

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to amend section 35 of the Income-tax Act, relating to expenditure on scientific research.

Sub-clause (a) of the said clause seeks to insert a new clause (ia) in sub-section (1) of the said section so as to allow deduction of an amount equal to one and one-fourth times of any sum paid to a company which fulfils the conditions specified therein.

Sub-clause(C) of the proviso to the said clause (ia) provides for a condition that the deduction shall be available to such company if it is, for the time being, approved by the prescribed authority in the prescribed manner.

Further, sub-clause(D) of the said proviso provides that such company shall also fulfil such other conditions as may be prescribed.

It is proposed to empower the Board to prescribe by rules the authority, the manner in which such authority may approve a company and the other conditions to be fulfilled by the company to be eligible for deductions under the said section.

Clause 11 of the Bill seeks to amend section 47 of the Income-tax Act, which lists transactions not regarded as transfer.

Sub-clause (b) of the said clause seeks to insert a new clause (xvi) so as to add to the list, any transfer of a capital asset in a transaction of reverse mortgage under a scheme to be made and notified by the Central Government.

It is proposed to empower the Central Government to make and notify a scheme of reverse mortgage for the purposes of the proposed clause.

Clause 15 of the Bill seeks to amend section 80-IB of the Income-tax Act, relating to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

Sub-clause(b) of the said clause seeks to insert a new sub-section (11C) in the said section so as to extend a five year tax holiday in respect of hospitals located anywhere in India, except the seven urban agglomerations and the districts and the city specified therein, which are constructed and have started functioning during the period between the 1st day of April, 2008 and the 31st day of March, 2013.

Clause(iv) of the proposed sub-section provides that the assessee shall furnish along with the return of income, an audit report in such form and containing such particulars as may be prescribed.

It is proposed to empower the Board to prescribe by rules the form and particulars of audit report for the purposes of the said sub-section.

Clause 22 of the Bill seeks to amend section 115WB of the Income-tax Act, relating to fringe benefits.

Sub-section (2) of the said section provides that the fringe benefits shall be deemed to have been provided by the employer to his employees if he incurs any expenditure for the purposes specified thereunder.

Clause (B) of the said sub-section provides that any provision for hospitality of every kind, except those provided in sub-clauses (i) and (ii), shall be deemed to be fringe benefits provided by the employer to his employee.

Item (I) of sub-clause (b) of the said clause seeks to insert a new sub-clause (iii) in clause (B) of sub-section (2) of the said section so as to provide that any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed, shall also be excluded from hospitality expenditure for calculation of fringe benefit tax.

It is proposed to empower the Board to prescribe by rules such other conditions for the purposes of clause(B).

Clause 25 of the Bill seeks to amend section 115WE of the Income-tax Act, relating to assessment of fringe benefits.

The said clause seeks to substitute sub-section(1) of the said section and also to insert new sub-sections (1A) to (1C) in the said section.

The proposed sub-section (1A) seeks to provide that for the purposes of processing returns under sub-section(1), the Board may make a scheme for centralised processing of returns with a view to determine the tax payable by, or the refund due to, the assessee as required under that sub-section.

It is proposed to empower the Board to make a scheme for centralised processing of returns for the purposes of the said section.

Clause 29 of the Bill seeks to amend section 143 of the Income-tax Act, relating to assessment of income.

Sub-clause(a) of the said clause seeks to substitute sub-section (1) of the said section and also to insert sub-sections (1A) to (1C) in the said section.

The proposed sub-section(1A) provides that for the purposes of processing of returns under sub-section(1), the Board may make a scheme for centralised processing of returns with a view to determine the tax payable by, or the refund due to, the assessee as required under the said sub-section.

It is proposed to empower the Board to make a scheme for centralised processing of returns for the purposes of the said section.

Clause 41 of the Bill seeks to amend section 195 of the Income-tax Act, relating to other sums.

The said clause seeks to insert a new sub-section (6) in the said section so as to provide that any person responsible for deduction of income-tax while crediting to the account of a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable to tax under the Act, shall furnish the information relating to the payment of such sum in such form and manner as may be prescribed.

It is proposed to empower the Board to prescribe by rules the form and the manner for furnishing such information.

Clause 42 of the Bill seeks to substitute a new section for section 199, relating to credit for tax deducted.

Sub-section (3) of the proposed section provides that the Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of provisions of Chapter XVII, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section(1) and sub-section(2) of the proposed section and also the assessment year for which such credit may be given.

Accordingly, it is proposed to empower the Board to make rules for giving credit in respect of tax paid or deducted.

Clause 45 of the Bill seeks to amend section 206C of the Income-tax Act, relating to profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

Sub-clause (a) of the said clause seeks to substitute sub-section (4) so as to provide that any amount collected in accordance with the provisions of the said section and paid to the credit of the Central Government shall be deemed as payment of tax on behalf of the person from whom the amount has been collected and credit shall be given to him for the amount so collected in accordance with the rules prescribed by the Board.

It is proposed to empower the Board to prescribe by rules the manner in which such credit shall be given.

Clause 69 of the Bill seeks to insert a new sub-section (2) to section 141 of the Customs Act empowering the Central Board of Excise and Customs to make regulations in respect of the manner in which imported or export goods may be received, stored, delivered, despatched or otherwise handled in a customs area and also in respect of the responsibilities of persons engaged in such activities.

Clause 74 of the Bill seeks to insert a new section 3A in the Central Excise Act, which empowers the Central Government to charge excise duty on the basis of capacity of production in respect of notified goods. Sub-section (2) of the said section empowers the Central Government to make rules to provide the manner of determination of annual production of the factory, specify the factor relevant to the production of such goods and determination of annual capacity of production of the factory in which such goods are produced on the basis of such relevant factor. Sub-section (3) of the said section empowers the Central Government to fix the rate of duty of excise leviable on notified goods by notification and also to make rules in respect of the manner in which such duty shall be collected.

Sub-clause (D) of clause 85 of the Bill seeks to insert a new section in the Finance Act, 1994 which empowers the Central Board of Excise and Customs to frame a scheme for enabling any person or class of persons to prepare and furnish return of service tax through Service Tax Return Preparer authorised to act as such under the Scheme. The Scheme is required to be laid before Parliament.

Sub-clause (J) of the said clause seeks to insert a new sub-section (1E) in section 95 of the Act relating to removal of difficulties.

The proposed sub-section empowers 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.

Clauses 86 to 96 of the Bill contain provisions in respect of Service Tax Dispute Resolution Scheme, 2008 for settlement of certain service tax arrears. Clause 87 of the Bill proposes to confer powers upon the Commissioner of Central Excise to notify designated authority not below the rank of Assistant Commissioner of Central Excise for the purposes of the Service Tax Dispute Resolution Scheme, 2008.

Clause 96 of the Bill proposes to confer powers on the Central Government to prescribe (a) the form in which a declaration may be made under section 89 and the manner in which such declaration may be verified, (b) the form of certificate which may

be issued under sub-section (2) of section 91, (c) any other matter which is to be or may be prescribed, or in respect of which provision is to be made by the rules. The rules made under the scheme are required to be laid before Parliament.

Chapter VII of the Bill seeks to provide for levy, collection and recovery of commodities transaction tax, furnishing of returns, assessment procedure, power of assessing officer, chargeability of interest, levy of penalty, institution of prosecution and filing of appeals; etc.

Clause 102 of the Bill provides that an assessee, being a recognised association responsible for collection of commodities transaction tax, shall furnish return within such time-limit, in such form, verified in such manner and setting forth such particulars as may be prescribed.

Further, it also provides that where such return has not been furnished within the prescribed time-limit, the assessing officer may issue a notice to the assessee requiring him to furnish the return in such form, verified in such manner setting forth such particulars, within such time, as may be prescribed.

It is proposed to empower the Central Government to make rules to specify the time-limit and also to provide for the form, the manner of verification, particulars to be set forth in the return to be filed by such assessee.

Further, it is also proposed to empower the Central Government to make rules to provide for the form; the manner of verification, particulars to be set forth in the return and the time-limit within which such return has to be filed by the assessee to whom notice under sub-section (2) of the said section has been issued.

Clause 111 of the Bill provides that an assessee who is aggrieved by any order of assessment made by the Assessing officer may appeal to the Commissioner of Income-tax (Appeals) in such form, verified in such manner as may be prescribed.

It is proposed to empower the Central Government to make rules to provide for the form and the manner for verification for the purposes of the said provision.

Clause 112 of the Bill provides that an assessee who is aggrieved by any order passed by the Commissioner of Income-tax (Appeals) may appeal to the Appellate Tribunal in such form and verified in such manner, as may be prescribed.

It is proposed to empower the Central Government to make rules to provide for the form and the manner of verification for the purposes of the said provision.

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

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