.

It is proposed to levy an additional surcharge, called the "Secondary and Higher Education Cess on income-tax", at the rate of one per cent. of income-tax and surcharge (not including the "Education Cess on income-tax") in all cases so as to fulfil the commitment of the Government to provide and finance secondary and higher education. [Clause 2]

WIDENING OF TAX BASE

Widening the scope of capital assets

Under the existing provisions of clause (14) of section (2), a capital asset means property of any kind held by an assessee, whether or not connected with his business or profession. Personal effects held for personal use by the assessee or any members of his family dependent on him are excluded from the ambit of definition of capital asset. Presently, the only asset which is in the nature of personal effects, but is included in the definition of capital assets is jewellery.

With a view to widen the scope of 'capital assets', it is proposed to amend the said clause, so as to also exclude from the meaning of personal effects- archaeological collections, drawings, paintings, sculptures, or any work of art. Transfer of such personal effects will attract capital gains tax.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-09 and subsequent years. [Clause 3]

New definition of India

Under the existing provisions of clause (25A) of section 2 of the Income-tax Act, India is deemed to include the Union territories of Dadra and Nagar Haveli, Goa, Daman and Diu, and Pondicherry. The said definition is as respects any period for the purposes of section 6 and as respects any period included in the previous year, for the purposes of making any assessment for the assessment year commencing on the 1st day of April, 1963, or for any subsequent assessment year. A similar definition of India is provided in clause (ka) of section 2 of the Wealth tax Act.

With a view to provide a comprehensive definition of India, it is proposed to amend the said clause (25A) of section 2 of the Income-tax Act to define "India" to mean the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and subsoil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 and the air space above its territory and territorial waters.

It is also proposed to amend clause (ka) of section 2 of the Wealth-tax Act, so as to provide similar comprehensive definition of India for the purposes of the Wealth-tax Act.

These amendments will take effect retrospectively from 25th August, 1976. [Clauses 3 and 74]

To vest the Central Government with power to notify a statutory corporation or a body corporate for the purposes of deduction under section 36(1)(xii)

Under the existing provisions of clause (xii) of sub-section (1) of section 36, any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, constituted or established by a Central, State or Provincial Act, for the objects and purposes authorised by the said Acts, is allowed as deduction in the computation of its income.

The objects and purposes as listed in the Act may authorise any kind of expenditure, the allowability of which cannot be questioned in terms of the existing provisions. There is, therefore, a need to vest the Central Government with the power to notify the statutory corporations or bodies after examination of objects and purposes enshrined in the Acts under which these statutory corporations or bodies are set up.

Accordingly, the amendment provides that the deduction shall be allowed if such corporation or body corporate is notified by the Central Government in the Official Gazette under the said clause, having regard to the objects and purposes of the corresponding Central, State or Provincial Act.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 12]

Providing condition for investment in “long-term specified bonds” under section 54EC

Section 54EC of the Income-tax Act, 1961 provides tax exemption on capital gains arising from the transfer of a long-term capital asset to the extent such capital gains are invested in “long-term specified assets” within a period of six months from the date of such transfer. The Finance Act, 2006 amended the definition of long-term specified assets so as to mean any bond redeemable after three years and issued on or after the 1st day of April, 2006 by National Highways Authority of India and Rural Electrification Corporation Limited. Such bonds had to be notified by the Central Government in the Official Gazette.

It is proposed to amend the said section, by substituting the existing clause (b) of explanation to the said section, so as to provide that the Central Government, while notifying such bonds in the Official Gazette may lay down in the said notification such conditions, including the condition for providing a limit on the amount of investment by an assessee in such bonds, as it thinks fit.

This amendment will take effect retrospectively from the 1st of April, 2006.

It is further proposed to insert a proviso to the said clause (b), so substituted, so as to provide that where any bond has been issued before the 1st day of April, 2007, under a notification subject to the conditions specified therein by the Central Government in the Official Gazette under the provisions of said clause (b), as they stood immediately before their amendment by the Finance Act, 2007, such bond will be deemed to be a bond notified under the provisions of new clause (b). Accordingly the notification S.O.2146(E) dated 22nd December, 2006, with the conditions specified therein, will be deemed to have been issued under the proviso to the said clause (b) so substituted.

The said proviso is to be inserted with effect from the 1st day of April, 2006.

It is also proposed to dispense with the requirement of notifying such bonds by the Central Government in the Official Gazette. It is proposed to insert a new clause (ba) so as to define “long-term specified asset” to mean any bond redeemable after three years and issued on or after 1st day of April, 2007 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, a company formed and registered under the Companies Act, 1956.

This amendment will take effect from 1st April, 2007.

It is also proposed to amend the said section so as to provide for a ceiling on investment by an assessee in such long-term specified assets. Investments in such specified assets to avail exemption under section 54EC, on or after 1st day of April, 2007 will not exceed fifty lakh rupees in a financial year.

This amendment shall take effect from 1st April, 2007. [Clause 15]

Widening the scope of Minimum Alternate Tax

Section 115JB provides that in case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after the 1st April, 2007, is less than ten per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be ten per cent of such book profit.

The *Explanation* occurring after sub-section (2) of section 115JB says that the expression “book profit” means the net profit as shown in the profit and loss account prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 as increased or reduced by certain adjustments, as specified in that *Explanation*. The aforesaid *Explanation*, inter-alia, provides that the book profit shall be increased by the amount or amounts of expenditure relatable to any income referred to in section 10A or section 10B if such amount is debited to the profit and loss account and it shall be reduced by the amount of income referred to in sections 10A and 10B, if any such amount is credited to the profit and loss account.

The exemption from MAT of the income eligible for deduction under section 10A or section 10B is contrary to the basic principle for introduction of MAT, which provides that every corporate taxpayer participating in the economy must contribute to the exchequer. Accordingly, it is proposed to amend clause (f) of the *Explanation* occurring after sub-section (2) of section 115JB to provide that the book profit shall not be increased by the amount or amounts of expenditure relatable to any income to which section 10A or section 10B applies.

It is further proposed to amend clause (ii) of the said *Explanation* so as to provide that the amount of income to which any of the provisions of section 10A or section 10B apply, shall not be reduced from the book profit for the purposes of calculation of income tax payable under the aforesaid section.

These amendments will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 26]

WELFARE MEASURES

Exemption for compensation received or receivable on account of any disaster

In the wake of several natural and man-made disasters that have occurred in recent times, compensation has been granted, from time to time, to the victims and their families by the Central Government, various State Governments and local authorities.

With a view to exempt any such compensation from income-tax, it is proposed to insert a new clause (10BC) in section 10 so as to provide exemption from income-tax to any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster. The exemption is not allowable in respect of amount received or receivable to the extent such individual or his legal heir has been allowed a deduction under the Income-tax Act on account of any loss or damage caused by such disaster. It is also proposed to provide that for the purposes of the new clause, 'disaster' shall have the meaning as assigned to it under section 2(d) of the Disaster Management Act, 2005.

This amendment will take effect retrospectively from 1st April, 2005 and will, accordingly, apply in relation to the assessment year 2005-2006 and subsequent years. [Clause 6]

Extension of tax benefits under section 80CCD to employees of "other employers"

Under the existing provisions contained in section 80CCD, in the case of an individual, employed by the Central Government on or after 1st January, 2004, who has paid or deposited any amount in a previous year in his account under a pension scheme notified or as may be notified by the Central Government, a deduction of such amount not exceeding ten per cent. of his salary is allowed. Similarly, the contribution made by the Central Government to the said account of the individual under the pension scheme is also allowed as deduction to the extent it does not exceed ten percent of the salary of the individual in the previous year.

It is proposed to amend section 80CCD so as to extend the provisions of the said section also to an individual employed by any other employer on or after the 1st day of January, 2004 and who has paid or deposited the specified amount in his account under the pension scheme referred to in sub-section (1) of the said section.

As a consequence of this amendment, sections 7 and 17 are also proposed to be amended to give a reference to 'any other employer' in the context of section 80CCD so as to deem the contribution by any other employer as income received in the previous year and to include the contribution by any other employer in the definition of salary respectively.

These amendments will take effect retrospectively from 1st April, 2004 and will, accordingly, apply in relation to the assessment year 2004-2005 and subsequent years. [Clauses 4, 10 and 19]

Deduction for entire amount of interest paid on a loan taken for higher education of a 'relative'

Section 80E of the Income-tax Act provides for a deduction, from the gross total income of an individual, of the amount paid by him by way of interest on loan taken from any financial institution or approved charitable institution for the purpose of pursuing higher education. The deduction is available for eight assessment years beginning from the assessment year in which the payment of interest on the loan begins.

The tax benefit was introduced with a view to sustain high quality human resources in the country and to encourage talented men and women to take up higher studies despite the constraints of resources. The relief is not allowed to the parents, but to the student himself when he starts repaying the amount.

It is proposed to amend section 80E so as to allow the deduction of interest on loan taken by an individual for higher education of his relative also.

It is also proposed to define the term "relative" for the purposes of section 80E so as to mean spouse and children of the individual.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 21]

RATIONALISATION AND SIMPLIFICATION MEASURES

Income deemed to accrue or arise in India

Section 9 provides for situations where income is deemed to accrue or arise in India.

Vide Finance Act, 1976, a source rule was provided in the said section through insertion of clauses (v), (vi), and (vii) for income from interest, royalty or fees for technical services. It was provided, inter alia, that in case of payments of interest, royalty or fees for technical services received from a resident payer, income would be deemed to accrue or arise in India, *except* where the interest or royalty or fees for technical services are relatable to a business or profession carried on by the resident payer outside India or for making or earning any income from any source outside India. The intent of the amendments was elaborated in the Explanatory notes on provisions relating to direct taxes for the Finance Act, 1976 issued vide Circular No.202 dated 5.7.1976. With respect to source rule for royalty income, it was stated as follows:

"In view of the aforesaid amendment, royalty income consisting of lump sum consideration for the transfer outside India of, or the imparting of information outside India in respect of, any data, documentation, drawings or specifications relating to any patent, invention, model, design, secret formula or process or trade mark or similar property, will ordinarily become chargeable to tax in India."

Thus the intention of introducing the source rule was to bring to tax interest, royalty and fees for technical services by way of creating a legal fiction in section 9. Since the source rule for interest and fees for technical services is the same as that for royalty income, the principle as elaborated above is equally applicable to interest and fees for technical services. The source rule would mean that

irrespective of the situs of the services, the situs of the payer and the situs of the utilisation of services will determine the tax jurisdiction. Further, section 5, which defines scope of total income, is subject to other provisions of the Act, which would include section 9, and the income deemed to accrue or arise in terms of section 9 gets covered under section 5. Income does not have to actually accrue or arise in India to be deemed to accrue or arise in India.

Recent judicial opinion has been that despite the deeming fiction in the said section, for any such deemed income to be taxable in India, there must be sufficient territorial nexus between such income and the territory of India. It has been held that where any sum is payable to a non-resident by a resident, the deeming sweep of the said section cannot bring to tax, any income of a non-resident received outside India from Indian concerns for services rendered outside India. In regard to fees for technical services, it has been specifically held that for the fees to be taxable in India, the services have not only to be utilised in a business in India, but also have to be rendered in India.

Legislative intent for introduction of clauses (v), (vi) and (vii) was to give legal sanctity to the source rule. This source rule is also recognised in India's Double Taxation Avoidance Agreements. For removal of doubts, an Explanation has now been inserted in section 9 to specifically reaffirm the source rule provided in that section, to clarify that where income is deemed to accrue or arise in India under clauses (v), (vi) or (vii) of sub-section (1) of section 9, such income shall be included in the total income of the non-resident, regardless of whether the non-resident has a residence or place of business or business connection in India. In such cases, it is not necessary to establish the territorial nexus between the income deemed to accrue or arise to the non-resident under the said clauses and the territory of India.

This amendment will take effect retrospectively from 1st June, 1976.

[Clause 5]

Clarification regarding concession in the matter of rent

Section 15 of the Income-tax Act provides that any salary due or paid or allowed or any arrears of salary paid or allowed to the assessee in the previous year by an employer or a former employer is chargeable to tax under the head 'salaries'. The term 'salary' has been defined in section 17 of the IT Act and it, inter-alia, includes perquisites or profits in lieu of or in addition to any salary or wages. The term 'perquisite' as defined in sub-section (2) of section 17 of the Income-tax Act, 1961, inter-alia, includes –

- (i) the value of rent-free accommodation provided to the assessee by his employer;
- (ii) the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer.

With a view to provide a clarification as to what constitutes concession in the matter of rent, it is proposed to insert an Explanation to sub-clause (ii) of clause (2) of the said section so as to provide that concession in the matter of rent shall be deemed to have been provided if in a case where an unfurnished accommodation is provided to the assessee by an employer (other than Central Government or any State Government) and it is owned by the employer, the value of accommodation determined at the rate of ten per cent. of the salary in cities having population exceeding four lakhs as per 1991 census and seven and one-half per cent. of salary in other cities, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by assessee.

It is further proposed to provide that concession in the matter of rent shall be deemed to have been provided if in a case where an unfurnished accommodation is provided to the assessee by an employer (other than Central Government or any State Government), which has been taken on lease or rent by the employer, the value of accommodation being the actual amount of lease rental paid or payable by the employer or ten per cent. of salary, whichever is lower, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by the assessee.

It is also proposed to provide that concession in the matter of rent shall be deemed to have been provided if in a case where a furnished accommodation is provided to the assessee by the Central Government or any State Government, the licence fee determined by the Central Government or any State Government in respect of the accommodation in accordance with the rules framed by such Government as increased by the value of furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee, exceeds the aggregate of the rent recoverable from or payable by the assessee, and any charges paid or payable for the furniture and fixtures by the assessee.

It is also proposed to provide that in a case where a furnished accommodation is provided by an employer other than Central Government or any State Government and accommodation is owned by the employer, the value of unfurnished accommodation as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from or payable by the assessee.

It is also proposed to provide that in a case where a furnished accommodation is provided by an employer other than Central Government or any State Government and accommodation is taken on lease or rent by the employer, the value of unfurnished accommodation as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from or payable by the assessee.

It is also proposed to provide that the value of furniture and fixture shall be ten per cent. of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, be the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the assessee during the previous year.

It is also proposed to provide that in a case where the accommodation is provided by an employer other than Central Government or any State Government in a hotel (except where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another), the value of accommodation determined at the rate of twenty-four per cent. of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, whichever is lower, for the period during which such accommodation is provided, exceeds the rent recoverable from or payable by the assessee.

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

It is also proposed to substitute clause (a) of the *Explanation 1* as so inserted so as to provide that concession in the matter of rent shall be deemed to have been provided if in a case where an unfurnished accommodation is provided by any employer other than Central Government or any State Government and the accommodation is owned by the employer, the value of the accommodation determined at the rate of twenty per cent. of salary in cities having population exceeding four lakhs as per 2001 census and fifteen per cent. of the salary in other cities, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from or payable by the assessee.

It is also proposed to provide that concession in the matter of rent shall be deemed to have been provided if in a case where an unfurnished accommodation is provided by any employer other than Central Government or any State Government and the accommodation is taken on lease or rent by the employer, the value of the accommodation being the actual amount of lease rental paid or payable by the employer or twenty per cent. of salary, whichever is lower, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from or payable by the assessee.

These amendments will take effect retrospectively from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-07 and subsequent years. [Clause 10]

Deduction in respect of any provision for bad and doubtful debts to be allowed in the case of co-operative banks under section 36(1)(viiia)

Under the existing provisions of clause (viiia) of sub-section (1) of section 36, deduction of an amount not exceeding seven and one-half per cent. of the total income (computed before making any deduction under the said clause and Chapter VIA) and an amount not exceeding ten per cent. of the aggregate average advances made by the rural branches of a scheduled bank or a non-scheduled bank computed in the prescribed manner is allowed as deduction in the computation of income of such banks. "Scheduled bank", as defined in the *Explanation* to clause (viiia) of sub-section (1) of the section 36, does not include a co-operative bank.

The deduction earlier allowable under section 80P in the case of a co-operative society engaged in carrying on the business of banking (co-operative banks) has been withdrawn from assessment year 2007-2008 barring in the case of a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Since profits of co-operative banks are now taxable after withdrawal of deduction available to a co-operative society engaged in carrying on the business of banking under section 80P, such co-operative society banks should be allowed deduction in respect of any provision for bad and doubtful debts as its profits have become taxable. The amendment proposes to allow this deduction to co-operative banks not being a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

The definition of scheduled bank in clause (ii) of *Explanation* to said clause (viiia) is also proposed to be amended to include scheduled co-operative banks within the definition.

Under the existing provisions contained in the *Explanation* to item (fa) of sub-clause (iv) of clause (15) of section 10, the expression "scheduled bank" has been defined to have the meaning assigned to it in clause (ii) of the *Explanation* to clause (viiia) of sub-section (1) of section 36 which does not include co-operative banks. However, the definition of "scheduled bank" after the proposed amendment will include scheduled co-operative banks. The referral definition of "scheduled bank" presently occurring in the *Explanation* to the aforesaid item (fa) does not allow exemption of interest payable to a non-resident or a not ordinarily resident by a co-operative bank. In order to continue with this position, the definition of "scheduled bank" in its pre-amended form in clause (ii) of *Explanation* to clause (viiia) of sub-section (1) of section 36 is being substituted for the existing *Explanation* in the aforesaid item (fa) to ensure that the scope of the exemption allowed under the aforesaid item (fa) is not changed. The proposed substitution of the definition of "scheduled bank" in the said item (fa) meets with this objective.

The proposed amendment to the definition of "scheduled banks" as it appears in section 36 will also have the effect of making the provisions of section 43D applicable to scheduled co-operative banks.

These amendments will take effect, retrospectively, from 1st April, 2007 and will, accordingly apply in relation to the assessment year 2007-2008 and subsequent years. [Clauses 6 and 12]

Rationalisation of provisions relating to deduction in respect of creation and maintenance of special reserve under section 36(1)(viii)

The existing provisions of clause (viii) of sub-section (1) of section 36 of the Income-tax Act, 1961 provide for a deduction in respect of any special reserve created and maintained by,—

- (i) a financial corporation engaged in providing long-term finance for industrial or agricultural development or development of infrastructure facility in India; or
- (ii) a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

The deduction allowable under the aforesaid clause cannot exceed forty per cent. of the profits derived from the business of providing long-term finance.

The provisions regarding this special deduction also existed in the Income-tax Act, 1922 and were retained in the Income-tax Act, 1961. The objective of this deduction originally was to stimulate industrial development of the country. The scope of the provisions of the said clause was later on widened by the Finance (No.2) Bill, 1971 to include in its ambit the approved financial corporations engaged in providing long-term finance for agricultural development in India. The objective underlying the provisions of the said

clause, as explained in the Memorandum explaining the provisions of the aforesaid Bill, has been to enable financial corporations to build up their internal resources at an accelerated pace and become independent of subventions from Government for financing their activities.

Since the introduction of this special deduction and subsequent widening of its scope, high tax incidence on companies has come down substantially. The benefit of this deduction was also intended to enable corporations to augment their initial low equity base on account of limited accessibility to capital market. In the wake of liberalisation, from the beginning of the nineties, there has been considerable expansion and deepening of the capital market. Accessibility to capital market has markedly improved.

The amendment, therefore, proposes to limit the deduction to twenty per cent. of the profits derived from the business of providing long-term finance. Considering the provision for outer limit to the deduction, which is twice the amount of the paid-up share capital and of the general reserves, the proposed reduction in the level of deduction to twenty per cent will have the effect of elongating the time period during which the deduction can be claimed by the beneficiary "specified entities". Effectively, therefore, the specified entities are not adversely affected in the long term.

The provision has also been restructured to provide for different categories of entities (which now also includes co-operative banks) and their respective activities for eligibility of the deduction under the said clause. For claiming deduction under the said clause, (i) a financial corporation specified in section 4A of the Companies Act or a financial corporation which is a public sector company or a banking company or a co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) has to be engaged in the business of providing long-term finance in India for industrial or agricultural development or development of infrastructure facility, (ii) a housing finance company has to be engaged in the business of providing long-term finance for the construction or purchase of houses in India for residential purposes and (iii) any other financial corporation including a public company, has to be engaged in the business of providing long-term finance for development of infrastructure facility in India. It may be clarified that a financial corporation specified in section 4A of the Companies Act shall include such corporations specified under sub-section (1) and under sub-section (2) of section 4A of the Companies Act.

The amendment also provides definitions of the expressions "banking company", "co-operative bank", "primary agricultural credit society", "primary co-operative agricultural and rural development bank", "housing finance company", "public company", "infrastructure facility" and "long-term finance".

These amendments will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 12]

Withdrawal of deduction under section 36(1)(x) in respect of contribution by public financial institutions towards ERAF

Under the existing provisions of clause (x) of sub-section (1) of section 36, any sum paid by a public financial institution by way of contribution towards any Exchange Risk Administration Fund (ERAF) set up by public financial institutions, either jointly or separately, is allowed as deduction in the computation of income of the payer institution.

ERAFs were set up under a scheme known as Exchange Risk Administration Scheme (ERAS). The benefit of coverage of exchange risk under the Scheme was available to borrowers of foreign currency loans provided by institutions out of their external commercial borrowings.

An exemption under clause (23E) of section 10 in respect of any income of a notified ERAF set up by public financial institutions was earlier provided by the Finance Act, 1989. By virtue of clause (14A) of section 10, income in the nature of Exchange Risk Premium received by public financial institutions from the borrower and thereafter credited to the ERAF was also exempted from tax. The exemption to ERAFs under section 10(23E) was withdrawn by the Finance Act, 2002 from assessment year 2003-04 on the ground that the operations of these funds were on a commercial line whereby they were collecting an exchange risk premium from borrowers of foreign currency to meet the actual losses on account of exchange fluctuation. ERAFs had been in existence for a considerable time since 1989 and it was felt that tax exemption to them had outlived the utility. Exemption under clause (14A) of section 10 was also withdrawn simultaneously.

The foreign exchange scenario in India has undergone a sea change since the launching of ERAS. There are several options available in the market for borrowers to hedge their foreign exchange risk. Responding to changed market dynamics ERAFs have been discontinued by the Industrial and Development Bank of India (IDBI), Power Finance Corporation (PFC) and Indian Renewable Energy Development Agency (IREDA). This clause has, therefore, outlived its utility.

The amendment, accordingly, proposes to omit clause (x) from the said sub-section.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 12]

Giving retrospective effect to exception from taxation for certain monetary receipts and to include certain other monetary receipts in the definition of income

Under clause (v) of sub-section (2) of section 56, where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, but before the 1st day of April, 2006, the whole of such sum shall be chargeable to income-tax under the head 'income from other sources'. Exception has been provided in the proviso to the said clause in respect of any sum of money received from certain persons and under certain circumstances as specified therein. The Taxation Laws (Amendment) Act, 2006, which was enacted on the 13th day of July, 2006, inserted new clauses (e), (f) and (g) in the said proviso so as to provide such exception in respect of any sum of money received from a local authority, or an entity referred to in section 10(23C) or a trust or institution registered under section 12AA with effect from 13th July, 2006.

It is proposed to give retrospective effect to the said clauses (e), (f) and (g) from 1st April, 2005, which is the date from which clause (v) of sub-section (2) of section 56 became effective.

This amendment will apply in relation to the assessment years 2005-2006 and 2006-2007.

Through the Taxation Laws (Amendment) Act, 2006, a new clause (vi) was inserted in sub-section (2) of section 56, whereby, subject to the exceptions specified in the proviso thereto, the whole of the aggregate value of any sum of money exceeding fifty thousand rupees, received without consideration by an individual or Hindu undivided family in any previous year from any person or persons on or after the 1st day of April, 2006, is chargeable to income-tax under the head 'income from other sources'.

Clause (24) of section 2 defines 'income'. It is proposed to insert a new sub-clause (xiv) in the said clause so as to provide that 'income' includes any sum referred to in clause (vi) of sub-section (2) of section 56.

This amendment will take effect retrospectively from 1st April, 2007 and will accordingly apply in relation to the assessment year 2007-2008 and subsequent years. [Clauses 3 and 16]

Rationalization of provisions related to deduction of health insurance premium

Section 80D of the Income-tax provides that in computing the total income of an assessee, being an individual or a Hindu undivided family, the sum paid by cheque to effect or to keep in force an insurance on the health of the assessee or on the health of any member of the family shall be allowed as a deduction. The maximum amount allowed as deduction is ten thousand rupees. In the case of senior citizens, the deduction allowed is fifteen thousand rupees.

Similarly, clause (ib) of sub-section (1) of section 36 provides for a deduction of the amount of any premium paid by cheque by the assessee, as an employer, to effect or to keep in force an insurance on the health of his employees under a scheme framed by the General Insurance Corporation formed under section 9 of the General Insurance Business (Nationalisation) Act, 1972 and approved by the Central Government or by any other insurer and approved by the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999.

With a view to allow deduction for payments made through electronic mode, credit card, etc., it is proposed to amend the provisions of section 80D and clause (ib) of sub-section (1) of section 36 so as to provide that the payment of premium made by any mode other than cash, shall be eligible for deduction under these sections.

It is also proposed to increase the maximum amount allowable under section 80D, from rupees ten thousand to rupees fifteen thousand. In the case of senior citizens, it is proposed to increase the limit from rupees fifteen thousand to rupees twenty thousand.

These amendments will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-09 and subsequent years. [Clauses 12 and 20]

Clarification regarding developer with reference to infrastructure facility, industrial park, etc. for the purposes of section 80-IA

Section 80-IA, inter-alia, provides for a ten-year tax benefit to an enterprise or an undertaking engaged in development of infrastructure facilities, Industrial Parks and Special Economic Zones.

The tax benefit was introduced for the reason that industrial modernization requires a massive expansion of, and qualitative improvement in, infrastructure (viz., expressways, highways, airports, ports and rapid urban rail transport systems) which was lacking in our country. The purpose of the tax benefit has all along been for encouraging private sector participation by way of investment in development of the infrastructure sector and not for the persons who merely execute the civil construction work or any other works contract.

Accordingly, it is proposed to clarify that the provisions of section 80-IA shall not apply to a person who executes a works contract entered into with the undertaking or enterprise referred to in the said section. Thus, in a case where a person makes the investment and himself executes the development work i.e., carries out the civil construction work, he will be eligible for tax benefit under section 80-IA. In contrast to this, a person who enters into a contract with another person [i.e., undertaking or enterprise referred to in section 80-IA] for executing works contract, will not be eligible for the tax benefit under section 80-IA.

This amendment will take retrospective effect from 1st April, 2000 and will, accordingly, apply in relation to the assessment year 2000-2001 and subsequent years. [Clause 22]

Tax benefit under section 80-IA not available to undertakings/enterprises of Indian companies undergoing amalgamation or demerger after 31.3.2007

The existing provisions of section 80-IA provide for 100% deduction for ten years in respect of profits and gains of certain undertakings or enterprises engaged in the business of development, operation and maintenance of infrastructure facility, industrial parks and special economic zones or generation, distribution or transmission of power, and similar benefit is proposed for laying and operating a cross-country natural gas distribution network, including gas pipelines and storage facilities being an integral part of the network, etc.

Sub-section (12) of the said section 80-IA, inter-alia, provides that where any undertaking of an Indian company which is entitled to the deduction under the said section is transferred before the expiry of the period specified therein, to another Indian company in a scheme of amalgamation or demerger, the provisions of the said section 80-IA shall apply to the amalgamated or the resulting company as they would have applied to the amalgamating or the demerged company if the amalgamation or demerger had not taken place.

It is proposed to insert a new sub-section (12A) in section 80-IA so as to provide that the provisions of sub-section (12) shall not apply to any undertaking or enterprise which is transferred in a scheme of amalgamation or demerger after 31.3.2007.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 22]

Extension of time limit set out in Rule 3 for complying with the condition laid down in Clause (ea) of Rule 4 of Part A of the Fourth Schedule to the Income-tax Act.

Rule 4 of Part A of the Fourth Schedule to the Income-tax Act provides for the conditions which are required to be satisfied by a provident fund for receiving or retaining recognition under the Income-tax Act. Clause (ea) of the said rule provides that the fund shall be of an establishment 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 all or any of the provisions of any scheme referred to in that section.

With a view to set out the conditions given in clause (ea) in unambiguous terms, it is proposed to substitute clause (ea) so as to provide that for receiving and retaining recognition under the Income-tax Act, the fund shall be a fund of an establishment to which the provisions of sub-section (3) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 apply or of an establishment which has been notified by the Central Provident Fund Commissioner under sub-section (4) of section 1 of the said Act, and such establishment shall obtain exemption under section 17 of the said Act from the operation of all or any of the provisions of any scheme referred to in that section.

Rule 3 of Part A of the Fourth Schedule provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf.

The proviso to sub-rule (1) of the said rule 3, inter-alia, specifies 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, the recognition to such fund shall be withdrawn, if such fund does not satisfy such conditions on or before 31st March, 2007.

With a view to provide adequate time to the Employees' Provident Funds Organization to decide on the applications seeking exemption under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, it is proposed to extend the time limit provided under rule 3 of the Fourth Schedule to the Income-tax Act for fulfillment of the condition specified in clause (ea) of rule 4 of Part A of the said Schedule, from 31.3.2007 to 31.3.2008.

It is also proposed to insert a proviso in sub-rule (1) of rule 3 so as to provide that the first proviso shall not apply to the provident fund of an establishment in respect of which a notification has been issued by the Central Government under sub-section (2) of section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

This amendment will take effect retrospectively from 1st April, 2007 and will, accordingly, apply in relation to the assessment year 2007-2008 and subsequent years. [Clause 73]

RATIONALISATION OF PROVISIONS OF TAX DEDUCTION AND COLLECTION AT SOURCE

Amendment of section 193 of the Income-tax Act, 1961 to provide for TDS on 8% Savings (Taxable) Bonds, 2003

The provisions of the existing section 193 exclude, inter alia, any interest payable on any security of the Central Government or a State Government from the requirement of deduction of tax at source. Consequently, tax is not being deducted on interest payable on 8% Savings (Taxable) Bonds, 2003.

The 8% Savings (Taxable) Bonds, 2003 are Central Government securities. The notification issued by the Department of Economic Affairs dated 21st March, 2003 also clarifies that the interest paid on 8% Savings (Taxable) Bonds, 2003 is taxable under the Income-tax Act. Non-deduction of tax on these bonds has been resulting in evasion of taxes.

The proposed amendment provides that the person responsible for paying to a resident any interest on 8% Savings (Taxable) Bonds, 2003 shall deduct income-tax if interest payable on such Bonds exceeds ten thousand rupees during a financial year.

This amendment will take effect from 1st day of June, 2007. [Clause 43]

Increasing the threshold limit in respect of interest payable by a banking Company or a co-operative society or a Post Office under Section 194A

The existing clause (i) of sub-section (3) of section 194A provides that deduction of income-tax at source shall not be made in a case where the amount of income by way of interest other than "Interest on securities" does not exceed five thousand rupees.

The amendment proposes that the limit for deduction of tax at source under the aforesaid section shall be ten thousand rupees where the payer is a banking company or a co-operative society engaged in carrying on the business of banking or a Post Office in respect of notified schemes. In other cases, the threshold limit shall be retained at five thousand rupees.

Consequential amendment has also been proposed to the provisions of section 206A relating to furnishing of quarterly return in respect of payment of interest to residents without deduction of tax at source.

These amendments will take effect from 1st June, 2007. [Clauses 44,51]

Expansion of scope of the provisions of section 194C

The existing provisions of sub-section (1) of section 194C provide for deduction of income-tax at source from any sum credited or paid to the resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the Government, local authorities, statutory corporations, companies, co-operative societies, statutory

authorities engaged in providing housing accommodation etc., registered societies, trusts, universities and firms. The rate of TDS is 1% in respect of advertising contracts and 2% in other cases.

The existing provisions of sub-section (1) of section 194C do not provide for deduction of tax at source on payments made by an individual or a Hindu undivided family to a contractor.

Considering the rising number of contracts being awarded by individuals and HUFs carrying on business or profession and the increasing volume of such payments to contractors, there is need to require such persons to deduct tax at source from payments made by them to contractors.

There would be genuine difficulties if individuals or HUFs with small business turnovers or gross receipts of profession are required to deduct tax at source. An exception in such cases would be justified. Similarly the contracts awarded by an individual or a member of HUF exclusively for personal purposes merit exclusion.

Accordingly, the amendment proposes to include only such individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on exceed the monetary limits specified under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which sum is credited or paid to the account of the contractor.

The amendment also proposes that the provisions of the said sub-section (1) shall not apply in respect of payments made to a contractor by any individual or a member of a Hindu undivided family exclusively for their personal purposes.

This amendment will take effect from 1st day of June, 2007.

[Clause 45]

Increase in the rate of TDS under section 194H to 10% and exemption from TDS thereunder from commission payable by Bharat Sanchar Nigam Limited and Mahanagar Telephone Nigam Limited to their PCO franchisees

The existing provisions of section 194H require deduction of tax at source on payment of commission or brokerage, the rate for deduction of tax being five per cent.

Deduction of tax at source facilitates capturing of income for tax purposes at the earliest point of time. However, deduction of tax at source in cases of payees whose income remains below taxable limit merely results in unnecessary paper work. Public Call Office (PCO) franchisees of Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited represent this category as very small sums of commission are received by them and there would be very few such cases where income would be above the threshold exemption limit.

The proposed amendment, therefore, provides that tax shall not be deducted on payments of commission or brokerage payable by Bharat Sanchar Nigam Limited or Mahanagar Telephone Nigam Limited to their public call office franchisees.

Many cases have come to notice where tax incidence in the case of recipient of commission or brokerage is much higher than the amount of tax collected at the rate of five per cent. This has been resulting in either deferment in collection of taxes or escapement of income in some cases. This problem is proposed to be addressed by enhancement of the existing rate of five per cent. for deduction of tax at source to ten per cent.

These amendments will take effect from 1st June, 2007.

[Clause 46]

Reduction in the rate for deduction of tax at source on rent for the use of any machinery or plant or equipment under Section 194-I

The existing provisions of section 194-I provide for deduction of tax at source by the person paying any income by way of rent to a resident. Individuals and HUFs having their turnover below the limits specified in clause (a) or clause (b) of section 44AB are not required to deduct tax under this section. The existing rate of deduction of tax is fifteen per cent. if the payee is an individual or a Hindu undivided family and twenty per cent. in the case of other payees. "Rent" for the purposes of this section is defined in the Explanation.

The existing definition of "Rent" as amended by the Taxation Laws (Amendment) Act, 2006 has come into force from 13th July, 2006 and in this definition rent on three new items, viz. machinery, plant and equipment have been inserted. Subsequent to the above amendment, representations have been received to the effect that the profit margin in the transactions involving lease or hire of machinery, plant or other equipment being quite low, TDS at the existing rates of 15% and 20% was resulting in higher amounts of collection of tax than the tax incidence in such cases.

Accordingly, this amendment proposes to separately specify the rate of deduction of tax at source at a lower rate of ten per cent. in respect of any income payable by way of rent for the use of any machinery or plant or equipment.

This amendment will take effect from 1st day of June, 2007.

[Clause 47]

Enhancement of the rate of TDS under section 194J of the Income-tax Act

Under the existing provisions of sub-section (1) of section 194J, a specified person is required to deduct an amount equal to five per cent. of any sum payable to a resident by way of fees for professional services or fees for technical services.

The data collected on tax deduction in various cases of professionals and technical experts, showed that the tax incidence in such cases was much higher than the amount of tax collected by way of deduction of tax at source at the existing rate of five per cent.

Accordingly, the amendment proposes to specify a higher rate of ten per cent. for TDS under section 194J. The increased rate for deduction of tax at source shall be applicable to payment of any sum by way of fees for professional services or fees for technical services or royalty or any sum referred to in clause (va) of section 28.

This amendment will take effect from 1st June, 2007.

[Clause 48]

Omission of reference to omitted section 88B from section 197A

The existing provisions of sub-section (1C) of section 197A contain reference to section 88B which was omitted with effect from 1st April, 2006.

The amendment seeks to delete the reference to the omitted section 88B from the said sub-section.

This amendment will take effect retrospectively from 1st April, 2006 and will, accordingly, apply in relation to the assessment year 2006-2007 and subsequent years. [Clause 49]

Definition of the expression "mining and quarrying" under section 206C of the Income-tax Act, 1961

The existing provisions of section 206C provide for collection of tax at source, inter alia, from the licensee or lessee in respect of any licence, contract or lease relating to any 'mining and quarrying' specified in column (2) of the Table in sub-section (1C) of the said section. The rate for collection of tax at source is specified in column (3) of the Table.

The existing provisions of the said section do not provide for a definition of the expression "mining and quarrying". Representations have been received from a few quarters that this phrase, in the absence of its definition in the section, was being interpreted to include oil exploration and incidental services and tax was being collected from licensees engaged in such exploration. Since, oil exploration and incidental services are in the organized sector, the provisions of TCS are not intended to be made applicable.

The amendment accordingly proposes to insert Explanation 1 to provide that for the purposes of sub-section (1) of section 206C, "mining and quarrying" shall not include mining and quarrying of mineral oil. *Explanation 2* further clarifies that for the purposes of *Explanation 1*, "mineral oil" includes petroleum and natural gas.

This amendment will take effect from 1st June, 2007.

[Clause 52]

MEASURES TO PROMOTE SCIENTIFIC RESEARCH AND DEVELOPMENT

Weighted deduction under clause (1) of sub-section (2AB) of section 35 to be allowed for five more years

The existing provisions of clause (1) of sub-section (2AB) of section 35, allow in the case of a company, engaged in the business of biotechnology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipment, computers, telecommunication equipment, chemicals or any other article or thing notified by the Board, 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. This provision is not applicable in respect of any expenditure incurred by a company after 31st March, 2007 and no weighted deduction against expenditure incurred after that date is admissible.

There is a general realisation that research and development still needs some fiscal support for a few more years. The amendment to clause (5) of the said sub-section, therefore, allows weighted deduction referred to in clause (1) for a further period of five years, that is, in respect of the expenditure incurred up to 31st March, 2012.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to assessment year 2008-2009 and subsequent assessment years up to assessment year 2012-2013. [Clause 11]

MEASURES TO PROMOTE SOCIO-ECONOMIC DEVELOPMENT

Exemption for interest on notified bonds issued by State Pooled Finance Entities

Under the existing provisions of clause (vii) of sub-section (15) of Section 10, interest on bonds issued by a local authority and specified by the Central Government by notification in the Official Gazette, is exempt from income-tax.

State Pooled Finance Entities have been set up to issue debt securities on behalf of urban local bodies in terms of the guidelines for the Pooled Finance Development Scheme notified by the Ministry of Urban Development. It is proposed to amend clause (vii) of sub-section (15) so as to provide that interest on bonds issued by a State Pooled Finance Entity and specified by the Central Government by notification in the Official Gazette, shall also be exempt from income-tax. For this purpose, "State Pooled Finance Entity" is proposed to be defined to mean such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development.

This amendment will take effect from 1st April, 2008 and will accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 6]

Exemption for certain incomes of Investor Protection Fund set up by commodity exchanges

Under the existing provisions contained in clause (23EA) of section 10, any income, by way of contributions received from recognised stock exchanges and the members thereof, of notified Investor Protection Fund, set up by recognised stock exchanges in India, either jointly or separately, is exempt from income-tax.

With a view to extend similar exemption to Investor Protection Funds set up by commodity exchanges, it is proposed to insert a new clause (23EC) in section 10 so as to provide that any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund set up by commodity exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall not be included in the total income. As is currently provided in the proviso to the said clause (23EA), it is also proposed to provide in the new clause (23EC) that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part,

with a commodity exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which the amount is so shared and shall accordingly be chargeable to income-tax. For the purposes of the new clause, it is proposed to define a "commodity exchange" to mean a "registered association" as defined in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952.

This amendment will take effect from 1st April, 2008, and will, accordingly apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 6]

Exemption for certain incomes of a venture capital company or venture capital fund from specified businesses or industries

Under the existing provisions of clause (23FB) of section 10, any income of a venture capital company or venture capital fund set up to raise funds for investment in a venture capital undertaking is exempt from tax. The existing definition of a "venture capital undertaking", as provided in clause (c) of *Explanation 1* to clause (23FB), means a venture capital undertaking referred to in the Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996 made under the Securities and Exchange Board of India Act, 1992 and notified as such in the Official Gazette by the Board.

It is proposed to amend the said clause so as to provide that such exemption will now be available only in respect of income of a venture capital company or venture capital fund from investment in a venture capital undertaking engaged in certain specified businesses or industries. For this purpose, it is also proposed to amend the aforesaid definition of venture capital undertaking to mean such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the business of nanotechnology, information technology relating to hardware and software development, seed research and development, bio-technology, research and development of new chemical entities in the pharmaceutical sector, production of bio-fuels, or building and operating composite hotel-cum-convention centre with seating capacity of more than three thousand, or engaged in the dairy industry or poultry industry.

This amendment will take effect from 1st April, 2008 and will accordingly apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 6]

Expansion of the scope of 'infrastructure facility' for the purposes of tax benefit under section 80-IA

Section 80-IA, inter-alia, provides for a ten-year tax benefit to an enterprise engaged in development, operation and maintenance of infrastructure facilities. Under the existing provisions of clause (i) of sub-section (4) of section 80-IA, an enterprise carrying on the business of developing or operating and maintaining or developing, operating and maintaining any infrastructure facility is eligible for a hundred per cent deduction of profits for a period of ten years, if it fulfils certain conditions specified therein.

Explanation to clause (i) of sub-section (4) of the said section defines the expression "infrastructure facility" to mean a road including toll road, a bridge, a rail system, a highway project including housing or other activities being an integral part of the highway project, a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system, a port, airport, inland waterway or inland port.

Considering the fact that navigational channels in the sea is a high risk project (involving huge capital investment) and also has long gestation period, it is proposed to expand the scope of the expression "infrastructure facility" so as to include a navigational channel in the sea within its ambit for the purposes of ten year tax benefit under section 80-IA.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 22]

Extension of time limit for generation or transmission or distribution of power by an undertaking of an Indian company set up for reconstruction or revival of a power generating plant

Section 80-IA of the Income-tax Act, 1961 provides for a ten-year tax benefit to an enterprise engaged in development of infrastructure facilities, Industrial Parks and Special Economic Zones, generation and distribution of power, etc.

Under the existing provisions contained in clause (v) of sub-section (4) of section 80-IA, an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant is eligible for ten year tax benefit under the said section if it fulfils the following conditions:-

- (a) such company is formed before 30.11.2005 with majority equity participation by public sector companies for enforcing the security interest of the lenders to the company owning the power generating plant;
- (b) such Indian company is notified by the Central Government before 31.12.2005; and
- (c) the undertaking begins to generate or transmit or distribute power before 31st March, 2007.

With a view to provide adequate time for revival of the power generating plant, it is proposed to extend the time limit by one year for generating or transmitting or distributing power i.e., before 31st March, 2008.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 22]

Deduction in the case of an undertaking laying and operating cross-country natural gas distribution network

The existing provisions of section 80-IA provide for 100% deduction for ten years in respect of profits and gains of certain undertakings or enterprises engaged in the business of development, operation and maintenance of infrastructure facility, industrial parks and special economic zones or generation distribution or transmission of power, etc. Sub-section (4) of the said section 80-IA specifies the activities eligible for deduction.

Considering the fact that tax subsidy for gas pipelines will enable substitution of the existing subsidy on LPG, it is proposed to insert a new clause (vi) in the said sub-section (4) of section 80-IA so as to provide that any undertaking carrying on the business of laying and operating cross-country natural gas distribution network, including gas pipelines and storage facilities being an integral part of the network, shall be eligible for deduction under the said section if it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act; it has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in the Official Gazette; one-third of its total pipeline capacity is available for use on common carrier basis by any person other than the assessee or an associated person; it starts functioning on or after 1st April, 2007; and it fulfils such other condition as may be prescribed.

It is further proposed to define the expression "associated person" for the purposes of the proposed clause (vi).

It is also proposed to provide that the deduction shall be allowed for ten consecutive assessment years out of fifteen years beginning from the year in which an undertaking lays and begins to operate the cross-country natural gas distribution network.

It is also proposed to provide that any undertaking formed by way of reconstruction or splitting up or by transfer to a new business of old plant and machinery (subject to certain exceptions) shall not be eligible for the above deduction under section 80-IA.

These amendments will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 22]

Extension of time-limit for setting up of industrial undertakings in the State of Jammu and Kashmir for the purposes of tax benefit under section 80-IB(4).

Under the existing provisions contained in sub-section (4) of section 80-IB, industrial undertakings engaged in manufacture or production of articles or things or operation of a cold storage plant and set up during the period beginning on 1st April, 1993 and ending on 31st March, 2007 in the State of Jammu and Kashmir, are eligible for a hundred per cent. deduction of profits for a period of five assessment years, followed by twenty-five per cent. (thirty per cent. in the case of a company) for the next five assessment years. The deduction is subject to a negative list of articles or things specified in Part-C of the Thirteenth Schedule to the Income-tax Act, which should not be manufactured or produced by such industrial undertakings.

With a view to promote the industrial development of the State of Jammu and Kashmir, it is proposed to extend the terminal date for setting up of industrial undertakings and commencement of eligible business in the State by five more years, i.e., from 31.3.2007 to 31.3.2012.

This amendment will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clause 23]

Tax holiday for hotels and convention centres in specified area

With a view to provide adequate number of hotel rooms to meet the requirement for accommodating the visitors to the Commonwealth Games which is to be hosted by the country in 2010 and also to boost the number of convention centres, it is proposed to insert a new section 80-ID to provide for deduction in respect of profits and gains from the business of hotels and convention centres in specified area.

It is proposed to provide that where the gross total income of an assessee includes any profits and gains derived by an undertaking from the business of hotel or from the business of building, owning and operating a convention centre, hundred per cent. deduction of the profits and gains derived from such business shall be allowed for five consecutive assessment years beginning from the initial assessment year.

It is further proposed to provide that the said section applies to any undertaking engaged in the business of hotel located in the specified area, if such hotel is constructed and has started or starts functioning at any time during the period beginning on 1st April, 2007 and ending on 31st March, 2010 or engaged in the business of building, owning and operating a convention centre, located in the specified area, if such convention centre is constructed at any time during the period beginning on 1st April, 2007 and ending on 31st March, 2010.

It is also proposed to specify the conditions to be fulfilled by the undertaking for the purpose of deduction under the proposed new section.

It is also proposed to provide that in computing the total income of the assessee, no deduction shall be allowed under any other section contained in Chapter VIA or in section 10AA, in relation to the profits and gains of the undertaking.

It is also proposed to provide that the provisions contained in sub-section (5) and sub-sections (8) to (11) of section 80-IA shall, so far as may be, apply to the eligible business under this section.

It is also proposed to define the expressions "convention centre", "hotel", "initial assessment year" and "specified area" for the purposes of the proposed new section. For the purposes of the proposed section hotel shall mean a hotel of two-star, three-star and four-star category as classified by the Central Government and specified area shall mean the National Capital Territory of Delhi and districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad.

It is also proposed to amend section 80-AC so as to provide that no deduction under the proposed section 80-ID shall be admissible unless the assessee furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139 of the Income-tax Act.

These amendments will take effect from 1st April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years. [Clauses 18 and 24]