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FINANCE ACT, 2007

HIGHLIGHTS

&

COMMENTS



As Dr. Muhammad Yunus, the Nobel laureate, said, "Faster growth rate is essential for faster reduction in poverty. There is no other trick to it."

-- Mr. P. Chidamberam, Hon'ble Finance Minister

But growth alone is not enough if it does not produce a flow of benefits that is sufficiently wide-spread. We, therefore, need a growth process that is much more inclusive, and which also ensures access to essential services such as health and education for all sections of the community".

-- Dr. Manmohan Singh, Hon'ble Prime Minister

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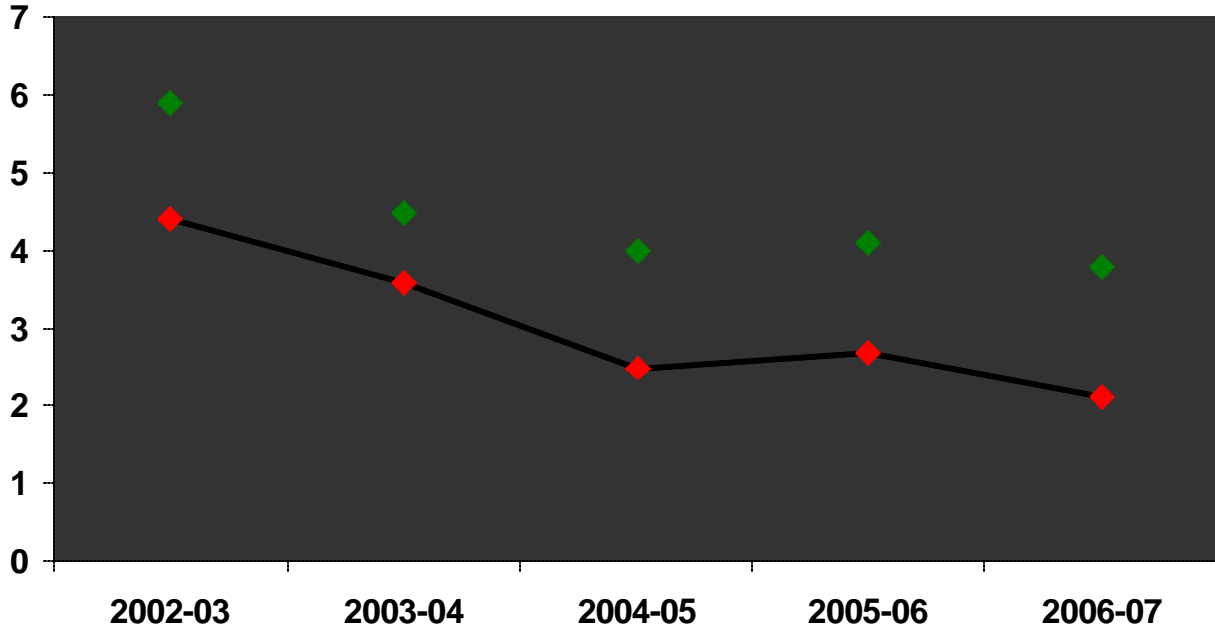


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Sr. No.	Subject	
A1	Capital Assets-Scope	
	Introduced	
Sec.	+/-	w.e.f.
2(14)	-	A.Y. 08-09

Highlights

- As per the existing law, profit on the sale of the personal effects is exempt from capital gains. However, the said definition of the said personal effects excludes the jewellery within its purview thereby making jewellery liable to tax.
- An amendment has been proposed to tax the items like archaeological collections, drawings, paintings, sculptures or any work of art and make them liable to capital gains tax.

Comments

- The items like archaeological collections, drawings, paintings, sculptures or any work of art were exempt from tax since they were considered as the personal effects.
- The amendment has now been made to tax such archaeological collections, drawings, paintings, sculptures, etc. since it has been found that these items were left untaxed although these items were sold at a substantially high price.
- However, the legal opinion suggests that the amendment was never required as what was exempt was the personal effects. It has been observed by Supreme Court in *Maharaja Rana Hemant Singhji v. CIT* [103 ITR 61] that personal effects are such which has something to do with person.

Sr. No.	Subject	
A2	Income-Deemed to accrue	
	Amended	
Sec.	+/-	w.e.f.
9	-	01.06.1976

Highlights

- As per interpretation of the existing provisions of s. 9, the income in the nature of interest, royalties, or fees for technical services u/s. 9(1) is deemed to accrue or arise in India and is taxed in India only if the non-resident has residence or place of business.
- This was also confirmed by the decision of Supreme Court in the case of *Ishikawajima Harima Heavy Industries v. DIT* [288 ITR 408(SC)].

Comments

- Vide Finance Act, 1976, a source rule was provided in the said section 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. By this amendment, the Legislature has sought to reaffirm the Source rule and reiterate that it is not necessary to establish the territorial nexus between the incomes deemed to accrue or arise to non-resident and the territory of India.
- This amendment was introduced primarily to re-inforce the source rule and supersede the decision of Supreme Court in the case of *Ishikawajima Harima Heavy Industries v. DIT* [288 ITR 408] which had deviated from the said view of the Legislature.



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In this case before Supreme Court, certain offshore services were to be rendered and the Supreme Court held that to be assessed in India, the services should be rendered in India; part of the business should be carried on in India and the utilization of the services should be India.

Sr. No.	Subject	
A3	Income-Compensation	
	Introduced	
Sec.	+/-	w.e.f.
10(10BC)	+	1.4.2005

Highlights

The Legislature has sought to introduce the exemption in respect of amount received by way of compensation on account of any disaster.

Comments

1. The Country has been facing disasters since last several years. The victims of the disasters are generally awarded some compensation by the Government. Last few years have seen several disasters like train blasts, natural calamities, etc.
2. It is therefore proposed that w.e.f. 1.5.2005, the compensation received on account of any disaster by the assessee or his legal heirs shall be exempt from tax.

Sr. No.	Subject	
A4	Income-Interest by Non-resident	
	Introduced	
Sec.	+/-	w.e.f.
10(15)	+	A.Y. 07-08

Highlights

1. The interest payable to a non-resident is exempt only if the same is received a scheduled bank. The definition of schedule bank does not include the Co-operative

society. The amendment is introduced to include even the Co-operative banks in the list of exempt interest incomes.

2. An amendment is now proposed to include the schedule bank in the list and allow the exemption even in respect of the interest from the said scheduled bank.

Comments

In order to boost the business of the co-operative banks, it has been proposed to allow the exemption to the non-resident from the interest received from co-operative banks.

Sr. No.	Subject	
A5	Income -VCU	
	Withdrawn	
Sec.	+/-	w.e.f.
10(23FB)	-	1.4.2008

Highlights

1. Under the existing provisions, 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.
2. It is now 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.

Comments

1. It is now proposed to restrict the exemption to the Venture capital company/fund only in respect of investment in venture capital undertaking:
 - a. Which is domestic company
 - b. Whose shares are not listed in any stock exchange



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c. Which is engaged in the business of nanotechnology, information technology relating to hardware/software development, seed research and development, biotechnology, research and development of new chemical entities in the pharmaceutical sector, prod. of bio-fuels or building and operating composite hotel cum convention centre, or dairy/poultry industry.

c. It is not formed by transfer to a new business of machinery or plant previously used for any purpose.

2. In other words, the scope of exemption is reduced by the amendment.

Sr. No.	Subject	
A7	Charitable Trust-Powers to CIT	
Amended		
Sec.	+/-	w.e.f.
12A	-	01.06.2007

Highlights

1. As per the present law, the benefits u/s. 11 and 12 are allowable to a charitable or religious trust only if an application for registration is made before CIT.

2. Moreover, the application is to be made within 1 year of creation of the trust. If the application is belatedly filed, the CIT may grant exemption if satisfied of the reasons given for condonation of delay.

3. By virtue of the present amendment, it is proposed to remove the powers of the CIT to condone the delay thereby withdrawing the powers to grant registration with retrospective effect.

Comments

1. By virtue of the proposed amendment, the trust will not be able to catch the train which is missed by them. In other words, no application can be made for registration after the expiry of the limitation of 1 year.

2. If the application is filed beyond the period of 1 year, the trust can be registered only w.e.f. the 1st April of the financial year in which the application is filed.

Sr. No.	Subject	
A8	Perquisites-Rent Free accommodation	
Introduced		
Sec.	+/-	w.e.f.

Sr. No.	Subject	
A6	Income-SEZ	
Amended		
Sec.	+/-	w.e.f.
10AA	-	10.02.2006

Highlights

1. Presently, the provisions of s. 10AA proposed exemption in respect of undertaking which has begun or begins to manufacture or provide services on or after 1.4.2006.

2. No conditions were specified for claiming the said exemption by SEZs.

3. The amendment now introduces certain conditions in order to be eligible for claiming the exemption.

Comments

1. The amendment now proposes to introduce certain conditions for claiming the exemption by SEZ.

2. It is proposed that the following conditions should be fulfilled in order to be eligible for the exemption:

a. Begun or begins to manufacture or produce articles or things or provide services on or after 1.4.2006.

b. It is not formed by splitting up, or reconstruction of a business already into existence.

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17(2)	-	1.4.2008
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Highlights

- The term 'salary' has been defined in s. 17 and it, interalia, includes perquisites or profits in lieu of or in addition to any salary or wages. The term 'perquisite' as defined section 17(2) of the IT Act, interalia, includes
 - the value of rent-free accommodation provided to the assessee by his employer;
 - the value of any concession of rent in respect of 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, the Bill proposes to provide the method of determination of such concession.

Comments

- The said amendment is proposed as a clarificatory provision.
- It is proposed that concession in the matter of rent shall be deemed to have been provided in a case of employer other than Government:

Nature of accommodation	Concession
Unfurnished accommodation	
Owned by employer	10%/7.5% salary - rent recoverable
Taken on lease/rent	Actual lease rentals or 10% of salary (whichever is lower) - rent recoverable
Furnished accommodation	
Owned by employer	Value of un-fur accommo + value of furniture and fixtures (10% of the cost or actual hire charges, as

	the case may be) - rent recoverable
In Hotel	24% of salary or actual charges paid to hotel (whichever is lower) - rent recoverable.

- It is also proposed that concession shall be deemed to have been provided in a case of employer being Government:

Nature of accommodation	Concession
Furnished accommodation	License fees determined by Govt.+ value of furniture - rent recoverable

Sr. No.	Subject
A9	Deduction -Scientific Research
Introduced	
Sec.	+/- w.e.f.
35(2AB)	- 1.4.2007

Highlights

- At present, the expenditure on in-house scientific research and development incurred by company engaged in business of bio-technology or mfg. or production of any drugs, equipments, etc. is eligible for weighted deduction @150% of such expenditure upto 31.03.2007.
- This time limit is extended to 31.03.2012.

Comments

Pursuant to the proposed amendment, the companies are now eligible for claiming deduction u/s. 35(2AB) for a period upto 31.03.2012.

BUDGET ANALYSIS



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Sr. No.	Subject	
A10	Deduction -Bad debts	
	Introduced	
Sec.	+/-	w.e.f.
36(1)(viiia)	+	1.4.2007

Highlights

- Under the existing provisions of section 36(1)(viiia), deduction upto 7.5% of the total income and upto 10% of the aggregate average advances made by the rural branches of a scheduled bank or a non-scheduled bank is allowed as deduction in the computation of income of such banks.
- "Scheduled bank", as defined under the Act does not include a co-operative bank.
- The Bill therefore proposes to allow this deduction to co-operative banks.

Comments

- The proposed amendment is brought as a measure of relief to the co-operative banks by allowing them the deduction on account of bad and doubtful debts.
- Consequently, s. 43D which deals with the income in relation to bad and doubtful interest would also be extended to co-operative banks.

Sr. No.	Subject	
A11	Deduction -Banks, FIs- Special reserve	
	Introduced	
Sec.	+/-	w.e.f.
36(1)(viii)	-	A.Y. 08-09

Highlights

- Presently, deduction in respect of the special reserve created and maintained by specified entities such as banks, financial institutions, housing finance companies, etc. Is allowed upto 40% of the profits derived from the business.

- The amendment is proposed to reduce the said deduction to 20%.

Comments

The scope and the quantum of deduction of special reserve created is reduced and brought down from 410% to 20%. However, the co-operative banks would now also be covered thereby allowing them the deduction on account of such reserve.

Sr. No.	Subject	
A12	Deduction -Business Expense Disallowance	
	Amended	
Sec.	+/-	w.e.f.
40A(3)	-	A.Y. 08-09

Highlights

- The existing provisions of s. 40A(3) provide for disallowance of 20% of the payment for expenses in excess of Rs. 20,000, made otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft.
- It is proposed to amend s. 40A(3) to provide for 100% disallowance of payments which are made in violation of its provisions.

Comments

- The provisions of s. 40A(3) presently disallowed the expenditure to the extent of 20% once the expenditure was incurred in cash for an amount exceeding Rs. 20,000/-. These provisions were in the statute book since 1.4.1996, i.e. A.Y. 96-97. Prior to this, the entire expenditure was liable to disallowance unless the assessee gives the bonafide reasons as per Rule 6DD. In other words, the said old system of disallowance is brought into force again.
- The Bill further proposes to provide that no disallowance shall be made if any

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payment exceeding Rs. 20,000 is made otherwise than by specified instruments in such cases and under such circumstances as may be prescribed, having regard to - (i) the nature and extent of banking facilities available, (ii) business expediency considerations and (iii) other relevant factors.

3. The Bill also proposes that if the deduction of any expenditure is claimed in earlier year for which the payment is made in subsequent year in violation of the provisions of s. 40A, the said expenditure shall be treated as income in the year in which the payment is made.

Sr. No.	Subject	
A13	Capital Gains - Exemption-Limit	
	Introduced	
Sec.	+/-	w.e.f.
54EC	-	1.4.2007

Highlights

1. Section 54EC 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" such as notified bonds issued by National Highways Authority of India or by the Rural Electrification Corporation Limited.

2. The Bill proposes to amend the said section w.e.f. 1.4.2007 so as to provide for a ceiling on investment by an assessee in such long-term specified assets upto 50 Lakhs.

Comments

1. The scope of the provisions of s. 54EC has been reduced by inserting a cap on the maximum amount of exemption available u/s. 54EC.

2. Identical cap of 3,500 crores was introduced on the overall investment made by

the companies like REC/NHAI upto pursuant to a notification issued by the CBDT. Although the writs are pending in various Courts of the Country, the issue now will become grave with the introduction of the provisions.

Sr. No.	Subject	
A14	Investment in Pension Schemes	
	Introduced	
Sec.	+/-	w.e.f.
80CCD	+	A.Y. 04-05

Highlights

1. Under the existing provisions of s. 80CCD, in the case of an individual, employed by the Central Government on or after 1 January 2004, who has paid or deposited any amount in his notified pension scheme A/c., a deduction upto 10% 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 of 10% of the salary.

2. The Bill proposes to amend s. 80CCD so as to extend the provisions also to an individual employed by any other employer on or after the 1 January 2004 and who has paid or deposited the specified amount in his account under the pension scheme referred to in section 80CCD(1) of the said section.

Comments

1. This is a welcome provision making the private employees at par with the employees of Central Government.

2. The benefit of the investment in pension scheme notified by the Central Government is also made available to the private sector employees.



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Sr. No.	Subject	
A15	Deduction -Medical Insurance	
	Amended	
Sec.	+/-	w.e.f.
80D	+	A.Y. 08-09

Highlights

1. The Bill proposes to increase the maximum amount allowable u/s. 80D from Rs. 10,000 to Rs. 15,000. In the case of senior citizens, the Bill proposes to increase the limit from Rs. 15,000 to Rs. 20,000.
2. Further, the Bill proposes to amend the provisions of s. 80D so as to provide that henceforth the payment of premium made by any mode other than cash shall be eligible for deduction under these sections.

Comments

1. The extension of the limit is a welcome step for the individuals.
2. The payments made by any mode other than cash would be a comforting provision as the issue as regards deduction in case of the payment by any mode otherwise than by cheque had created some debate and litigation on the payments by book entry.

Sr. No.	Subject	
A16	Deduction -Interest on loan taken for education	
	Introduced	
Sec.	+/-	w.e.f.
80E	+	A.Y. 08-09

Highlights

1. Section 80E provides for a deduction of the amount paid by way of interest on loan taken from any financial institution or approved charitable institution for the purpose of pursuing higher education.

2. The said benefit is extended to the person who incurs the cost for his relative.

Comments

1. The benefit of s. 80-E was available in respect of the interest on loans for higher education taken by the student himself. The relief was not allowed to the parents, but to the student himself when he starts repaying the loan.
2. This benefit is now also extended to the parents in respect of the interest cost for loan taken for the education of his son.

Sr. No.	Subject	
A17	Deduction - works contracts	
	Amended/Clarified	
Sec.	+/-	w.e.f.
80-IA	-	1.4.2000

Highlights

1. There was some confusion as to whether the provisions of s. 80-IA are available to works contracts.
2. The Bill proposes to clarify that the provisions of s. 80-IA shall not apply to a person who executes a works contract with the undertaking or enterprise referred to in the said section.

Comments

1. 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 s. 80-IA.
2. 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,



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will not be eligible for the tax benefit under section 80-IA.

Sec.	+/-	w.e.f.
92CA	--	1.6.2007

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Sr. No.	Subject	
A18	Infrastructure development	
Introduced		
Sec.	+/-	w.e.f.
80-ID	+	A.Y. 00-01

Highlights

The bill has proposed to provide deduction on account of profits and gains from the business of operating hotels and convention centers in specified areas.

Comments

1. With a view to provide adequate number of hotel rooms to meet the requirements for accommodating the visitors to the Commonwealth Games which is to be hosted by India in 2010 and also to boost the number of convention centers, the Bill has 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 centers in specified areas.
2. The said areas have been specified to be Delhi and districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad.
3. The Bill proposes 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, 100% deduction of the profits and gains derived from such business shall be allowed for first 5 consecutive assessment years

Sr. No.	Subject
A19	Transfer pricing
Amended/Introduced	

Highlights

1. As per the existing provisions of the Act, the time limit for selection of cases for scrutiny is 1 year from the end of the month in which the return was filed. References to Transfer Pricing Officers are made mostly after one year of filing of the return.
2. With a view that the Transfer Pricing Officers as well as the Assessing Officers get sufficient time to make the audit of transfer price and the assessment in cases involving international transactions, it has been proposed to increase the time limits by 12 months for making the assessment or reassessment in such cases.
3. It is further proposed to provide that the Transfer Pricing officer shall determine the Arm's length price at least two months before the expiry of new statutory time limit for making the assessment or reassessment.
4. Further, under the existing provisions, it has been provided that on receipt of the order of the Transfer Pricing Officer, the Assessing Officer shall proceed to compute the total income of the assessee having regard to the Arm's length price determined by the Transfer Pricing Officer. This therefore created litigation as to whether the order of TPO was binding on the Assessing Officer or whether the same was merely having a persuasive value. The amendment is also made to hold that the order of TPO would be binding on the Assessing Officer.

Comments

1. Pursuant to the aforesaid amendment, present time limit for completion of assessment by the Assessing Officer for A.Y. 2005-06 has been extended from 31.12.2007 to 31.12.2008. Thus, the TPO will have to pass order determining the arm's length price by



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31.08.2008 pursuant to which the Assessing Officer will pass the order by 31.12.2008.

2. Pursuant to other amendment, the order of TPO is made binding on the Assessing Officer. In other words, on receipt of the order of TPO, the Assessing Officer will proceed to compute the total income in conformity with the Arm's length price determined by the Transfer Pricing Officer. It appears that this amendment is to overcome the Delhi High Court decision in the case of Sony India (P) Ltd. V. CBDT [157 Taxman 125], wherein it was held that the report of the Transfer Pricing officer is not binding on the Assessing officer.

Sr. No.	Subject	
A20	MAT-Scope	
	Amended	
Sec.	+/-	w.e.f.
115JB	-	A.Y. 08-09

Highlights

1. Section 115JB provides that for Minimum tax on companies if the total income normally computed is less than 10% of its book profit. Presently, the companies who have set up EOU/EHTP/FTZ/STP Units are eligible for tax deduction u/s. 10A and 10B, and are out of purview of the MAT provisions of section 115JB.

2. The Bill proposes to provide that the amount of income to which s. 10A/10B apply, shall not be reduced from the book profit for the purposes of calculation of income tax payable under the aforesaid section.

Comments

Thus, the effective tax rate for EOU/EHTP/FTZ/STP Units for MAT purposes would therefore work out to 11.33%. As such, they lose their tax free status.

Sr. No.	Subject
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A21	DDT	
	Amended	
Sec.	+/-	w.e.f.
115O	-	A.Y. 07-08

Highlights

1. Under the existing provisions, dividend declared, distributed or paid by a domestic company on or after 1.4.2003, is taxed @ 14.025% (including education surcharge and education cess)

2. The Bill proposes to increase the rate of such tax on distributed profits to 15%.

3. Similarly, the burden of such tax on money market mutual funds or liquid funds is increased to 25%.

Comments

1. The burden of dividend distribution tax is increased from 12.5% to 15% in case of domestic companies. Thus, the effective rate becomes 16.995% (tax rate 15%, surcharge 10% and education cess 3%).

2. Similarly, the effective rate has now increased from @ 14.025% on income distributed to individual or a HUF and 22.44% on income distributed to any other person to 25% making the effective rate @28.325%.

Sr. No.	Subject	
A22	FBT-ESOP	
	Introduced	
Sec.	+/-	w.e.f.
115WB	-	A.Y. 08-09

Highlights

1. It is proposed to bring ESOP within the purview of FBT so as to include any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees), within the ambit of "fringe benefits".



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2. For this purpose, the fair market value of the specified security or sweat equity shares, on the date of exercise of the option by the employee as reduced by the amount actually paid by, or recovered from the employee in respect of such security or shares shall be the value of fringe benefits.

3. Accordingly, the effective FBT payable shall be 33.99% (Tax rate 30% + surcharge 10% + education cess 3%) of the value of fringe benefit.

Comments

The provisions of FBT are also loaded on ESOP thereby further making the FBT provisions stringent.

Sr. No.	Subject	
A23	FBT-Free samples	
	Introduced	
Sec.	+/-	w.e.f.
115WB	+	A.Y. 08-09

Highlights

1. As per the existing provisions, certain expenditure on advertisement including publicity is excluded for the purpose of FBT.

2. To expand the domain of such exceptions to provide relief to employers, it is proposed that the expenditure on display of products and on distribution of samples of any item either free of cost or at concessional rate to any person including doctors, shall not be included in 'sales promotion including publicity' for valuation of fringe benefits.

Comments

This exemption will grant some relief to the tax payers as the genuine expenditure is exempted from FBT.

Sr. No.	Subject	
A24	FBT-Advance tax	
	Amended	

Sec.	+/-	w.e.f.
115WC	+	1.6.2007

Highlights

Presently, FBT is payable on quarterly basis to the extent of 30% of the fringe benefits computed for a particular quarter. This system is now done away with and the advance FBT is brought in line with the advance income-tax.

Comments

1. The different dates of advance tax on income and FBT created lot of inconvenience. This inconvenience is now withdrawn.

Due dates of Installments	Present System	Proposed	
		Companies	Other than Companies
Upto 15 th June	100% of FBT payable for the June quarter	15% of the FBT payable for the year	N.A.
Upto 15 th September	100% of FBT payable for the Sept quarter	45% of the FBT payable for the year as reduced by the installments paid earlier	30% of the FBT payable for the year as reduced by the installments paid earlier
Upto 15 th December	100% of FBT payable for the Dec quarter	75% of the FBT payable for the year as reduced by the installments paid earlier	60% of the FBT payable for the year as reduced by the installments paid earlier
Upto 15 th March	100% of FBT payable for the March quarter	100% of the FBT payable for the year as reduced by the installments paid earlier	100% of the FBT payable for the year as reduced by the installments paid earlier

2. It is further proposed that where an assessee has failed to pay the advance tax, he shall be liable to pay simple interest @ 1% of the amount by which the advance tax paid falls short of the amount payable by the due date for every month or part of the month for which the shortfall continues.



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Sr. No.	Subject	
A25	TDS	
	Introduced	
Sec.	+/-	w.e.f.
Misc	-	1.6.2007

Highlights

1. Several amendments are introduced in the provisions relating to TDS.

Sr. No.	Existing Provisions	Proposed Amendment
194A	TDS on interest exceeding Rs. 5,000/-	TDS proposed on interest exceeding Rs. 10,000/- in case of banking/Co-op Soc. In business of banking or post office
194C	TDS on contractors do not apply to individuals and HUFs [194C(1)]	The Individuals and HUFs are also covered under TDS net in respect of contractors payments.
194H	TDS on commission is 5%	? TDS on commission is proposed to be 10%. ? No TDS on payment by BSNL or MTNL to PCO franchises
194I	TDS on rent of plant, machinery and equipment @15% if Indl./HUFs and 20% for others .	TDS on rent of plant, machinery and equipment proposed to be @10%.
194J	TDS on professional / Technical fees @ 5%	TDS on professional / Technical fees proposed @ 10%.

Comments

The amendments relating to TDS are both; favourable as well as unfavourable to the assessee.

Sr. No.	Subject	
A26	Settlement Commission	
	Introduced	
Sec.	+/-	w.e.f.
245C	-	1.6.2007

Highlights

Chapter XIX-A contains provisions relating to settlement of cases by the Settlement Commission. With a view to avoid delay in determining the tax liability of an assessee

which is caused because of factors like duplication of proceedings, absence of statutory time frame for settling the case and also with a view to streamline the proceedings before the Settlement Commission, the Bill proposes to amend the provisions of said Chapter XIX-A of the IT Act. The important changes proposed to be made are:

Existing Provisions	Proposed Amendment
An assessee may make an application to the Settlement Commission at any stage of the proceedings in his case pending before any Income-tax Authorities	After 31.5.07 an assessee can make an application to the ITSC only during pendency of the proceedings before the Assessing Officer. But no application can be made if the proceedings pending are u/s. 148 or pursuant to search u/s. 132.
An application can be made only if the additional amount of income-tax on the income disclosed in the application exceeds Rs. 1,00,000.	An application can be made only if the additional amount of income-tax on the income disclosed in the application exceeds Rs. 3,00,000/-
The IT payable on the income disclosed in the application has to be paid after the application is allowed to be proceeded with u/s. 245D(1).	IT along with interest, if any, shall be paid on or before the date of making the application and proof of such payment shall be attached with the application.
No intimation is to be given to the Assessing Officer till the application for settlement is admitted by ITSC.	The applicant shall send a copy of the application to the Assessing Officer on the date of making the application before the Settlement Commission.
The Settlement Commission may grant immunity from prosecution under Indian Penal Code, IT Act and any other Central Act.	The Bill proposes to provide that the ITSC shall not grant immunity from prosecution under any law other than IT Act and Wealth-tax Act.
The ITSC may, if it is necessary or expedient to do so, reopen completed proceedings.	No power to reopen completed assessments with ITSC.
The settlement application can be made any number of times by an assessee.	The application for settlement can be made only once in life time.

Comments

1. The proposed amendment shows that the Legislature intends to do away with the process of settlement of cases sooner or later. It appears that this is due to the paucity of the members and the reduced number of benches of ITSC.



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2. The powers of ITSC have been drastically reduced and the scope of the ITSC is also considerably reduced thereby almost nullifying the possibility of the new entrant before ITSC.

Sr. No.	Subject	
A27	80-G approval -appealable	
	Introduced	
Sec.	+/-	w.e.f.
253	+	1.6.2007

Highlights

- Under the existing provisions, if the approval u/s. 80-G(5)(vi) is rejected by the Commissioner, the assessee does not have any option but to file writ before the Court.
- The amendment is therefore proposed to make the rejection order of Commissioner appealable before ITAT.

Comments

- The amendment to make the rejection order appealable would reduce the writs before the Courts and thereby reducing the pendency of cases before the Courts.
- This is a welcome move.

Sr. No.	Subject	
A28	Concealment Penalty	
	Amendment	
Sec.	+/-	w.e.f.
271(1)(c)	-	Misc

Highlights

- Several amendments have been brought in s. 271(1) relating to concealment penalty.

Explanation 4 to section 271(1) states that in a case to which Explanation 3 applies, the amount of tax sought to be evaded shall mean the tax on the total income assessed.	The tax shall now mean the tax on the total income assessed as reduced by the advance tax, TDS, TCS and S.A. Tax paid before the issue of notice u/s. 148.
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w.e.f. 1.4.2003	
The provisions of Explanation 5 to s. 271(1)(c) grants immunity from levy of penalty in certain cases.	The said Explanation 5 is now removed and the immunity is withdrawn in respect of searches carried out after 1.6.2007.
w.e.f. 1.6.2007	
N.A.	New Explanation 5A inserted so as to provide that if in the course of a search u/s. 132 on or after 1.6.07, the assessee is found to be the owner of (i) any money, bullion, etc. or (ii) any income based on any entry in any books of account, etc and claims that such assets or entry represents his income, he shall be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.
w.e.f. 1.6.2007	

Comments

- The new provisions of s 271(1)(c) have been simplified and the incomes found to have been concealed pursuant to the search cases are separately dealt with.
- As such, the scope of the search cases is widened by the amendments proposed.

Sr. No.	Subject	
A29	Penalties for search cases	
	Introduced	
Sec.	+/-	w.e.f.
271AAA	-	1.6.2007

Highlights

- The Bill proposes to insert a new section so as to provide for penalty by way of additional tax of 10% in case of search initiated on or after 1.6.2007.
- However, immunity is granted if
 - in a statement u/s. 132(4) in the course of the search, the assessee admits the undisclosed income and specifies the manner in which such income has been derived;



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- b. substantiates the manner in which the undisclosed income was derived; and
- c. pays the tax, together with interest, if any, in respect of the undisclosed income.

Comments

The immunity which was allowed u/s. 271(1)(c) earlier has now been shifted to the new provision.

service tax.....

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Sr. No.	Subject	
B1	Service Tax - Act	
	Amended	
Sec.	+/-	w.e.f.
As Under	+/-	Date of Enactment

Highlights

The Finance Act, 1994 containing the provisions relating to levy of Service Tax is proposed to amend as follows:

- 4. **Section 70:** amended to prescribe levy of late fees of an amount not exceeding Rs.2000/ for delay in filing of half yearly return depending on the period of delay.
- 5. **Section 83:** amended to provide that Section 14AA (powers to Commissioner of CE to order a cost audit by Cost Accountant to study abnormal utilization CENVAT) and Section 38A (provides protection by way of saving for all pending actions under rules and notifications that are repealed, rescinded or amended) of Central Excise Act, 1994 shall apply to Service Tax also.

6. **Section 86 (1A)/ (2A) :** inserted to empower CBEC to constitute committee of chief commissioners / commissioners to review adjudication, penalty, revisions orders / appeal orders passed by Commissioner of CE and file appeal against such orders to Appellate Tribunal, if required.

7. **Section 95 (1D):** inserted to empower Central Government to issue orders for removal of difficulty in case classifying or assessing the value or implementing any new services introduced by Finance Bill, 2007 within one year from the date of enactment thereof.

8. **Section 96A:** amended to introduce an explanation providing that a Joint Venture applicant may seek advance ruling provided that one of the JV partner, having substantial interest and control, is non resident.

Comments

- 1. Discretionary penalty is substituted by mandatory late fee for default in filing of returns.
- 2. Change in law shall not effect the pending litigations initiated before the change.
- 3. The terms substantial interest, used in case advance ruling sought by JV, not defined.

Sr. No.	Subject	
B2	Service Tax – Rules	
	Amended	
Sec.	+/-	w.e.f.
As Under	+/-	1 st March, 2007

Highlights

1. **Rule 2:** in respect of reverse charge in case of sponsorship services has been amended to provide that in case recipient of services is a



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non- resident the service provider shall be liable to pay tax.

2. **Rule 6:** amended to allow the adjustment of excess service tax paid against liability for the subsequent month/ quarter subject to certain conditions.

3. **Rule 7A:** inserted to provide for filing of revised return in case of any error or omission in original return within 60 days of filing of original return.

4. **Form ST-1:** Declaration part has been amended to substitute requirement of submission of original Registration certificate by self certified copy of registration certificate for intimating the change in any information provided at the time of obtaining original registration.

CENVAT CREDIT RULES 2004

5. **Rule 6(3):** amended to provide for option to General Insurance Service Provider to claim CENVAT in ratio of value of taxable and exempted out put services.

6. **Rule 9(3):** amended to omit the requirement relating to reasonable steps by manufacturers or service provider to ensure the payment of duty or service tax on inputs or input services.

7. **Rule 11:** amended to provide for reversal of CENVAT Credit / payment of duty on unsold out put services / products by manufacturer or service provider opting for exemption.

8. **Rule 15:** amended to reduce maximum penalty from Rs.10000 to Rs.2000 for availing wrong CENVAT Credit.

B3	Service Tax Items Covered	
	Introduced	
Sec.	+/-	w.e.f.
65(105)		To be Notified

Highlights

1. Following new services have been brought under service tax net.

a. **Asset Management Services:** This shall cover services like portfolio management, monitoring, planning, guiding, restructuring of funds by person other than those covered under Banking and other Financial Services

b. **Component of Services included in Works Contract:** This shall cover various existing category of services like Construction services (commercial, industrial and residential complex), Erection, commissioning and installation of Plant etc. Completion and Finishing services, Repairs etc. An optional composition scheme to pay tax @2% of total contract value shall be notified.

c. **Design Services;** This shall cover services for designing furniture, products, packages, logos, graphics, websites etc. However, this shall not cover the services by Interior designer and fashion designer already covered under separate category.

d. **Development & supply of contents:** This shall cover services in relation to development and supply of contents like mobile value added services, music, game, clips, ring tones, wall papers, or any information like cricket score, traffic updates etc. for the use in telecommunication services, advertising agency services and online information and database access or retrieval services.

e. **Mining Services:** This shall cover services in relation to extraction from mines.

f. **Renting of Immovable property Services:** This shall cover services in relation to renting etc of Immovable property for use

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in course or furtherance of business or commerce.

g. **Telecommunication services:** Hitherto, services covered under different categories like telephone, pager, leased circuit, telegraph, telex, fax etc. are consolidated under this one category.

2. The scope of following existing taxable services has been changed.

a. **Banking & Other Financial services:** The scope has been curtailed by changing applicability to 'commercial concern' instead of 'any other person'. The scope is enlarged by covering cash management services. The term 'financial leasing' has been defined now.

b. **Consulting Engineers Services:** The scope has been enlarged by covering computer hardware engineering.

c. **Management consultants Service:** The scope has been enlarged by renaming the same as Management or business consultants and redefining the same to include management of business in addition to management of organization.

d. **Management, Maintenance and Repairs Services:** An explanation inserted to clarify that term 'goods' includes computer software.

e. **Mandap keepers, Pandal and Shamiana Contractors and Event Management Services:** An explanation has been inserted to clarify the social function includes Marriage.

f. **Manpower Recruitment or Supply services:** An explanation has been inserted to clarify that the service includes pre-recruitment services like screening, verification of credentials and antecedents of candidates and verification of documents.

g. **Rent - A - Cab Services:** The scope enlarged by covering renting of a motor vehicle having capacity of more than 12 passengers excluding driver.

h. **Sale of space or time for advertisement:** The scope has been enlarged

by covering sale of space in business directories, yellow pages and trade catalogues.

Sr. No.	Subject	
B4	Exemptions	
	Provided	
Sec.	+/-	w.e.f.
As Under	+	1st March, 2007

Highlights

1. Services provided by Residential Associations to its members not exceeding Rs.3000/ per month are exempted.
2. All taxable services provided by recognized Technology Business Incubators (TBI) and Science and Technology Entrepreneurship Park (STEP) subject to certain condition are exempted.
3. All the taxable services provided by an entrepreneur located in the premises of TBI and STEP are exempted subject to certain conditions.
4. Specific Testing and analysis services by approved Clinical Research Organizations are exempted.
5. Services provided to producer or distributors in relation to delivery of content of cinematograph film in digital form for direct transmission though the use of satellite etc is exempted.

Sr. No.	Subject	
B5	Rate	
	Amended/Introduced	
Sec.	+/-	w.e.f.
	-	Date of Enactment

Highlights

1. The rate of Service Tax has been maintained at 12%. However, the rate of Education Cess has been Increased from 2% to 3%.

Comments :



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1. Due to the increase in education cess the effective rate shall be increased from 12.24% to 12.36%

2. The threshold limit for applying registration under service tax has been enhanced from Rs.3 lacs to Rs.7 lacs

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Sr. No.	Subject	
B6	Other Changes	
	Amended	
Sec.	+/-	w.e.f.
	+	1 st April, 2007

Comments

The small service provider having gross receipts on account of taxable service up to Rs.7 lacs shall be relived from all the Service Tax compliances.

Highlights

1. The threshold limit for applicability of Service Tax has been enhanced from Rs.4 lacs to Rs.8 lacs.

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