



Smart Consultants Pvt. Ltd. Budget 2001 Analysis

BUDGET 2001 : AN INNOVATIVE INITIATIVE

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Sr. No.	Subject	
1	Bks of acct/document	
Sec	+/-	w.e.f.
2(12A)/ (22AA)	-	1.6.2001

HIGHLIGHTS

1. "Books of account" for S.2(12A) to include ledgers, daybooks, cash books, account-books and other books,

- Whether kept in written form or
- As print outs of data stored electronically.

2. "Document" now includes "Electronic Record" as per S. 2(1)(t) of Information Technology Act.

COMMENTS

1. There was no definition of books of account and accordingly a lot of debate was going on.

2. In terms of nomenclature, it now includes ledgers, daybooks, and cashbooks, account books and other books. This is wide enough to cover any regular book, including stock registers, for example.

3. In terms of media, it now includes the hard as
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well as soft copies. Of course, the language would suggest that the printouts (i.e. hard copies) of the data stored on electronic media (i.e. soft copies) be only covered by the expression "Books of account" and not the soft copies themselves.

4. However, probably by including the same in the definition of electronic record one may say that this lacuna is partly covered. If this is not sufficient, there could be an argument that the copy on floppy is a print out on floppy !!

5. "Electronic Record" under the Information Technology Act means the data on electronic media or microfilm or microfiche.

6. The implications of this amendment are both positive and negative.

a. On one hand, an assessee can contend that whatever he maintains is sufficient compliance to the requirement of maintenance of books of account.

b. On the other hand, department can rely on such information to determine the income of the assessee.

- Tremendous care will now have to be taken to ensure that MIS and other statements that may be available on the hard disk and maintained not for compliance but convenience will have to fulfill the tests and
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sanctity of the books of account.

- Sufficient backup must be maintained of the Hard Disk, which can now be impounded in the course of a search or required to be produced in the course of an assessment.
- The law , practice and jurisprudence will have to identify meanings and tests for , “proper”, “complete” books “regularly maintained” and results which “match” with the same.

One more possibility is whether the department can insist and / or assessee can “file” such electronic records with the department. The positive side here is that it may save lot of expense and time for the assessee either in taking out a hard copy and / or in physically filing with the department. The negative side would be that such data could be more readily copied, and analyzed.

Sr. No.	Subject	
2	Business Expenditure	
Sec	+/-	w.e.f.
43B/35DDA	-	A.Y.02-03

HIGHLIGHTS

1. Leave Encashment

This will be deductible subject to S.43B i.e. if the same has been discharged before the due date for filing of return.

2. Voluntary Retirement Scheme

This will now be allowed in 5 equal installments beginning with the year of expenditure.

COMMENTS

1. This is to overrule the decision of the Supreme Court in the case of Bharat Earth Movers Ktd.(245 ITR 428) and that of the Calcutta High Court in the case of Assam Oil Co. Ltd.(154 ITR 647), respectively.

2. The amendment on the VRS could well apply to some VRS schemes that have been finalized unaware of such a change!

Sr. No.	Subject	
3	Capital Gains	
Sec	+/-	w.e.f.
54EC/ED 55	+/-	A.Y. 02-03

HIGHLIGHTS

1. 54EC:

In the list of eligible securities for S 54EC, has been added 3 –yr Redeemable Bonds issued by Rural Electrification Corporation Ltd.

2. 54ED:

LTCG arising on sale of securities and units exempt u/s 54ED if reinvested in new issues of shares.

3. 55:

CG on Trade Mark or Brand Name to be worked out on the basis of the purchase price, if any, otherwise taking cost at Nil.

COMMENTS

1. 54EC:

RECL is in addition to NABARD and NHA1. It is not clarified as what if the application is rejected.

2. 54ED:

- This is parallel to the first *Avtaar* of Sec 54E.
- The period within which reinvestment shall take place is 6 months and the lock in period is 1 year.
- The only difference is that unlike the said section 54E but like the other section 54, the reinvestment is of the capital gain and not the full proceeds.
- It is further clarified that such investment on which this benefit is availed would not be again available for the benefit u/s 88
- It is not clear as to whether one would be said to have complied with the requirement for reinvestment if one has applied or one is allotted the shares.

3. 55 :

TradeMarks have to follow the analogy of Tenancy. The decision of the Supreme Court in



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the case of B.C. Srinivas Shetty (128 ITR 294) no more useful for the same.

Sr. No.	Subject	
4	Carry Forward/set off of losses	
Sec	+/-	w.e.f.
72A	+/-	A.Y.00-01

HIGHLIGHTS

1. Carry forward and set off of losses of Amalgamating Co. is available to Amalgamated Co. provided the same is an Industrial Undertaking.

2. Industrial Undertaking for this would mean any undertaking engaged in the manufacture or processing of goods or the manufacture of computer software or the business of generation or distribution of electricity or any other form of power or mining or the construction of ships, aircrafts or rail systems.

COMMENTS

1. The term "Industrial Undertaking" was not defined here.

2. It was felt that this could lead to litigation. Hence there was a need to clarify.

3. Apparently it seems that the new definition is applicable to amalgamation of Industrial undertaking and not to demerger of Industrial undertaking.

Sr. No.	Subject	
5	Charitable Trusts	
Sec	+/-	w.e.f.
10/11	-	A.Y.02-03

HIGHLIGHTS

1. For accumulation made after 1.4.2001, the max. period for which income can be accumulated specified/ reduced as/to 5 years

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2. For exemption, there must be a publication of the accounts in a local newspaper, if the gross receipts exceed

- In case of University/Hospital, Rs.1 Crores
- In case of Trusts , Rs. 10 lakhs

And furnish a copy with the applications for approval/ certificate and return of income.

3. Notified Universities/ Hospitals etc. can continue to hold equity shares as investments if it formed part of their corpus as on 1.6.1998.

COMMENTS

1 While various clauses in Sec 10 had no stipulation, Sec 11 specified the period as 10 years. It is proposed to insert/reduce the period as/to 5 years.

2. Questions may arise on interpretation of various terms ,
"Accounts"

- the final audited accounts
- the full accounts
- the abridged accounts or
- such accounts as trust may deem fit

"Newspaper"

- the one which is in circulation locally
- the one which is in local language

Sr. No.	Subject	
6	Deductions /Relief	
Sec	+/-	w.e.f.
As under	+/-	A.Y.02-03

HIGHLIGHTS

1 u/s 80-L:

Allowance now restricted to Rs.9,000

2.u/s 88 :

For those earning salaries upped Rs.1,00,000, the relief will be @30% as against @20%

3. u/s 80-CCC/80D/80DD/88

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Deduction allowable for pmts to any private sector insurance co. approved by Insurance Development and Regulatory Authority.

4. u/s 80-G

A 100 % deduction is extended to the donations made to the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.

COMMENTS

1 u/s 80-L:

Basic 12,000 reduced to 9000
Addl. 3,000 continues

2. u/s 88 :

This is a marginal relief. It will be available only to such assesseees whose salary income does not exceed 90% of his gross total income from all the sources

3. u/s 80-CCC/80D/80DD/88

This will lend level playing field and give fillip to the competition that the new cos will have to give to LIC/GIC.

A question may arise as to what about the premia paid to the private insurers before 31.3.01? It may be noted that IRDA(Insurance Regulation and Development Authority) has clarified that the earlier provision never had any mention of Life Insurance Corporation and was actually applicable for any insurer who has been approved / registered by/with the IRDA.

4. u/s 80-G

Though here there is no reference, an amendment was carried out during the year

- through an ordinance
- on account of the Earthquake relief
- to the tune of 100% of the donation
- Without the qualification limit of 10% of income.

Sr. No.	Subject	
7	Depreciation	
Sec	+/-	w.e.f.
32	+/-	A.Y.02-03

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HIGHLIGHTS

1. Depreciation made mandatory.
2. The rates are proposed to be changed as under:

Sr	Description	Rate
A	Shipping industry	25%
B	Textile Industry (on the machinery purchased under the Technology Upgradation Fund Scheme)	50%
C	New Commercial Vehicle(for 1 yr only)	50%

3. There will be indefinite carry forward of depreciation.

COMMENTS

1. Mandatory

- The decision of Supreme Court in the case of Mahendra Mills (159 CTR 381) is effectively bypassed.
- This will affect the assesseees who are interested in selling the capital asset and availing capital gain advantages, rather than claiming depreciation and attracting tax as short term capital gains
- b Interested in exhausting the tax holidays
- c Governed by MAT provisions- the income in any case is taxable – why claim depreciation and lose it
- They will not be able to eat the cake and have it too.
- Further apparently ,the change would apply to both the cases, i.e.
- d Sec 32(1)(i) type (WDV) and
- e Sec 32 (1)(ii) type (SLM) .

2. The rates

- They are progressive which is favourable.
- For Commercial Vehicle it has been specified for 1 year only. It has to be seen whether this applies to the vehicles for 1 year or vehicles acquired during the 1 year. We have to wait for the Rules to see the final

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picture.

3. As regards the carry forward

- In a way the position prior to A.Y.1997-98 has been restored. Even the priority for set off will remain the same.
- However there could be some doubt about the depreciation for the intervening period of 3 years.
- It is also contradictory that
 - a On one hand you force depreciation than carry forward indefinitely .
 - b On the other hand, you deny the stand of the assessee that he can defer the claim itself indefinitely?

Sr. No.	Subject	
8	Development Allowance-Tea	
Sec	+/-	w.e.f.
33AB	+	A.Y.02-03

HIGHLIGHTS

- 1.The allowance is proposed to be increased from 20% to 40%
2. The additional allowance has to be used only for re-plantation, rejuvenation and modernization of tea plantations and processing facilities.

COMMENTS

1. The amount to be deposited in the Tea Deposit Account with NABARD.

Sr. No.	Subject
9	Deve. Undertakings-General

HIGHLIGHTS and COMMENTS:

1. Introduction:

In order to understand the nature of the amendments proposed, we have to understand the scheme of the law on the subject.

2. Broad Areas

There are two provisions covering concerns of

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development. Let us tabulate the major areas covered as per the Present law and against that place the Future ones- the additional categories being added by Budget 2001.

80-IA	80-IB
Present	
* Deve Zones	*Incl U-taking
* Deve Busi. (Infrastructure)	*Ship
>Infra Facility	*Hotel
>Infra-others (Telecom Power)	*R & D
* Deve Finance	*Mineral Oil
	*Hsg. Projects
	*Cold Chain
Future	
*Internet Service Providers	* Foodgrains
*Broadband Networks	

3. Sec. 80-IA

Here, let us concern us with Sec. 80-IA and take up Sec 80-IB separately. The elements of law here can be broadly classified as under

- A. Deve. Zones
- B. Deve. Business
- C. Deve. Finance

4. Class-1: The Deve. Zones

These can be further classified into

- a. Industrial Parks
- b. (Now) Special Economic Zone

5. Class- 2: The Deve. Business:

This can in turn be classified into the following:

- a. Infra Facility
- b. Infra – other

6. Class- 3: The Deve.Finance:

The Deve. Finance can be further classified into financing of the following:

- a. Deve. Zones
- b. Deve. Business

7. Deve. Business: Factors:

Then the law on the subject can be broadly classified into the following:

- a. Location of business
- b. Nature of business
- c Commencement (after and before)

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- d. Rate of deduction
 e. Period for which dedn is available
 and
 f. Range of period

8. Deve. Finance: Factors:

These can be classified as under:

- a. Nature of the assessee
 b. Nature of Investment
 c. Nature of finance income
 d. Rate of deduction
 e. Period for which dedn is available
 and
 f. Range of period

9. Class-wise changes

We may deal with the changes proposed under each class hereafter.

Sr.	Description	Para
I	Deve – Zones	9A
II	Deve Business	
	* Business proper	9B
	* Period for	9C
	* Commencement by	9D
	* Conditions	9E
III	Deve – Finance	9F

Sr. No.	Subject	
9A	Deve – Zones	
Sec	+/-	w.e.f.
80-IA	+	A.Y 02-03.

HIGHLIGHTS

- Here the category of development of Special Economic Zones has been added.
- This will be substantially on par with the Industrial Parks.
- The deduction would be @ 100% for a period of 10 years in a block of 15 years.
- Deduction would also be extended to those financing the same.

COMMENTS

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Sr. No.	Subject	
9B	Deve –Businesses	
Sec	+/-	w.e.f.
80-IA / IB	+/-	A.Y.01-02

HIGHLIGHTS

- Here the following businesses have been added
 - Internet Service Providers (ISP) ...80-IA
 - Broadband Network (BN) ...80-IA
 - Foodgrains (Integrated business of handling, transport and storage) ...80-IB
- The deduction would be 100 % (5yrs) and 25/30%(5 yrs)

COMMENTS

- This shows the increasing awareness about the need to support infotech.

Sr. No.	Subject	
9C	Deve - Period for	
Sec	+/-	w.e.f.
80-IA/IB	+	A.Y.02-03

HIGHLIGHTS:

- These can be grouped as under

A	Category A: Infra Facility (Social Infra) Roads, Highways, Rail Systems, Water Treatment and Supply, Irrigation , Sanitation and Solid Waste Mgmt System
B	Category B: Other Infra Airports, Ports , Inland Ports, Waterways , Industrial Parks,
C	Category C: Other areas Generation & Distribution of Power

- Here the deduction is proposed as under:

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Category	Dedn	For	During
	%	Yrs	Yrs
A	100	10	20
B	100	10	15
C	100	10	15

COMMENTS

1 The benefit earlier was a 2-tier one

- 100 % for 5 years and
- 25/30% for next 5 years.

With a view to allow larger benefit, it is proposed to make it a single tier one.

2. However the 2-tier system has been continued for other category of

U/s 80-IA

Telecommunications, ISP and broad-bands

U/s 80-IB

Foodgrains (Integrated business of handling , transport and storage)

Sr. No.	Subject	
9D	Deve	
	Commencement by	
Sec	+/-	w.e.f.
80-IA	+/-	A.Y.01-02

HIGHLIGHTS

1. These can be divided in the following categories

Cat	Description
X	Power ,Industrial Parks
Y	Telecommunications

2. Here the change proposed is as under

Cat	Change
X	Extended from 31.3.03 to 31.3.06
Y	Extended from 31.3.00 to 31.3.03

COMMENTS

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1. The benefit as explained elsewhere would be as under:

Cat	Description
X	100% for 10 during 15 yrs
Y	100%(5yrs) 30%(5 yrs)

Sr. No.	Subject	
9E	Deve –Conditions	
Sec	+/-	w.e.f.
80-IA	+	A.Y.02-03

HIGHLIGHTS

1. The conditions for BOT or BOOT have been done away.

COMMENTS

1 Earlier one of the conditions was to be either

- BOT(Build, Own, Transfer) or
- BOOT (Build. Own. Operate, Transfer)

Sr. No.	Subject	
9F	Deve –Finance	
Sec	+/-	w.e.f.
80-IA/ 10(23G)	+	A.Y.02-03

HIGHLIGHTS

1.Income by way of
a. Interest, dividends,
b. Long Term Capital Gains
(and now, by amending definition of “interest”)
c. Guarantee commission
d. Credit enhancement fees
would be eligible for the deduction / exemption simultaneously u/s 80-IA and 10(23G).

2. Co-operative banks are now eligible.

COMMENTS

1. Co-op Banks being neither “infrastructure capital company” nor “Infrastructure capital fund” were not eligible. Hence the amendment was required.

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2. They will be now able to invest in shares or long term finance of such companies.

Sr. No.	Subject	
9G	Development-Summary	
Sec	+/-	w.e.f.
80-IA / IB	+	Several

The amendments seek to achieve the following:

- Adding a zone (SEZ)
- 2-tier to 1-tier in some cases
- Extension of 2-tier in some cases
- Extension of time by 3 yrs to 31.3.03 and 31.3.06 in some cases
- Giving up of BOT/BOOT
- Making co-op banks eligible

Sr. No.	Subject	
10	Dividend Stripping	
Sec	+/-	w.e.f.
10(33)	-	A.Y.00-01
94(7)		A.Y. 02-03

HIGHLIGHTS

1. Losses are to be ignored and income is not exempt, if there is a dividend stripping.

2. A transaction would be deemed to be dividend stripping if the securities are bought and sold within a band of 3 months before and after the "record date" while earning dividend on the same.

3. However, to the extent the transactions are squared up with the UTI or MF concerned, the benefit will not be denied.

COMMENTS

1. A normal dividend stripping involved the following steps:

- | | |
|---|---|
| 1 | MF declares an attractive dividend in advance. Such income is tax-free. |
|---|---|

- | | |
|---|---|
| 2 | Substantial investment typically from high net worth individuals flows in |
| 3 | MF charges an entry load (usually 1 to 2.5%) on the investments |
| 4 | After the tax-free dividend is received, the investment flows out. |
| 5 | MF charges exit load(1-2.5 %) at the time of redemption |
| 6 | Investors book fall in NAV pre and post dividend as a short term capital loss and set off the same against their short term capital gains |
| 7 | Fund makes money on entry and exit loads, investors avoid payment of substantial taxes which is a loss to the government. |

There is a controversy as to what will happen in the case of the losses that would have arisen or would arise in this month i.e. for 31/03/2001?

2. One view is that "Income" includes "Losses" and accordingly it will be governed by the change if the transfer is to a person other than the UTI or MF.

3. There seems to be a lot of confusion. In the first instance, one would have understood Sec. 10(33) to extend upto the income by way of dividend etc. and not by way of capital gains. However by clarifying that

Nothing contained in this clause it shall apply to any income arising from the transfer of the units if UTI or mutual funds by the unit-holders to persons other than UTI or such Mutual Fund,

the budget seems to have opened a Pandora's Box. If one logically extends this proposition than all the gains made on the surrender of the units etc. would be tax-free. Of course it is another thing to say that there would be no such gain in the actual practice. This seems in contradiction to the provisions of Sec. 45(6) which provides, of course may be only for units referred in Sec 80CCB that such difference will be deemed to be capital gain and shall be taxed accordingly..

4. In any case the view that some experts seem to be holding that for the purposes of sec 10(33),



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income includes losses seems to be far fetched. It must be understood that this proposition has found favour with the courts in the context of set off of incomes and losses where by its very nature it is logical and true. On the other hand, sec 10(33) comes into play only when there is a (positive) income. In other words, when there is a loss, sec 10(33) does not get invoked at all.

5. We therefore hold view that it is in order to set off the losses that can be incurred upto 31/03/2001 against other incomes.

6. Further there seems to be a rather narrow definition , which stipulates the conditions in a cumulative language-

- | | |
|----|--|
| a. | purchase within 3 months prior to record date |
| b. | sale within 3 months after the record date and |
| c. | income receivable is exempt |

If any of these conditions are not satisfied then the provision may not apply.

Sr. No.	Subject	
11	Exemptions	
Sec	+/-	w.e.f.
Several	-	Several

HIGHLIGHTS

1. NABARD/NHB/SIDBI (A.Y.02-03)
They would no more enjoy tax exemption.

2. VCU (A.Y.01-02)
u/s 10(23FB), a VCU will continue with the exemption if the investee company subsequently gets listed on a Stock Exchange.

3. VCU of UTI (A.Y.01-02)
This has been brought on par with the other VCU's

COMMENTS

1.The exemption was available not under the

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income tax act but under the laws by which such institutions were set up.

Accordingly it is proposed to delete the following Sec. 54 of NABARD Act, 1981

Sec. 48 of NHB Act, 1987

Sec. 50 of SIDBI Act 1989

2. The definition prescribes that the eligible VCU is one, which is not listed on a Stock Exchange. However, if subsequently, there is an occasion to list the same, that shall not cost the VCF and its individual investors the exemption.

3. A VCU is defined to be one who is registered under the Registration Act. UTI, on the other hand is governed by an Act of Parliament. It would therefore not be eligible in respect of its VCU. This amendment seeks to cure this anomaly.

Sr. No.	Subject	
12	Expenses- Exempt Income	
Sec	+/-	w.e.f.
14A	-	A.Y.62-63

HIGHLIGHTS

1.This prohibits deduction of expenditure incurred for earning exempt income.

COMMENTS

1 This effectively reverses the decision of the Supreme Court in the case of Rajasthan State Warehousing Corporation (242 ITR 430).

2. This may affect companies having two streams of income like dividend and interest, or new industrial undertaking and old undertaking.

3. The amendment is effective retrospectively from the date of enactment of the Act i.e. 62-63

4. A question may arise in respect of expense, which relates to -

- both an exempt income and non-exempt income (e.g. Share transfer expenses, where shares are held as stock in trade, are primarily for business rather than dividend)

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- not an exempt income but a tax-deductible income?

5. Though the said newly inserted provisions are retrospective w.e.f. A.Y. 62-63, it will be applied to new cases only. CBDT has clarified that where the proceedings had become final before 01.04.2001, the assessments would not be re-opened u/s. 147 of the Income-tax Act.

Sr. No.	Subject
13	FE outgoes

Sr. No.	Subject
13A	FE Outgo-Foreign Telecasting Channels
Sec	+/- w.e.f.
9	- A.Y.02-03

HIGHLIGHTS

- Will be now be taxed in India.

COMMENTS

- Presently they were governed by Circular No. 742 of CBDT, which provided taxation of such profits on a deemed basis at the rate of 10%.
- This circular may now be withdrawn.

Sr. No.	Subject
13B	FE Outgo – Interest
Sec	+/- w.e.f.
10(15)	- A.Y.02-03

HIGHLIGHTS:

- “Interest” paid on ECB no more exempt except in some cases.
- In the cases, where interest is exempt, it will include the one paid as penal interest upto 2%
- The ECB made on or after 1.6.01 will attract this provision.
- Major exception being the ECB made by the

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Housing Finance Companies.

Sr. No.	Subject
13C	FE Outgo - Royalty
Sec	+/- w.e.f.
9	- A.Y.02-03

HIGHLIGHTS:

“Royalty” widened to include “use or right to use any industrial, commercial or scientific equipment”

COMMENTS:

- Equipment leasing/hiring income dues to non-residents will now become taxable in India.
- These were earlier escaping tax under some DTAAs. Now there was a need to provide a sunset provision for such items.

Sr. No.	Subject
14	House Property
Sec	+/- w.e.f.
As Under	+/- A.Y. 02-03

HIGHLIGHTS

1. In case of property let out for a part of the year, one would straightaway look at actual rent received or receivable for the period it is let out.

2. Standard Deduction for repairs etc. increased from 25% to 30%

3. There will be no other deduction other than interest.

4. Interest on housing loans for self occupied flats allowable upto Rs.1,50,000 as against Rs. 1,00,000 for

- loans taken after 1.4.99 and
- house acquired before 1.4.03

COMMENTS

- The difference between two methods is shown

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in the table below.

Particulars	L.Y.	N.Y
Rent receivable		
* for the let out period	X	X
* for the balance period	X	NA
Less: Vacancy Allowance	X	NA
Less: Unrealised Rent	X	NA
Balance Income	X	X

LY=Last Year NY= Next Year

2. The following deductions would now be no longer available-

- * Insurance premium
- * Annual charge
- * Ground rent
- * Land revenue
- * Vacancy allowances
- * Unrealisable rent

This may not be in consonance with the spirit of the amendment-

- it seeks to tax income on actual basis rather than notional,
- and shall then logically allow expense also on actual basis, rather than notional.

3. The limit for deduction on interest would continue to be Rs.30,000 for the earlier loans.

4. The amendments are carried out mainly in secs 23 , 24 and 25AA and consequentially 25, 25A, 25B, 27 and 80-GG.

Sr. No.	Subject	
15	Income	
Sec	+/-	w.e.f.
2(24)	-	A.Y.02-03

HIGHLIGHTS

1.The scope the words

- "lottery" and
- "card game and other game of any sort" have been expanded inter alia to include the Game shows like KBC.

COMMENTS

1 Elsewhere the rate of tax has been

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- lowered and
 - prescribed
- to and at 30% for the above items.

2. Question may arise in the case of prizes in kind. Here either the winner may be required to pay the tax element back so that the same can be deducted and paid or he may be paid something over and above the prize in kind by way of TDS.

3. Question may also arise in respect of prizes won during the financial year 00-01 but disbursed during financial year 01-02.

Sr. No.	Subject	
16	Penalties	
Sec	+/-	w.e.f.
	+/-	1-6-01

HIGHLIGHTS

1. Now many of the penalties are made absolute and no more left to the discretion of the officer.

Default		
Sec	Present	Proposed
Failure to comply with the notice u/s 142(1)/143(2) or failure to get the accounts audited u/s 142(2A)		
271	1000-25000	10000
Failure to maintain books of account by professionals specified u/s 44AA		
271A	2000-100000	25000
Late filing of return		
by the persons covered under 1/6 scheme (after 31 st Oct)		
271F	500	5000
By other persons before the end of the assessment year		
271F	1000	5000
Failure to answer questions, to produce books of account and to comply with the provisions for PAN		
272A (1)	500-10000	10000

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Failure to submit statement of particulars of perquisites and profits in lieu of salaries to the employees		
272A (2)	NA	100 per day
Failure to apply for TAN		
272 BB	Upto 5,000	10000

COMMENTS:

1. Generally this has been held out to be an attempt to take away the discretion of the AO and provided a fixed penalty.
2. However, it is another thing to observe that the amounts fixed are generally on the higher side.
3. In the same breath the government has taken a chance to increase the penalties in respect of late filing of returns etc.

Sr. No.	Subject
17	Procedural Provisions

Sr.	Particulars	Para
1	Approvals	17A
2	Block Period	17B
3	Intimation	17C
4	Interest from assessee -1	17D
5	Interest from assessee -2	17E
6	Interest to the assessee	17F
7	Order giving effect	17G
8	PAN	17H
9	Reassessment	17I
10	Rectification	17J
11	Refund	17K
12	Returns	17L
13	Revision Application	17M
14	Setting aside of the assessment order	17N
15	Stay and the ITAT	17O
16	TCC	17P

Sr. No.	Subject	
17A	Procedures- Approvals	
Sec	+/-	w.e.f.
10/115B	+	1.6.01

HIGHLIGHTS:

1. Certain educational and medical institutions, which were required to be approved by the CBDT, can now be approved by the CITs.
2. Similarly for the purposes of Sec 115AB, the "Overseas Financial Organisation" has to seek approval from SEBI even for the tax purposes.

COMMENTS:

1. The idea is to avoid duplication with a well-defined role of a government agency.

Sr. No.	Subject	
17B	Procedures- Block Period	
Sec	+/-	w.e.f.
158B	+	1.6.2001

HIGHLIGHTS:

- The total period is sought to be reduced
- from "10+broken"
 - to "6+broken"

COMMENTS:

This is a rationalization following the amendment in sec 149 defining the period within which an assessment can be reopened.

Sr. No.	Subject	
17C	Procedures- Intimation	
Sec	+/-	w.e.f.
143(1)	+	1.6.2001

HIGHLIGHTS:

Time limit for issue of intimation u/s 143(1)(a) reduced from 2 years to 1 y ear.

COMMENTS:



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This is a welcome provision.

Sr. No.	Subject	
17D	Procedures- Interest from assessee -1	
Sec	+/-	w.e.f.
Various	+	1.6.2001

HIGHLIGHTS:

At present the assessee is expected to bear interest

- at varying rates ranging from 18% to 24%
- under various sections like 115P, 115S, 158BFA, 201, 206, 220, 234A, 234B, 234C

It is proposed to bring this to a uniform rate of 15% p.a.

Similar changes are proposed under the WT Act.

COMMENTS:

It is in consonance with the general reduction of rates.

Sr. No.	Subject	
17E	Procedures- Interest from Assessee -2	
Sec	+/-	w.e.f.
234A/B	-	1.4.1989

HIGHLIGHTS:

It is proposed that the interest shall be payable with reference to the assessed income and not the returned income.

COMMENTS:

This will overrule the decision of the Supreme Court in the case of Ranchi Club (164 CTR 200) retrospectively.

2. However, for the purpose of self-assessment tax u/s 140-A, it is proposed that the comparison will (obviously) be with the returned income.

Sr. No.	Subject
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17F	Procedures – Interest to the assessee	
Sec	+/-	w.e.f.
244A	-	1.6.2001

HIGHLIGHTS:

This is being brought down from 12% p.a. to 9 % p.a.

COMMENTS:

Similar changes are proposed under the WT Act.

Sr. No.	Subject	
17G	Procedures- Order giving effect	
Sec	+/-	w.e.f.
250etc	+	1.6.2001

HIGHLIGHTS:

Any order giving effect to an order u/s 250/254/263/264 shall be passed within 1 year.

COMMENTS:

Earlier there was no time limit, with a result that justice delayed was justice denied.

Sr. No.	Subject	
17H	Procedures – PAN	
Sec	+/-	w.e.f.
139A	+	

HIGHLIGHTS:

Every person who is subject to deduction or collection of tax at source shall provide his PAN to the opposite party who shall mention the same in the certificate.

COMMENTS:

Sr. No.	Subject	
17I	Procedures-Reassessment	
Sec	+/-	w.e.f.
147	+	1.6.2001

HIGHLIGHTS:

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Commencement: As against the present provision for issue of notice within 4, 7 or 10 years from the end of relevant provision, now must be issued within 4 or 6 years.

Completion: Must be made within 1 (earlier 2) years

COMMENTS:

Sr. No.	Subject	
17J	Procedure -Rectification	
Sec	+/-	w.e.f.
154	+	1.6.2001

HIGHLIGHTS:

These orders must be passed within 6 months (as against 4 years)

COMMENTS:

Though this is a welcome move, it has not be clarified as to what will happen if the AO does not pass the order within the time.

Sr. No.	Subject	
17K	Procedure- Refund	
Sec	+/-	w.e.f.
241	+	1.6.2001

HIGHLIGHTS:

Can not be withheld by the Department

COMMENTS:

1. This is one of the most pragmatic moves. So far the AO s had been withholding the refunds citing instructions and taking shelter under this provision.

2. This will usher an element of accountability in the tax administration. The AO now would no longer be able to demonstrate a better performance by wrongfully withholding due refunds.

3. We must salute the Finance Minister to be able to do this that too in a year of constraints.

Sr. No.	Subject	
17L	Procedures - Returns	
Sec	+/-	w.e.f.
139	+	A.Y.01-02

HIGHLIGHTS

1.The due dates for filing of various returns of income together with the Tax Audit report where applicable have been changed.

2.This can be summarised as under:

Sr.	Particulars	Old	New
A	Other than B-E	30/6	31/7
B	Business	31/8	31/7
C	Audit-non corp	31/10	31/10
D	Corporate	30/11	31/10
E	1/6 Scheme	Diff	31/10

3. All the companies must compulsorily files the returns even if they do not have the taxable income.

COMMENTS

1. Generally speaking, there is a preponement except salaried employees who would now get more time. The assesseees and the auditors will have to gear up to do the things faster, which probably would be better also. There will be of course some questions for example for Sec 80-HHC report, the proceeds might not have been realised by the due date mentioned.

2. The returns are required to be filed so as to keep them within the financial discipline

3. **ERRATA** The time limit for Audit-non-corporate was earlier proposed to be 31/7 which was later changed to 31/10 when the bill was passed. The said change may kindly be noted.

Sr. No.	Subject
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17M	Procedure- Revision Application	
Sec	+/-	w.e.f.
264	+	1.6.2001

HIGHLIGHTS:

The fees for filing the same has been increased from Rs 25 to Rs. 500

COMMENTS:

This was probably overdue- Rs. 25 was too less a fee.

Sr. No.	Subject	
17N	Procedure - Setting aside of the assessment order	
Sec	+/-	w.e.f.
251	+	1.6.2001

HIGHLIGHTS:

The CIT (Appeals) will now no more have the power to set aside the order of the AO and send it back to him.

COMMENTS:

This was one area where there was earlier no time limit and an assessee was being put to agony because of the initial failure of an AO to make a complete order or the CIT (Appeals) apathy to go into the details or to take a difficult decision.

Sr. No.	Subject	
17O	Procedure- Stay and the ITAT	
Sec	+/-	w.e.f.
254	+	1.6.2001

HIGHLIGHTS:

If the ITAT grants stay and does not decide within 180 days, the stay will be vacated.

COMMENTS:

1. Again it is not clarified as to what will happen in such a case and at whose cost?

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2. In other words, the ITAT may not be able to take decision due to its own factors and it would be the assessee who would suffer.

Sr. No.	Subject	
17P	Procedure - TCC	
Sec	+/-	w.e.f.
230A	+	A.Y.

HIGHLIGHTS:

Now the Tax Clearance Certificate u/s 230-A on the transfer of property no longer required.

COMMENTS

This move may one day bring in unprecedented momentum.

Sr. No.	Subject	
18	Rates of Tax	
Sec	+/-	w.e.f.
Several	+	As under

HIGHLIGHTS:

Particulars	Before	After
Basic Rates(A.Y.02-03)		
o Indls./HUFs/AOPs	30%	30%
o Cos	35%	35%
o Co-ops	35%	30%
Fixed Rates		
o Dividends(1-6-01)	20%	10%
o Lotteries (A.Y.02-03)	40%	30%
(Game Show(1-6-01)	0%	30%
o GDRs(A.Y.02-03)	10%	10%
Surcharge(As above)		
o Indls/AOPs	12/17%	2%**
o Domestic Cos	13%*	2%**
o Others	12%	2%**
* incl. 1% added during the year for National Calamity Contingency Fund		
** Gujarat Earthquake Relief Fund		

COMMENTS:

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1. General :

As against the expected hike in tax rates, FM has surprised by in fact reducing the rate and surcharge.

2. Basic Rates:

Co-ops: There is a 5% reduction.

3. Fixed Rates:

a. Dividend Tax

(Sec 115-O/115-R) This was increased only last year from 10% to 20% . Now we are back to 10%.

It has to be noted that unlike most other changes, this change in the rate is applicable from a particular date i.e. 1-6-01.

b. Lotteries etc

Sec 115BB includes inter alia winnings from any lottery or crossword puzzle or race including horse race or card game and other game of any sort or from gambling or betting of any form or nature whatsoever

Here as a measure of rationalization, the rate is reduced from 40% to 30%. Unlike dividends, this is applicable to the A.Y. 02-03.

Here it is clarified that "lottery" shall include winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever under any scheme or arrangement by whatever name called.

It is also further clarified that the "card game and other game of any sort" shall include any game show, an entertainment program on television or electronic mode in which people compete to win prizes or any other similar game.

With this the **Game Shows** will attract tax rate of 30%. This is effective from 1-6-01. A question may arise as to whether this date has to be applied to the date of recording , or the telecasting of show or of the actual receipt of the cheque.

c. GDRs

Special Scheme for taxation of GDR s has been

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now

- Clarified and
- Extended to those issued by the Govt.

Presently the scheme was applicable to the bonds or shares in an Indian company issued in accordance with the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 which refers to shares issued by way of Global Depository Receipts (GDRs)

Under the new substituted section it is proposed to use the term "Global Depository Receipts" in place of 'share'

It is than proposed to extend the concessional tax rate of 10% to GDRs issued under other notified schemes of the Central Government also Consequential amendments are also proposed in sections 47 and 196C of the Income tax act

With this ,

- all Dividend income (other than dividends declared by a domestic company) and
- long-term capital gains

derived from

- GDRs issued /re-issued against the shares of an Indian company
- GDRs issued against shares of a domestic and foreign subsidiaries on divestment by its Indian listed holding company.

Will be taxed at concessional rate.

Of course, in both cases, the GDRs should have been purchased by the non-resident in foreign currency and through an approved intermediary.

This concessional rate of tax will now be extended to income in respect of GDRs purchased by employees of Indian companies engaged in other knowledge-based sectors as well, namely, entertainment services, pharmaceutical, biotechnology and other industry or service as may be notified.

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3. Surcharge:

Foreign cos will continue to be exempt from the surcharge.

Surcharge will continue to be applicable to

- all normal income
- all special income taxable at special/flat rates e.g. LTCG @20%
- all TDS

It will be applicable on the basis or respective dates on basic of fixed rates.

4. Effective Rates

Thus the rates would translate to

Particulars	Before	After
Basic Rates(A.Y.02-03)		
o Indls./HUFs/AOPs	35.1	30.6
o Cos	39.2	35.7
o Co-ops	39.2	30.6
Fixed Rates		
o Dividends(1-6-01)	22.4	10.2
o Lotteries (A.Y.02-03)	44.8	30.6
(Game Show(1-6-01)	0	30.6
o GDRs(A.Y.02-03)	11.7	10.2
The rates mentioned are the maximum rates in the given case		

Sr. No.	Subject	
19	Research & Deve	
Sec	+/-	w.e.f.
35(2AA)	+	A.Y.
35(2AB)		

HIGHLIGHTS

Sec. 35(2AA)

Weighted deduction of 125% extended to any sum paid

- to specified persons
- for programme approved by prescribed authority.

Sec. 35(2AB)

Weighted deduction of 150% extended to

- a. Area: Biotechnology
- b. Nature of Exp: clinical trials, filing patents,

obtaining regulatory approvals.

COMMENTS

Sec 35(2AA):

1.This was available for pmt made to an approved

- National Laboratory
- University
- Indian Institute of Technology

For carrying out an approved programme.

2. Now it is sought to be extended to specified projects

3. Apparently this will cover India Millenium Mission, 2020.

Sec 35(2AB)

1. This benefit is available to any co. engaged in the business of drugs, pharmaceuticals, electronic /telecommunication equipment , computers, chemicals etc.

2. It is sought to be extended to biotechnology.

Sr. No.	Subject
20	Salaries

Description	Para
Basic Exemption	20A
ESOP	20B
Entt.Allowance	20C
Profit in lieu of salary	20D
Perquisites	20E
VRS	20F

Sr. No.	Subject	
20A	Salaries- Basic Exemption	
Sec	+/-	w.e.f.
17	-	A.Y.02-03

HIGHLIGHTS

Perquisites will not be taxed as long as annual salary is less than Rs 50,000 (from earlier



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Rs.24,000)

COMMENTS

The exemption does not extend to perk by way of rent-free accommodation.

Sr. No.	Subject	
20B	Salaries- ESOPs	
Sec	+/-	w.e.f.
47/49 115ACA	+/-	A.Y.01-02

HIGHLIGHTS

1. Law is extended to

- Other knowledge based industries
- Other similar scheme i.e. ESPS

But restricted to

- The Scheme which is in accordance with the SEBI guidelines.

COMMENTS

1. Other knowledge-based industries are entertainment, pharma, biotechnology and other notified areas.

2.. The concessional treatment is being extended to the employees of subsidiary companies whether domestic or foreign. In other words, Employees Share Purchase Scheme will also be covered.

3. SEBI guidelines are applicable only to the listed companies. Now two situations may arise

- The law will not apply to an unlisted company
- The change will apply to the unlisted company as if the Guidelines were applicable.
- The law will apply to the unlisted companies minus the Guidelines.

Apparently one can not comply with the law that is not applicable but the language would suggest that the first situation might arise on interpretation.

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4. There are three events in the case of an ESOP

- The granting
- The exercise
- The sale of the shares

5. The government has been toying with the options of taxing the ESOP's at the time of grant exercise and sale of the shares.

- The finance act 2000 had provided u/s 17(2)(iii) that the ESOP's would be taxed at the time of grant and consequently, U/S 49(2B) it was provided that the market value on such date would be cost for the purpose of subsequent sales.
- Both these provisions have been deleted but some people may be left with such ESOP's. With the view to take care of such contingencies, a provision is continued on the same lines, restricted in application to the same securities.
- It may however also apply to the ESOPs, which are issued not in accordance with the SEBI guidelines.

Sr. No.	Subject	
20C	Salaries- Entt. Allowance	
Sec	+/-	w.e.f.
16	-	A.Y.02-03

HIGHLIGHTS

The deduction in respect of entertainment allowance for those continuously in the same employment since 1.4.1955 has been deleted.

COMMENTS

This provision had outlived its utility.

Sr. No.	Subject	
20D	Salaries-Profit in lieu of	
Sec	+/-	w.e.f.
17	-	A.Y.02-03

HIGHLIGHTS

Profit in lieu of salary, while not being in employment, i.e. amounts received

- lump sum or other wise

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- from future or past employer
- either before taking or after ceasing to be in employment. would be taxable.

COMMENTS

This gives blow to the time tested theory of that only the payments arising out of contract of employment can be taxed.

A view is sought that the new provision of S. 17 could bring to tax even the payments like non-compete compensation will be taxed as salary which was earlier exempt from tax.

Sr. No.	Subject	
20E	Salaries-Perquisites	
Sec	-	w.e.f.
17	-	A.Y.02-03

HIGHLIGHTS

- A new item has been added to the list of perquisites – “ the value of any other fringe benefit or amenity as may be prescribed”
- Value of perks, benefits or amenities would be worked out on the basis of cost to the employers
- This concept will not be extended to house and cars where different criteria will be adopted for simplicity.

COMMENTS

There were areas where the income in the hands of the employee was much less than the outgo and deduction in the hands of the employer. This is an attempt to plug the same. Of course this will come through Rules which will have to be seen.

With this a full circle is completed from an era

Employer	Employee
Partly disallowed	Partly not taxed
Fully allowed	Partly not taxed
Fully allowed	(almost) Fully taxed

While hitting those in higher brackets, there is a relief for those in lower brackets - an enhanced benefit u/s 88 of 30% as against 20% as at present.

The new perquisite rules in respect of interest free loans have been clarified to be applicable to the outstanding loans and just to new loans. The circular issued by CBDT for tax deduction at source in respect of salary income clarified that perquisite value of such loans was to be calculated on the basis of the maximum outstanding monthly balance by the simple interest method.

Further, exemption was given, vide the said circular, to treatment of perk in respect of accommodation provided to an employee at a remote area project execution site till the commissioning of the project. Thus, the accommodation would be taxable as perquisites after the commissioning of the project.

Sr. No.	Subject	
20F	Salaries-VRS	
Sec	+/-	w.e.f.
10(10C)	+	As under

HIGHLIGHTS

Exemption extended to employees of

- all State Govt.(AY 2001-02)
 - Central Govt. (AY 2002-03)
- (For the tax treatment of VRS in the hands of Employer, see elsewhere)

COMMENTS

The benefit is still not available to an employee of a partnership or proprietary firm.

Sr. No.	Subject
21	Software Development

HIGHLIGHTS:

1. It is proposed to clarify and provide some important elements of this set of deductions.

Particulars	Para
a. Eligibility – Beginning	A
b. Eligibility – Location	B
c. Eligibility – Business	C
d. Eligibility – Profit	D



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e. Eligibility – Composition	E
f. Eligibility – Deduction	F

These are discussed here after

Sr. No.	Subject	
21	Software Development Eligibility – Beginning	
Sec	+/-	w.e.f.
10A	+	A.Y.01-02

HIGHLIGHTS:

In the event of relocation of a unit from a Free Trade Zone into Special Economic Zone the period of ten years shall be reckoned from the date the unit first began to manufacture or produce articles or things or computer

COMMENTS

The law will be status neutral.

Sr. No.	Subject	
21B	Software Development Eligibility – Location	
Sec	+/-	w.e.f.
10A/80HHE	+	01-02

HIGHLIGHTS:

Exemption extended to “on-site” services, over and above “off-site” work (i.e. exports)

COMMENTS

In other words, Indian companies have an option better than the body shopping.

Sr. No.	Subject	
21C	Software Development Eligibility – Business	
Sec	+/-	w.e.f.
10B	+	A.Y. 94-95

HIGHLIGHTS:

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1. For the purpose of sec 10B, the concept “Produce” will extend

- not only to “computer programmes”
- but also to “processing or management of electronic data”

COMMENTS

1. Sec 10B has been on the statute from 1.4.1989.
2. With a view of enlarging its scope, an Explanation was added by the Finance Act, 1994 w.e.f. A.Y.1994-95 to define “produce” to include production of computer programmes.
3. There were some doubts as to whether this would include the activity of processing and managing electronic data.
4. This is what is sought to be covered now.
- 5 This has been done by inserting a separate provision in sec 10BB
6. The amendment is effective retrospectively from A.Y. 94-95 i.e. the date from which an explanation was inserted in the first place.
7. It will apply for the period from that date to 1.4.2000 i.e. the date on which Sec.10B was substituted.

Sr. No.	Subject	
21D	Software Development Eligibility – Profit	
Sec	+/-	w.e.f.
10A/B	+	A.Y. 02-03

HIGHLIGHTS:

1. For the purposes of both sec 10A and 10B “Export Profit” and “Export turnover” defined to include only the one relevant to the export business (Export undertaking) as compared to the total business

COMMENTS:

1. There are two elements here
 - what is the profit of the undertaking
 - what is the profit of the export activity
2. The first limb is sought to be taken care by

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ensuring that the “profits”, “turnover” and “export turnover” are reckoned with the undertaking and not the business as a whole.

3. The second limb is sought to be taken care by deleting the 3rd proviso which allowed profit to DTA (Domestic Tariff Area) sales as export sales.

Sr. No.	Subject	
21E	Software Development Eligibility – Composition	
Sec	+/-	w.e.f.
10A	+	A.Y 01-02

HIGHLIGHTS:

1. The condition re: prohibition of transfer beyond 51% not applicable to listed companies.

COMMENTS

1. The candid fact is that in the case of the Infotech companies the real commodity is the share capital itself. We have seen enough stories about the dotcom companies being taken over by larger fish.

2. This is a genuine need in the case of this highly capital intensive and ever growing industry and we need appropriate mindset to accept that this is not a tax avoidance exercise.

3. Apart from this, the normal care for contingencies which is found in such provisions is not to be seen. For example a situation where a firm gets dissolved or where a partner may be added on the death of another partner.

Sr. No.	Subject	
22	Tax Audit	
Sec	+/-	w.e.f.
44AB	-	A.Y.01-02

HIGHLIGHTS

1. “Accountant”

If the accounts are audited under some other

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law, we need

- Report under that law
- Further report under IT Act.

2. “Due Date”

It has been proposed that the dates for finalizing and filing the Tax Audit reports be changed as under

Class of Assessee	Present	Proposed
Companies	31Dec	30Nov
Other than companies	30Oct	31July

COMMENTS

1. “Accountant”

The “Further Report” has to be signed by an “Accountant”

2. “Due Date”

This is in line with the amendment introduced in Sec 139.

The amendment has been specified as of 1-6-01. In other words, it is applicable for the running year and appropriately the auditors will have to gear up themselves.

Sr. No.	Subject
23	Tax Deduction at Source

Sr. No.	Subject	
23A	TDS-Bottom Line	
Sec	+/-	w.e.f.
194A	-	1.06.01

HIGHLIGHTS:

Item	Before	After
Interest	Rs 5,000/ 10,000	Rs.2,500

COMMENTS

This is a retrograde amendment-a petty mind for a petty mind !

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Sr. No.	Subject	
23B	TDS- Rates of deduction	
Sec	+/-	w.e.f.
194B/H	--	1.6.01

HIGHLIGHTS

Item	Before	After
Game Shows Commission & Brokerage	0	30%
	0	10%

Except on transaction re: shares & Securities

COMMENTS

1. In the case of Game shows etc. questions may arise on the day on which the law should be applied – the date of the recording, the day of telecast or the day of payment.
2. Generally it is possible to observe that if the credit for commission or brokerage is recorded before 1.6.01, the liability for TDS may not arise.
3. Insurance commission and professional services are kept outside the scope of this section as they are covered u/ss. 194D and 194J.

Sr. No.	Subject	
23C	TDS-Provision of Particulars	
Sec	+/-	w.e.f.
192	-	1.06.01

HIGHLIGHTS

The employer should furnish to the employees a statement giving correct and complete particulars and value of

- perquisites or
- profits in lieu of salaries provided to them.

COMMENTS

This was probably overdue because surveying the companies was not enough in detecting the variances in the reported and availed benefits and amenities.

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Sr. No.	Subject	
23D	TDS/TCS: Failure – consequences	
Sec	+/-	w.e.f.
201	-	1.4.62

HIGHLIGHTS

Now the provisions would apply even if the default either in deduction or in collection of tax is not full but only part.

COMMENTS

1. This will overrule the decision of the ITAT in the case of Associated Cement Companies Ltd.(74 ITD 369), where the ratio was that the provision would not apply when the tax is not deducted at all. This will probably give the department a double edge because it will be able to recover the tax not only from the one from whose the tax was due but also from whom the deduction of tax was due.
- 2.This will also nullify the decision of the AP High Court in the case of P.V.Rajgopal (233 ITR 678)
3. The amendment will be retrospective from the date on which the Act was enacted i.e. 1-4-62.

Sr. No.	Subject	
24	Transfer Pricing	
Sec	+/-	w.e.f.
92	-	A.Y.02-03

HIGHLIGHTS

A wholly new concept with detailed regulations is being sought to be introduced. This can be broadly classified in the following:

Particulars	Para
Basic Principles	24A
Important Terms	24B
Obligations of assessee	24C
Rights of the Department	24D

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| Consequences on failure to comply | 24E |

under:

COMMENTS

1. This is one of the most strategic and far reaching provisions that was needed and now enacted.

2. This will prevent erosion of the Indian tax base.

3. It has defined the various terms in a wide manner and one has to see how the same be applied.

4. However it does not address some of the issues like intangibles, e-commerce, global trading derivatives etc.

5. It does not provide Advance Pricing Arrangement facility

Sr. No.	Subject	
24A	Basic Principles	
Sec	+/-	w.e.f.
92	-	A.Y.02-03

HIGHLIGHTS

The introduction of Transfer Pricing Regulations is one of the most important and far reaching anti-avoidance provisions proposed to be introduced by the Bill.

The provisions concern

- international
- transactions

between

- associated
- enterprises.

Not at

- Arm's length prices

Both at the levels of

- Recognition of income
- Distribution of costs/expense

COMMENTS

1. A broad distribution of the provisions is as

Sec	Particulars
92	Income from Intl Trans at Arms Length
92A	"Associated Enterprise"
92B	"International Transaction"
92C	Computation of Arm's Length Price
92D	Maintenance of Records
92E	Report from accountant
92F	Definitions

2. Some provisions akin to this were already existing under our statutes. A representative list follows.

Sec	Act	Description
2(22)	IT	Deemed dividend
(e)		
40(b)	IT	Pmts to partners
40 (c)	IT	(Old) Pmts to Directors
40A(2)	IT	Pmts to interested parties
295	CA	Loans to Directors
297	CA	Restrictions on <ul style="list-style-type: none"> • contracts • other arrangements in which directors are interested.
299	CA	Disclosure of interests by Directors
301	CA	Register of such contracts
372A	CA	Restrictions on loans and investments
314	CA	Restrictions on holding of place of profit
Sch VI	CA	Disclosure of transactions with Directors/ Cos where they are interested
Legend		
IT		Income-tax Act
CA		Companies Act

3. Similar provisions also exist under various other other laws like Central Excise, Labour laws etc.

4. The present amendments however seem to be much more far reaching and general. Further by targeting the international companies, it also



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would encompass international tax law, jurisprudence and practice.

5. Though it presently is focussed on the income tax, a day will not be far when it will be given a FEMA angle.

Sr. No.	Subject	
24B	Important Terms	
Sec	+/-	w.e.f.
92A/B/F	-	A.Y.02-03

HIGHLIGHTS

There are four basic definitions interwoven as follows:

- An **Enterprise**

Which is an

- **Associated Enterprise**

Which is engaged in

- **Transactions**

Being

- **International transactions**

At a price

- Which is an **Arm's length price**

Both on the

- Income and
- Expense side

Enterprise

The term has been widely defined to mean a person who is engaged or proposes to engage, whether directly or indirectly, in India or abroad, in any activity relating to:

- Production, storage, supply and distribution of articles or goods and intellectual property;
- Provision of services; and
- Investment and finance.

Associated enterprise/s

This term has been defined to mean an enterprise, which:

Participates

- directly or indirectly
- in the management or control or capital of the another enterprise; or

Is managed and controlled,

- directly or indirectly,
- by a person, who also directly or indirectly, manages and controls another enterprise.

Fits in some other conditions like

- equity ownership in excess of prescribed limits,
- granting of loans in excess of prescribed limits,
- guaranteeing borrowings in excess of prescribed limits,
- business interdependence, etc.

Transaction

The term "transaction" for this purpose means any

- arrangement, understanding or
 - action in concert,
- whether
- formal or not and
 - enforceable or not.

International transaction

The term "international transaction" has been defined as a transaction

- between two or more associated enterprises,
- either or both of whom are non-residents. involving
- Purchase, sale or lease of tangible or intangible property;
- Provision of services;
- Lending and borrowing of money;
- Mutual agreements/arrangements for the allocation or apportionment of any cost or expense incurred; and
- Any other transaction which have a bearing on the profits, income, losses or assets of an enterprise.

Arm's Length Price

The term has been defined as a price, which is applied/to be applied in a transaction between independent persons in uncontrolled conditions.

Section 92C prescribes the following methods as being appropriate for determining the arm's



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length price of an international transaction:

- Comparable uncontrolled price method;
- Resell price method;
- Cost plus method;
- Price split method;
- Transactional need method; and
- Such other method as may be prescribed by the Central Board of Direct Taxes.

The appropriate method to be adopted will depend on

- the nature of the transaction/class of transactions,
- class of associated persons,
- functions performed and
- other factors which may be prescribed.

In case more than one price is determined by applying the most appropriate method, the arms length price shall be taken as to be the arithmetical mean of such prices.

COMMENTS

It has to be noted that the Arm's length price is to be applied on both the arms i.e.

- Income and
- Expense/costs

In other words, one has to be able to establish that on the neither side there is any unfair pricing or distribution, which will help show an enterprise an unfair tax results.

Sr. No.	Subject	
24C	Obligations of Assessee	
Sec	+/-	w.e.f.
92D	-	A.Y.02-03

HIGHLIGHTS

Every person entering into an international transaction to:

- Keep and maintain prescribed information and documents in respect thereof, for a prescribed period; and
- Furnish any information and documents in

the course of any proceedings under the Act.

- Obtain and furnish a report from an accountant in a prescribed form and within a prescribed period.

COMMENTS

1. The provisions would encompass a vast range of areas, criteria, terms and tests.

2. It will force a tax professional to look at the business side of the transactions in an objective yet judgmental way.

Sr. No.	Subject	
24D	Rights of Department	
Sec	+/-	w.e.f.
92D	-	A.Y.02-03

HIGHLIGHTS

1. Under the new provisions, the Departmental Authorities, based on information or documents in their possession, can make adjustments in computing the income of the tax payer from international transactions using arm's length pricing, if in their opinion:

- the price charged in the international transaction is not an arm's length price; or
- the information and documents relating to international transactions have not been maintained by the tax payer as prescribed; or
- the data used in computation of the arm's length price is not reliable or correct; or
- the taxpayer has failed to furnish the information and documents called for by the Revenue authorities.

COMMENTS

While removing discretion at various places over the years, this provision makes up for all the powers lost by the authorities. Nothing can be vaster , general and all encompassing than this.



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Sr. No.	Subject	
24E	Consequences for non-compliance	
Sec	+/-	w.e.f.
92C	-	A.Y.02-03

HIGHLIGHTS

1. Deeming.

The difference between the transaction price and the arm's length price determined by the assessing officer will be deemed to be income concealed.

2. Denial

In case transfer-pricing adjustments are made to the taxpayer's income, the benefit of tax holidays would not be available to the adjustments, even if the taxpayer is otherwise eligible for a tax holiday on such income.

3. Penalty

- The maximum penalty prescribed for this purpose is three times of the tax liability arising from such disallowance/ addition.
- Failure to keep and maintain prescribed

information and documents will attract a maximum penalty of two percent of the value of each international transaction.

- Similar penalty is also prescribed for failure to furnish any information or documents required by the tax department.
- Failure to obtain and furnish an accountant's report in the prescribed form on or before the prescribed date will attract penalty up to a maximum of Rs.1 lakh.

No penalty will be levied in case where there is a reasonable cause for default, except in the case of income concealment.

COMMENTS:

1. It is difficult to perceive that an assessee enjoying tax holiday would get trapped in this unless the primary reason for unfair pricing was repatriation abroad.

2. In other words, in case of tax holiday cases, in fact, it shall be other countries that should be worried because India offers some of the best tax holidays all over the world.