



**BUDGET
2004**

BUDGET 2004

*HIGHLIGHTS
&
COMMENTS*

FORESIGHT . INSIGHT . . HINDSIGHT . . . SMARTSIGHT

MUMBAI OFFICE: 29, Khimji Meghji House, 3rd Floor, 11/15, Issaji Street, Vadgadi, Mumbai – 400 003. India

Tel.:2340 0882 •Fax.: 2342 0195 Gram: MASTERPLAN↔MASTERPLAY•Email: amcon.mumbai@amcount.com

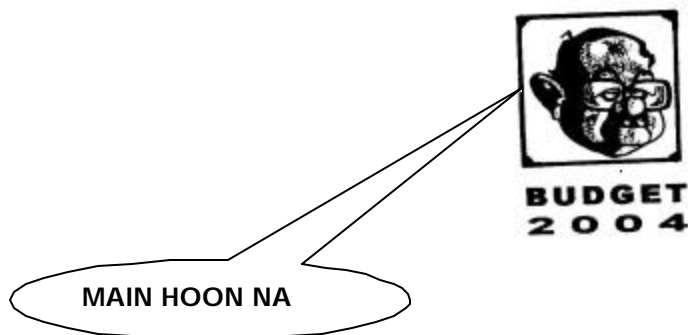
PUNE OFFICE: B/5, Shardaram Park, 34, Sasson Road, Opp. Domino's Pizza, Near Jehangir Hospital, Pune – 411 001

Tel./Fax: (9520) 2611 3824 •Email: amcon.pune@amcount.com

Website: <http://www.amcount.com>

August 9, 2004

Dear Friends,



As usual, here is our exclusive intensive analysis of the 2004 Budgets of the Central Government and Maharashtra State Government.

This is a unique budget from a Government, headed by a Prime Minister and assisted by a Finance Minister, both of whom have presented several budgets. The duo has responded with a Main-Hoon-Na approach to make people feel happy.

It has introduced several new taxes: The E-tax (Education Cess), the G-tax (Income tax on Gifts), the S-tax (Securities Transaction Tax) and the T-tax (Tonnage Tax) and removed C-tax (Capital Gains, on listed securities, that is).

It has brought in substantial transparency and efficiency in the form of consolidation of TDS and TCS and introduction of Annual Information Return all of which will be in soft form and will be a massive database for tax assessments, which would then come out of raid-raj.

What do we expect now? As the Kelkar Committee has recommended we can expect a uniform VAT phasing out Cenvat, Service tax and a reduction in Custom duty and Income tax at the central government levels and removal of octroi and stamp duty at the state level.

The Houses accepted the Budget and approved the same with certain changes which were most agitated, e.g. in the form of S-tax by revising the tax rates and some other cosmetic changes.

We are sure that as in the past, you will continue to receive this presentation with kudos and kickbacks.

The copy is also available on our website <http://www.amcount.com>.

For Smart Consultants Pvt. Ltd.
Anand Mehta
(Director)

MUMBAI OFFICE: 29, Khimji Meghji House, 3rd Floor, 11/15, Issaji Street, Vadgadi, Mumbai – 400 003. India
Tel.:2340 0882 •Fax.: 2342 0195 Gram: MASTERPLAN↔MASTERPLAY•Email: amcon.mumbai@amcount.com
PUNE OFFICE: B/5, Shardaram Park, 34, Sasson Road, Opp. Domino's Pizza, Near Jehangir Hospital, Pune – 411 001

Tel./Fax: (9520) 2611 3824 • Email: amcon.pune@amcount.com
Website: <http://www.amcount.com>

BUDGET - 2004**THE 'MAIN HOON NA' APPROACH****INDEX**

SR. NO.	SUBJECT	SR. NO.	SUBJECT
INDIRECT TAX			
A	BOMBAY SALES TAX ACT 1959	D	MAHARASHTRA AMNESTY-BST
1.	Amnesty scheme	1.	Acts covered under the scheme
2.	Ex-parte assessment	2.	Benefit under the scheme
3.	Interest	3.	Condition for the scheme
4.	No. Remand	4.	Dealers covered under the scheme
5.	Purchase tax	5.	Dues covered under the scheme
6.	Reduction in rate of tax	6.	Duration of the scheme
7.	Refund instead of exemption	7.	Procedure under the scheme
8.	Registration	E	PROFESSION TAX
9.	Scope of rectification	1.	Time Limit For Assessments
10.	Set off to manufactures	F	SERVICE TAX
11.	Tax on restaurant sale	1.	Service Tax – New Services
B	BOMBAY STAMP ACT	2.	Service Tax – Scope Extended
1.	Rate Of Duty	3.	Service Tax – Exemption removed
C	CENTRAL SALES TAX	4.	Service Tax – Exempted
1.	Appeal before CST-AT-Scope	5.	Service Tax – Rate & Credit
2.	Cess on CST – not applicable	6.	Service Tax – Miscellaneous
3.	S.T. for units in SEZ-Abolished	G	WORK CONTRACT / LEASE SALES TAX
4.	Stay of Recovery	1.	Construction Contract
		2.	Interest on Refund
		3.	WCST on Textile PROCESSING
DIRECT TAX			
1.	Annual Information Return	13.	Double Tax Avoidance
2.	Assessing Officer – Powers	14.	Education Cess
3.	Business Deduction	15.	Income – Gift
4.	Business Loss	16.	Interest to NRIs
5.	Capital Gains	17.	Miscellaneous
6.	Charitable Trust	18.	Minimum Alternate Tax (MAT)
7.	Depreciation – installed Capacity	19.	Pension
8.	Deduction u/s. 80IA	20.	Prosecution
9.	Deduction u/s. 80IB	21.	Rebate
10.	Deduction-Medical disabilities	22.	Shipping Companies -Tonnage Tax
11.	Dividend and Bonus Stripping	23.	Tax deduction and collection at source
12.	Dividend Distribution Tax	24.	Securities Transactions Tax

ANALYSIS OF BUDGET PROPOSALS

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER BOMBAY SALES TAX ACT 1959

Sr. No.	Subject	
A1	Amnesty Scheme	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
Gov. Resoln.	+	1.7.04

Comments

The Government Resolution outlining the features of the new scheme under Maharashtra Tax Laws, as announced by FM in his budget speech is issued by now. The salient feature of the Scheme is given in separate note.

Sr. No.	Subject	
A2	Ex-parte assessment	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
33D	+	1.7.2004

Highlights

The assessing officers themselves will be authorised to set aside the ex-parte assessment orders on an application by the dealer.

Comments

At present in appeal, the ex-parte orders are normally set aside by the appellate authority and cases are remanded to the assessing officers. Now the time and cost of appeal will be saved.

Sr. No.	Subject	
A3	Interest	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
36,43A,44A	+	1/7/04

Highlights

- The rate of interest applicable to late payment and short payment is proposed to reduce from 24% to 15%.
- The interest on refunds and late refunds is also proposed to reduce from 12% to 6% and from 9% to 6% respectively.

Comments

This brings the rate of interest in parity with the market rates and Bank rates of interest, which have

been dropped considerably during last few years.

Sr. No.	Subject	
A4	No. Remand	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
	+	1.7.2004

Highlights

- The power of the appellate authorities regarding remand of assessments will be dispensed with.
- The appellate authorities will now declare the final results in their appeal orders.
- The authority of Sales Tax Tribunals regarding remand of assessment will remain unchanged

Comments

- This will save time and cost of fresh assessment of assessments remanded in appeal.
- As the orders passed on remand are again appealable, this will save cost and time of that also.

Sr. No.	Subject	
A5	Purchase Tax	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
13AA	+	1.7.2004

Comments

It is proposed to dispense with Purchase Tax u/s 13A, which is, payable @ 2% If :-

- The basic rate of tax on raw materials is 4%, and
- the finished goods are sent on consignment transfer to other States.

Sr. No.	Subject	
A6	Reduction in Rate of Tax	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
Schedules	+/-	1.7.2004

It proposed to reduce the burden of tax as given below:

Description of Goods	Change in Rate of Tax
Honey sold by Sahakari Societies up to turn over of Rs.	Fully exempt from Tax

60 Lakhs	
Cashew juice	---Do---
Ethanol sold to the oil companies.	TOT exempted
All types of electric bulbs as also fluorescent tubes, chokes, starters and their fittings	Reduced from 13% to 8%
Plastic goods	---do---
Electric wires and cables	---do---
Blocks made from Cement and fly-ash	---do---
Carbon paper	---do---
Typewriter Ribbons	Reduced from 13% to 4%
Electrical and electronic appliances	Reduced from 20% to 13%
Kerosene sold outside the public distribution system	---do---
Sweets and sweetmeats	Reduced from 8% to 4%
Drip irrigation system and parts and components thereof	Exempted from RST
Ration kerosene	RST exempted
Agricultural implements for the farmers sold at a price less than Rs 10000/	Fully exempted from Tax

Sr. No.	Subject	
A7	Refund instead of Exemption	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
41-A1	-	1.7.2004

Highlights

1. Instead of granting the exemption under section 41 of the Act, it has been proposed introduce suitable provisions under the act whereby the beneficiary purchaser can claim refund
2. It has been proposed to implement this new provision in a small way in the current year

Comments

This is proposal is with a view to make it possible to quantify the cost of concessions granted. However, there may be many beneficiaries like charitable trust etc. who are not registered under the Act. It will be difficult or costly for those to avail benefit.

Sr. No.	Subject	
A8	Registration	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
3	-	1.7.2004

Highlights

1. The statutory limit of turnover for registration of a trader other than a manufacturer or an importer will now be Rs. 5 lakh instead of the present limit of Rs. 2.5 lakh.
2. The registration certificates of all such traders whose turnover was less than Rs. 5 lakh in the previous year will be automatically stand cancelled.
3. There will be no change in existing turnover limit for registration of liquor dealers.
4. No changes are proposed in the minimum turnover limits (Rs 2.5 lakh) applicable to manufacturers and importers. However, the minimum value required of manufactured / imported goods has been proposed to increase from Rs 10000/ to Rs 25000/.

Comments

1. Small traders will be relieved from the responsibilities of filing of returns, assessment, maintenance of records etc.
2. Reduction in number of registered dealers by 20% approx., will substantially reduce the work of the Department.

Sr. No.	Subject	
A9	Scope of Rectification	
	<i>Amended</i>	
Sec.	+ / -	W.e.f.
62	+	1.7.2004

Highlights

The scope of the provision relating to rectification of orders is proposed to enlarge so as to enable the dealers to apply for rectification in respect of missing declaration Forms, which are produced after the assessment is completed.

Comments

At present once the assessment is passed, there is no option but to file an appeal against the demand raised by assessing officer for non production of such forms /declaration. This change will also save time cost and reduce paper work.

Sr. No.	Subject	
A10	Set Off to Manufactures	
	<i>Amended</i>	
Sec.	+ / -	W.e.f.
41D	+	1.7.2004

Highlights

1. It is proposed to reduce the retention level from 3% to 2% on locally purchased raw materials by the manufactures consequently setoff will stand increased by 1% point.

2. Similarly the retention level on purchase of capital assets used for manufacturing has been proposed to reduce from 4% to 2%.
3. In case the manufactured goods are sent on consignment transfer to other States, at present the retention is 6% of the purchase price, which has been proposed to reduce to 3%.
4. It has been proposed to fully eliminate the burden of tax on inputs in the next three years.

Comments

This will result in higher set off to the manufacturer and reduction in cost of inputs.

Sr. No.	Subject	
A11	Tax on Restaurant Sale	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
--	+	--

Highlights

1. The restaurants having annual turnover of less than Rs 50 Lakhs are allowed to pay Tax on sale as per concessional slab rate. It is proposed that now this concession will be available to restaurants having turn over in excess of this amount also.
2. Since April 1999, TOT and SC are applicable

Restaurant sale in addition to slab rate also but many dealers have not paid TOT and SC. It is proposed to give administrative relief where by if the amount of TOT and SC is paid before 30th Sept. 2004, no interest and penalty will be charged.

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER BOMBAY STAMP ACT

Sr. No.	Subject	
B1	Rate of Duty	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
Schedule	+/-	1.7.2004

Highlights

1. Rate of stamp duty on conveyance of immovable property has been reduced maximum to 5%, which was earlier 10%. This is effective from 1st July, 2004. stamp duty on leave and license agreement heavily increased.
2. The minimum stamp duty is increased to Rs. 100/-. Earlier Affidavit, Agreement, acknowledgment (for debt above Rs. 10,000/-) etc. were liable to stamp at less than Rs 100/-, now increased to Rs 100/-.

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER CENTRAL SALES TAX ACT

Sr. No.	Subject	
C1	Appeal before CST-AT-Scope	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
19,20	+	To be notified

1. It is proposed to provide that the disputes before the Central Sales Tax Appellate Authority (CAA) shall be in respect of inter state branch transfer read with section 9 (levy and collection of tax under the CST Act) by the appropriate state authority.
2. The amendment is clarification in nature. CAA was constituted by Finance Act of 2001 to settle dispute between various state governments on matter relating to sale of goods in the course of inter state trade and commerce. The appellate authority's jurisdiction is limited to settlement of inter state dispute arising in cases of "Inter state stock transfers vis a vis inter state sales".
3. It appears that the appeals in respect of other grounds like production of declaration forms (form-C, Form-H etc), Goods return, claims u/s 6(2) etc may continue to be filed before the appellate authority in the state of the dealer, where it is assessed for the transaction.

Sr. No.	Subject	
C2	Cess on CST – not applicable	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
	+	NA

Highlights

1. Neither the proposed amendments to the CST Act, nor chapter VI (Education Cess) of the Finance Bill (No.2), 2004 provide for 2% Education Cess on CST. In the circumstances, 2% Education Cess is not payable on the amount of CST payable.
2. However, the amount of Cess payable on the excise or the customs duty would in turn increase the 'sale price' on which CST is leviable. Therefore, to that extent there will be marginal, consequential increase in the incidence of CST payable on 'inter-state sales'.

Sr. No.	Subject	
C3	S.T. for units in SEZ-Abolished	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
8	+	To be notified

Highlights

1. Finance Act 2002 had provided for exemption of CST on sales of any goods made to a unit set up in Special Economic Zone (SEZ). It is now proposed to extend the benefit for the purposes of setting up (development) operation and maintenance of SEZ also.

Comments

1. Now the sales made by the dealer in the interstate trade or commerce to a registered dealer for the purposes of Setting up, operation, Maintenance, Manufacture, Trading, Production, Processing, Assembling, Repairing, Reconditioning, Re-engineering. Packaging or for use of packing material or packing accessories to a unit located in any SEZ or for development, operation and maintenance of SEZ by the developer of SEZ Will not attract any CST if the unit/developer of SEZ issues declaration in form 'I'.

2. Since, Inter-state works contracts and lease transactions are also covered under the broad definition of 'sale' under the CST Act, such SEZ unit or developer of SEZ may also issue form I to avail exemption of CST on contract awarded for works contract and lease transactions.

3. To avoid practical difficulty, now it is proposed that the concerned SEZ unit of the developer of SEZ

would obtain the declaration form I from the SEZ authority and the same would be submitted by the claimant dealer to avail the exemption of CST.

Sr. No.	Subject	
C4	Stay of Recovery	
	Introduced	
Sec.	+ / -	w.e.f.
22(1A)	+	To be notified

Highlights

Sub section 1A is proposed to be inserted to section 22 to authorize CAA to grant stay on recovery of disputed amount.

Comments

1. By insertion of the sub-section, the power to grant stay of operation of order of the assessing authority against which the appeal is filed before the authority is now proposed to be granted.

2. The appellate authority may order pre-deposit of tax before entertaining the appeal or while granting such stay. However, the appellate authority shall take into regard the tax paid by the appellants under the general sales tax law of the state concerned.

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER MAHARASHTRA AMNESTY

The Maharashtra Government has announced '**Amnesty Scheme 2004**' by a resolution dated 1st June 2004. Some salient features of the said scheme are as under:

Sr. No.	Subject
D1	Acts Covered Under The Scheme

1. Bombay sales Tax
2. Central sales tax
3. Entry Tax (Motor Vehicle)
4. Luxury Tax
5. Sugarcane Purchase Tax
6. Motor Spirit Tax
7. Works Contract Sales Tax
8. Lease sales Tax
9. Entry Tax (Goods)

Sr. No.	Subject
D2	Benefit under the scheme.

Application made during Phase I

1. 50% of Disputed amount of Tax
2. 95% of Interest and Penalty as per order relating period up to 31st March, 2000
3. 90% of Interest and Penalty as per order relating period after 31st March, 2000
4. 95% of the post assessment interest and

penalty

5. If orders (other than penalty) are passed but no penalty order is passed till 31st May 2004, no such order will be passed in future.

6. For unassessed period if penalty u/s 36(4A) has not been levied no such penalty will be levied in future

Application made during Phase II

There will be similar benefit as mentioned above for Phase I, except the quantum of benefit at Sr. No 1, 2 and 3 will be reduced to 40%, 90% and 80% respectively.

Sr. No.	Subject
D3	Condition For The Scheme

1. The payment of 'requisite amount' i.e. all the dues for the period after reducing the amount of benefit as per the scheme shall be made during the period of Scheme.
2. Application in prescribed form shall be filed with appropriate officer.
3. Pending appeals / petition shall be withdrawn

unconditionally.

4. Unregistered dealers shall make application for Registration.

Sr. No.	Subject
D4	Dealers Covered Under The Scheme

1. Registered Dealer
2. Unregistered Dealers including those whose RC are cancelled
3. Units covered under Package Scheme - Deferral or exempted.

Sr. No.	Subject
D5	Dues Covered Under The Scheme

1. Assessed dues - order passed on or before 31st May 2004.
2. Interest due on unassessed period - dues as per orders (Assessment, Rectification, Revision, Appeal, Re-assessment passed on or after 1st June 2004.
3. Dues for which stay has been granted

Sr. No.	Subject
D6	Duration of the scheme

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER PROFESSION TAX

Sr. No.	Subject	
E1	Time Limit for Assessments	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
	+	1.7.2004

1. Phase I: 1st July to 31st August 2004
2. Phase II: 1st Sept. to 30th November 2004

Sr. No.	Subject
D7	Procedure under the scheme

1. Work out the quantum of benefit and balance amount payable period wise.
2. Make payment of amount payable through separate challan for different period before the last date of scheme
3. Withdraw pending appeals / petitions.
4. If unregistered dealer makes application for Registration, prepare separate application (In Annex II to the Scheme) for different periods.
5. Submit application before the last date along with proof of :
 - 5.1. Payment of requisite amount
 - 5.2. Unconditional withdrawal of appeal
 - 5.3. Application for Registration
6. The officer will scrutinise the application and if there is any defect he will ask dealer to make it good within 15 days of submission or will pass the order of accepting the same within 15 days.

1. It has been proposed to introduce time barring provisions along the lines of Sales Tax Act.
2. These provisions will become applicable in respect of periods starting on or after the 14.2004.
3. As an administrative measure, it is also proposed not to take up assessments of employers for periods ending on or before the 31st March 2002.

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER SERVICE TAX

Sr. No.	Subject	
F1	Service Tax – New Services	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
Various	-	10.9.2004

The following additional services are being covered in the net of service tax:

1. Business exhibition services
2. Airport services
3. Transport of goods by road by a goods transport agency
4. Transport of goods by air
5. Survey and exploration of minerals
6. Opinion poll services
7. Intellectual property services other than copyrights.
8. Forward contract services
9. Pandal or Shamiana services

10. Outdoor catering
11. TV or radio programmer production
12. Construction services in respect of commercial or industrial buildings or civil structures excluding construction airport, long distance pipe line and transport terminal.
13. Travel agents (other than air / rail travel agents).

It is clarified that the services tax is being restricted to the risk cover in life insurance service.

Sr. No.	Subject	
F2	Service Tax – Scope Extended	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
Various	-	9.7.2004

Scope of certain existing services is being extended as follows:

1. Commission and installation of plant, machinery or equipment to include "erection" thereof.
2. Stock brokers to include sub-brokers.
3. Cable operator service to include Multi System Operators.
4. Business auxiliary service also to include service relating to procurement of inputs, production of goods or provision of services on behalf of client. However, activities excluded from the scope of service tax.
5. Financial services also to include other specified financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit, bill of exchange, providing a bank guarantee, overdraft facility, bill discounting, safe deposit, lockers or safe vaults and operation of bank accounts. The interest amount, would, however, remain excluded from purview of service tax. In addition to banking company, financial institutions including a non-banking financing company, body corporate, any other commercial concern providing financial services will also be covered.
6. Tour operator services will include such package tour operators also who organize tours involving any mode of transport.

Sr. No.	Subject	
F3	Service Tax – Exemption removed	
Sec.	+ / -	w.e.f.
Various	-	9.7.2004

The following service tax exemptions are being removed:

1. Exemption to services in relation to safe deposit lockers and vaults.
2. Maintenance or repairs of computers under a maintenance contract or by the manufacturer.
3. Mandap keeper services provided by hotels. However, 40% abatement will be allowed if catering is also provided.
4. Commission agents, other than those dealing in agricultural produce, under business auxiliary service.
5. Broadcasting service provided by cable

operators.

6. Reduction of abatement from 90% to 60% for non-packing tours.

Sr. No.	Subject	
F4	Service Tax – Exempted	
Sec.	+ / -	w.e.f.
Various	+	9.7.2004

Following new Exemptions are provided:

1. 40% abatement in convention service when catering is also provided.
2. 60% abatement to rent-a-cab scheme operators.

Sr. No.	Subject	
F5	Service Tax – Rate & Credit	
Sec.	+ / -	w.e.f.
Various	+/-	10.9.2004

1. The rate of service tax is proposed to be raised from 8% to 10%. In addition, the Education Cess @2% of Service Tax shall also be applicable.
2. Credit for service tax and excise duty (Cenvat) is being extended across good and services.

Sr. No.	Subject	
F6	Service Tax – Miscellaneous	
Sec.	+ / -	w.e.f.
--	+	10.9.2004

Other Important Changes are as follows :-

1. Mandatory penalty for non-registration is being removed.
2. The present rate of interest of 15% on delayed payment of service tax is being replaced by a range, from 10% to 36% per annum. The Central Government will have the power to notify the rate of interest on delayed payment service tax within this range.
3. If the charges levied are inclusive of service tax then the service tax is required to be paid on gross amount charged or received.
4. If the input supplier has not paid the service tax credit cannot be recovered from the person availing steps in terms of Rule 5.

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER WORK CONTRACT / LEASE SALES TAX

Sr. No.	Subject	
G1	Construction Contract	
	<i>Amended</i>	
Sec.	+ / -	W.e.f.
Notification	+	8.7.2004

Comments

1. A list of contracts covered under the expression 'construction contract', used under the Act has been notified since last few years. It has been proposed to enlarge the scope of this expression and notify a

fresh list with retrospective effect - 1st May 1998.
2. As lower rate of tax was applicable to construction contract this will have effect of reducing tax liability of certain contractors.

Sr. No.	Subject	
G2	Interest on Refund	
	Introduced	
Sec.	+ / -	W.e.f.
9A, 9B /8B, 8C	+	--

Comments

1. It is proposed amend the Works Contract Sales Tax Act and Lease Sales Tax Act to incorporate provisions for interest on refunds under the respective Acts.
2. At present there is no substantive provision for interest on refund under Works Contract and Lease Sales tax statute. The Interest on refund was granted on the basis of provisions under BST Act but according to recent Supreme Court Judgment grant of such interest is inadmissible

unless there is a substantive provision in the respective Act.

Sr. No.	Subject	
G3	WCST on Textile Processing	
	Introduced	
Sec.	+ / -	w.e.f.
--	+	--

Highlights

1. It is proposed, as an administrative measure, not to recover works contract tax on textile processing for periods up to the 31st March 2004.
2. Similar relief with suitable modifications is proposed to other such industries also.

Comments

This proposal is with a view to grant relief from past period liability on textile units because of the High Court decision that the activity of textile processing is a work contract liable to tax under the Act.

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER INCOME TAX

Sr. No.	Subject	
1	Annual Information Return	
	Introduced	
Sec.	+ / -	w.e.f.
285BA	-	1.4.2005

Highlights

1. All assessees and authorities will be required to file Annual Information Return in respect of specific type of transactions exceeding the specified limits.

Who	What
a) Prescribed person in the office of Government, b) A local authority or other public body or association. c) Registrar or sub-registrar- Registration Act, d) Authority- the Motor Vehicle Act, e) Post master general, f) Collector- the Land Acquisition Act, g) Recognized stock exchange, h) Officer -RBI and; l) Depository- the Depositories Act	a) Purchase, sale or exchange of goods or property or right or interest in a property or b) Rendering any service which may be prescribed, c) Work contract, d) Investment made or an expenditure incurred or e) Taking or accepting any loan or deposit.

Comments

1. Presently there was only an enabling provision for filing of statement of financial transactions as may be prescribed by appropriate rules. No such rules were actually prescribed.
2. Now the basic law is enacted in the Act itself. This has the following features :-
3. This is very clear and conclusive as regards WHO and WHAT as mentioned above. Here, apart from Assessees, authorities are also roped in and instead of only one who is entering; one who is recording a financial transaction is also covered. It is also clear as regards the defect and correction of such returns on the same lines as the tax returns.
4. However, provision has been made for the rules to prescribe-
• WHAT? - Item b) above.
• WHO? + WHAT? For HOW MUCH?
• (Amounts exceeding Rs. 50,000/-)
• HOW? The soft form.
• TO WHOM? I-T or other authority or agency
• WHEN?
5. Failure on part of these persons will attract penalty of Rs. 100/- per day of default u/s 271FA. No provision is made for any appeal against such order.
6. The law is applicable from 1.4.05. One does not need to worry as the Notes to Clauses clarify that it is applicable to transactions entered into, on or after 1.04.05.
7. The days are not far when a central super computer collates the privately collected information with your returns of income. There is an equal

chance of a super duper misusing such information.

Sr. No.	Subject	
2	Assessing Officer – Powers	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
142A	-	15.11.1972

Highlights

As per the proposed amendment, powers have been widened in the hands of the Assessing Officer to refer the matter to the valuation officer for the purpose of computing the income u/s. 69 or 69B in relation to unexplained investment, bullion, etc.

Comments

- Under the Income Tax Act, the power of reference to Valuation Officer was found only in Sec. 55A in relation to Capital Gains.
- Recently, the Supreme Court in the case of Smt. Amiya Bala Paul v. CIT [262 ITR 407] held that the right to refer the matter to the valuation officer is not available to the Assessing Officer in relation to determination of income.
- The amendment has knocked down the ruling of the Apex Court that too retrospectively w.e.f. 15.11.72 i.e. the date on which the authority of Valuation Officer was created by the Taxation Laws Amendment Act, 1972 to clarify that the AO has and always had the power to make reference to the VO.
- It has been however clarified that such retrospective effect will not apply to the assessments, which are completed and became final before 30-9-2004. It means that those assessments which are yet not final and whereby the issue is still open for adjudication before the appellate authority, the amendment would come in a way against the assessee.
- Further, one also may have to see whether, constitutionally, the powers now conferred upon the Assessing Officer can be said to be available before the Assessing Officer with retrospective effect.

Sr. No.	Subject	
3	Business Deduction	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
40(ia)	-	1.4.2004

Highlights

- It is proposed to regulate the deduction in respect of the following items :-

- 1.1. Interest
- 1.2. Commission or Brokerage
- 1.3. Fees for professional services
- 1.4. Fees for technical services
- 1.5. Payment to a contractor or sub-contractor for work
2. The regulation will take place in the form of denial of deduction if the tax is not deducted or after deduction has not been paid within the specified time limit.
3. There is a relief, of course. The deduction will be allowed in a subsequent year in which the tax is deducted/paid.

Comments

- Background and Rationale :-
 - 1.1. We already have provisions for deduction of tax at source. We then have interest/penalty and recovery provisions to enforce the same. In these days of tight monies, these are not found sufficient.
 - 1.2. We already had a provision like Sec. 40(a)(i) to deny deduction from income to the Assessee when he denies deduction of tax in case of an NRI. This provision is now being extended to all the deduction of tax at source.
- Limitations :-
 - 2.1. It is not applicable to all the types of TDS. For example, TDS on salary is not covered.
 - 2.2. The law applies if tax is not deducted. It does not take into account if there is a reason (like exemption certificate from ITO) or logic (like bonafide belief)
 - 2.3. Further, it is clear that the deduction will be allowed in the year in which the amount of TDS is actually paid. However, there is no provision for deduction of the expenditure in case if the TDS is paid within the same year, though belatedly.
- Another catch is that these provisions may be applicable to transactions after 1.4.2004 and hence even the transactions prior to the budget may get covered.
- Similarly, it does not recognize if the payee has paid the tax in his hands and would therefore now resist the deduction of tax at source by the payer.

Sr. No.	Subject	
4	Business loss	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
71	-	1.4.2005

Highlights

An amendment has been proposed to provide that no set off will be allowed for such business loss against the salary income.

Comments

1. It was felt that the salary earners were taking undue advantage of the benefit of setting off their business loss against their salary income.
2. The amendment seeks to plug the loophole.
3. However, there is still no bar against setting off of loss :-

Under the head	Against
"House Property"	Any incl "Salaries"
"Other Sources"	Any incl "Salaries"
"Business"	Any except "salaries"

Sr. No.	Subject
5	Capital Gains
A	CG-Urban Agricultural land
B	CG- Listed Securities

Sr. No.	Subject	
5A	CG-Urban Agricultural land	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
10(37)	+	1.4.2005

Highlights

A capital gain arising to individuals in respect of an urban agricultural land will be exempt if: -

1. Such land was used for agricultural purpose two years prior to the date of sale by an individual/HUF.
2. The transfer is by way of compulsory acquisition.
3. Compensation/consideration is received after 1.4.04.

Comments

1. As per the existing provisions, the capital gain on transfer of agricultural land is taxed if it is from an urban land and not otherwise.
2. Now it is proposed to relax the same further if the same relates to a compulsory acquisition etc as mentioned above.

Sr. No.	Subject	
5B	CG- Listed Securities	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
10(38)/115AD	+	1.10.2004

Highlights

1. The amendments propose that the tax in respect of the transfer of securities on a recognized stock exchange would be: -

- 1.1. Nil in case of a LTCG and
- 1.2. 10% in case of a STCG
2. There is a provision for marginal relief in case of those assesseees whose income consists only of such STCG and who, but for the 10% tax stipulated above, would have borne no tax.
3. The said exemption is replaced by the turnover tax on securities transacted on a stock exchange.

Comments

1. Presently we have several provisions governing CG on a listed share :-

1.1. At present the transfer of any capital asset, being share or securities, held for a period of 1 year or more is taxed as long-term capital gains at a concessional rate of 20% (in case of indexation is allowed) or 10% (profits without indexation).

1.2. Further LTCG on any listed security part of the BSE-500, acquired on or after 1.3.03 but before 1.4.04, is free of tax.

2. Now there is an attempt to rationalize this regime by exemption from IT and incidence of Security Transaction Tax (STT). The following are important features: -

2.1. WHO?

- This is applicable to all the assesseees. However individuals and HUFs whose income excluding STCG is less than the maximum chargeable to tax will be subject to a relief.
- Primary market investors are biggest beneficiaries as there is no LTCG tax and no transaction tax.
- The benefit is available to the Foreign Institutional Investors who will bear a lower rate of tax from 30% u/s 115AD to 10% u/s 111A. It is also available to the ESOP holders in salary class.

2.2. WHAT?

- Only the transactions in shares and securities on recognized stock exchanges not restricting to the BSE-500. The off-market deals like redemption or repurchase like units of mutual fund, debentures, etc and company buy backs will not be eligible.
- As regards the loss on such transactions, though, there is no clear indication as to whether such loss will be available for set-off against the other capital gains?

3. However, there are a couple of cautions :-

3.1. The A.O. may view the series of the transactions resulting in short term capital gains as business income resulting in normal rate of tax.

3.2. The AO may see in the STCG on non-BSE 500 shares an attempt to convert black money into white.

Sr. No.	Subject	
6	Charitable Trust	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.

12AA/35AC	-	1.10.2004
-----------	---	-----------

Highlights

1. There are 2 provisions for withdrawal of approval/registration :-

1.1. U/s 12AA : registration for Sec. 11

1.2. U/s 35AC : Approval for deduction u/s 35AC

2. As regards Sec. 12AA, it has been provided that if the commissioner is satisfied that the activities of the trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, he shall pass an order in writing canceling the registration so granted.

3. As regards Sec. 35AC, it is similarly provided that the National Committee can withdraw the approval if it is satisfied that the project or the scheme is not being carried on in accordance with the conditions specified.

Comments

1. As per the existing provisions, once the registration/approval is granted to a trust, there is no express provision to cancel the registration even if it is proved that activities of the trust are not genuine or are not being carried on in accordance with the objects set out.

2. Now the CIT/NC has been empowered to cancel the registration/approval. Unfortunately there is no provision for appeal against such a drastic order.

3. The provision so introduced coupled with the Maharashtra Government's proposal for its representative on Trusts will therefore result in a strict monitoring of the trusts.

Sr. No.	Subject
7	Deductions-s. 80-IA
A	Infrastructure
B	Power
C	Telecommunication
D	Industrially backward area

Sr. No.	Subject
7A	Infrastructure
80-IA	- Generally

1. Sec. 80IA(4) extends the benefit to the following :-

1.1. Infrastructure facility

1.2. Telecommunication

1.3. Industrial Park or Special Economic Zone and

1.4. Power Generation and Distribution

2. The changes are made in the 2 categories :-

2.1. Telecommunication

2.2. Power

3. These are dealt in detail hereafter.

Sr. No.	Subject	
7B	Power	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
80-IA	+	1.4.2005

Highlights

1. The benefit of deduction u/s. 80-IA has been extended to the activity of substantial renovation or modernization of the existing transmission or distribution lines.

2. Further, it is now proposed that purchase of old plant or machinery upto 100% from State Electricity Board and upto 20% from others will not be considered as old machinery.

Comments

1. There are 2 elements :-

1.1. What qualifies?

1.2. What does not qualify?

2. At present, what qualifies is a new undertaking setup for :-

2.1. Power Generation and Distribution (PGD)

2.2. Power Transmission and Distribution Network (PTDN)

This is proposed to be extended to substantial renovation and modernization of the aforesaid PTDN i.e. beyond 50% in terms of book value.

3. At present what does not qualify is formation by splitting up or reconstruction of a business already in existence. Now it is proposed to allow old machinery :-

3.1. Upto 100% if coming from a State Electricity Board (SEB) and

3.2. Upto 20% if coming from others

4. To put another way, the changes are :-

4.1. Extension of benefit – renovation etc.

4.2. Liberalisation of conditions- old is gold.

5. Biggest beneficiaries perhaps would be Reliance, Tata Power, and Ahmedabad Electric Corp.

Sr. No.	Subject	
7C	Telecommunication	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
80-IA	+	1.4.2005

Highlights

1. The aforesaid prohibition relating to splitting up and reconstruction is brought in to the Telecommunication business also.

2. The last date to start providing

telecommunication services by the undertaking is extended from 31.03.2004 to 31.03.2005.

Comments

1. As mentioned earlier, Sec. 80IA(4) extends the benefit to the following :-
 - 1.1. Infrastructure facility
 - 1.2. Telecommunication
 - 1.3. Industrial Park or Special Economic Zone and
 - 1.4. Power Generation and Distribution
2. The aforesaid prohibition on splitting up and reconstruction applicable already to power generation and distribution is proposed to be extended to telecommunication.
3. It is not clear as to :-
 - 3.1. What will be the fate of the units already set up?
 - 3.2. Why it is not extended to other 2 businesses?
4. While the first change tries to rationalize, the second one tries to liberalise 2 different aspects.
5. To put in other words, the changes are :-
 - 5.1. Importing restrictions – splitting etc
 - 5.2. Extension of time-to 31.03.05

Sr. No.	Subject	
7D	Industrially backward area	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
80-IA	+	1.4.2005

Highlights

1. The provision relating to deduction to the extent of 100% of the profits allowable to an undertaking in an industrially backward state is sought to be amended for the state of Jammu & Kashmir
2. There are 2 changes: -
 - 2.1. An extension – of the time limit for setting up from 31.03.04 to 31.03.05
 - 2.2. A restriction – that such undertaking will not be engaged in the manufacture or production of any article or thing specified in the new Part C to the Thirteenth Schedule.

Comments

This is a welcome move by extending the time limit for eligibility of the deduction albeit with a limitation.

Sr. No.	Subject
8	Deductions-s. 80-IB
A	Housing projects
B	Hospitals
C	Specified Activities

1. Sec 80-IB governs new undertakings other than infrastructure projects.
2. The broad changes are as under :-
 - When+Where = Extend time for place- J&K
 - What+Where =Tighten Industry for place- J&K
 - When+What= Extend time for business - R&D
 - What More= Expansion for business- Agro Processing
 - What+Where=Extend to business for place- Rural Hospitals
 - What+How=Tighten terms- Housing
3. These have been discussed in detail hereafter.

Sr. No.	Subject	
8A	Housing projects	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
80-IB	+	1.4.2005

Highlights

1. The provisions relating to deduction to housing projects have been amended by providing the deduction to the projects upon complying with the following revised conditions :-
 - 1.1. The date of approval of project by local authority has been extended from 31-3-2005 to 31-3-2007.
 - 1.2. Further, it is proposed that the construction must be completed within 4 years from the end of the financial year in which the project is approved by local authority. Where there are changes in the plan and more than one approval is taken, the time limit would be computed with reference to the first approval.
 - 1.3. The date of completion would be the date on which completion certificate is issued by the local authority.
2. The condition relating to minimum plot area of one acre will now not be applicable to projects carried out in accordance with a scheme of Central or State government for reconstruction or redevelopment of existing buildings However, such scheme has to be approved by the Central Board of Direct Taxes.
3. It is proposed that the built up area of shops and commercial establishments shall not be more than 5% of the total area or 2,000 sq. ft., whichever is less.

Comments

1. Presently, deduction to the extent of 100% of the profits is allowable u/s. 80-IB to an undertaking developing and building housing projects, which fulfills various conditions. Let us see the changes.
2. Commencement : There is a condition that such undertaking has commenced construction after f^t

October 1998. There is no change here.

3. **Size** : As regards the size :-

3.1. The plot shall be minimum of 1 acre and

3.2. The flat has a maximum built-up area of 1,500/2,000 sq.ft. in cities/other areas.

Now there are 2 changes here :-

- The 1 acre limit will not apply in case of approved reconstruction or redevelopment projects in a city like Mumbai.

- The built-up area is sought to be defined to mean the inner measurements of the residential unit at the floor level, including the projections and balconies as increased by the thickness of the walls but not including the common areas shared with other residential units. The built-up area is also sought to be limited in the sense that the built-up area of the shops and other commercial establishments shall not exceed 5% of the aggregate built-up area of the housing project or 2,000 sq. ft. whichever is less.

4. **Approval** : The time limit for approval by the local authority is extended from 31-3-05 to 31-3-07. It is also provided that where the approval is obtained more than once, such project shall be deemed to have been approved on the date on which the building plan of such project is first approved by the local authority.

5. **Completion**: The scheme was open-ended. No time limit was provided for completion of the project. Now it is provided that where project is approved prior to 1.4.04, the project shall be completed. In case if approval is after 1.4.04, project should be completed within 4 years from the end of the year in which project is approved. For this purpose, it is provided that the date of completion certificate issued by the local authority will be considered to be the date of completion.

6. The proposed amendments have certain positive features: -

6.1. They have set at rest several controversies and complexities which were prevailing in relation to the present provisions.

6.2. They will encourage reconstruction in major cities.

7. However, some aspects in the said provisions need clarifications like: -

7.1. What is a project? Is it a building or a group of buildings serviced by the same society?

7.2. Whether the period of 4 years would be applicable to the existing projects?

7.3. What if the project gets delayed for the reasons beyond control of the developer? Especially when some of the assessments are already framed?

7.4. What is meant by "other commercial establishments"? Do they include, say, a school, a clubhouse, recreation areas, a dispensary etc?

7.5. Whether the entire benefit will be lost in case of partial non-compliance of the above

conditions?

Sr. No.	Subject	
8B	Hospitals	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
80-IB	+	1.4.2005

Highlights

1. Deduction to the extent of 100% of the profits is proposed for undertaking engaged in the business of operating and maintaining hospital in rural area.
2. The important conditions are :-
 - 2.1. The construction of the hospital begins after 1.10.04
 - 2.2. The construction is as per the regulations of the local authority.
 - 2.3. It has minimum 100 beds.
 - 2.4. The construction is completed before 31-3-2008. For this purpose, the date of completion issued by the local authority will be conclusive.
 - 2.5. Such deduction is allowed for 5 consecutive years from the year in which the hospital begins to provide medical services.

Comments

1. The crucial terms viz., rural area and hospital are not defined.
2. The minimum limit of 100 beds is unrealistic.
3. Such hospitals would have normally registered as a Trust. That may not be now necessary.

Sr. No.	Subject	
8C	Specified Activities	
	<i>Amended</i>	
Sect.	+/-	w.e.f.
80 IB	+	1.4.2005

Highlights

1. Sec. 80IB : In respect of R&D association, the date of approval from the prescribed authority is now extended to 1.4.2005.
2. Sec. 80IB(11A) : business of processing, preservation and packaging of fruits and vegetables has been now covered.

Comments

In Sec. 80IB(11A) dealing with the integrated business of handling, storage and transportation of food grains, is sought to be extended to more items.

Sr. No.	Subject
9	Deduction-Medical disabilities

Sec	Amended	
	+/-	w.e.f.
80DD/80U	+	1.4.2005

Highlights

1. This deals with 2 provisions :-
 - 1.1. Sec. 80DD w.r.t. dependant
 - 1.2. Sec. 80U w.r.t. oneself
2. It deals with 2 Acts :-
 - 2.1. Persons With Disabilities (Equal Opportunities, Protection Of Rights and Full Participation) Act 1995 (hereinafter PWD)
 - 2.2. National Trust for Welfare Of Persons With Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999 (hereinafter NTW)
3. It uses these 2 Acts to define various terms:
 - 3.1. NTW to define "Autism", "Cerebral Palsy" and "Multiple Disability", "Person with Disability" and "Severe Disability", "Medical Authority" and
 - 3.2. Both PWD and NTW to define "Person with severe Disability".
4. It extends the benefit available under these sections to the above-named diseases and conditions.

Comments

This is welcome move for those who incur heavy expenses for themselves and their disabled dependants.

Sr. No.	Subject	
10	Depreciation – installed capacity	
	Amended	
Sec.	+ / -	w.e.f.
32	+	1.4.2005

Highlights

The provisions relating to additional depreciation of 15% have been amended to accept lower expansion upto 10% as eligible for the said deduction.

Comments

1. Under the existing provisions, additional depreciation @15% is available for new plant and machinery installed after 1-4-2002 if :-
 - 1.1. The undertaking is a new industrial undertaking and begins manufacturing after 1-4-2002. OR
 - 1.2. The undertaking is an existing undertaking, which carries out expansion and increases the installed capacity by 25% or more
2. It is proposed to relax the condition of increase in installed capacity from 25% or more

to 10% or more.

3. However, the language is not corrected. In other words, a unit, which begins manufacturing after 1-4-2002, cannot probably claim advantage in respect of a substantial expansion.

4. The amendment seeks to encourage more investment in manufacturing sector. However, it can work other way round also. The AO may compulsorily allow such depreciation even if the assessee may like to postpone it to a better year.

Sr. No.	Subject	
11	Dividend and Bonus Stripping	
	Introduced	
Sec.	+ / -	w.e.f.
94	-	1.4.2005

Highlights

1. There are two provisions – one expanding the Dividend Stripping and other covering the Bonus Stripping.
2. As regards Dividend Stripping, it is proposed to widen the time criteria from 3 months to 9 months.
3. The bonus stripping is also now prohibited. It is applicable to a person who buys any units (original units) 3 months before the record date on which bonus units are allotted and sells the original units within 9 months after the record date.
4. In such cases, the entire loss arising on sale of such original units is to be ignored.
5. It is also proposed that the loss, which is not allowed to be set off, shall be deemed to be the cost of purchase of the Bonus units.

Comments

1. Provisions to prohibit dividend stripping were introduced in the year 2002. It is applicable to a person who :-
 - 1.1. Buys any securities within 3 months before the record date and
 - 1.2. Sells the same within 3 months after the record date.
2. In such case, loss incurred on purchase and sale of securities is not allowed to be set off.
3. The amendment proposes 2 changes :-
 - 3.1. It also covers bonus stripping.
 - 3.2. It extends the time limit for sale of securities from 3 months to 9 months after the record date.
4. Interestingly, the provisions relating to bonus stripping are only in respect of units and not any other securities.

Sr. No.	Subject	
12	Dividend Distribution Tax	
	Amended	
Sec.	+ / -	w.e.f.
115R	-	9.7.2004

Highlights

1. The rate of dividend distribution tax has now been dissected in respect of different kind of entities as under :-
 - 1.1. @ 12.5% if to an Individual or HUF
 - 1.2. @ 20% if to any other person
2. The exemption to open-ended equity oriented fund is being extended to an HUF

Comments

1. At present, dividend declared by Mutual Funds is taxable @12.5%, as dividend distribution tax. The dividend is tax free in the hands of the recipients.
2. The dividend tax has been on the roll every budget since it was introduced in 1997. The intention behind the aforesaid proposal is that the Corporate should suffer higher tax.
3. This discrimination can have two fallouts :-
 - 3.1. It may not be possible for the Mutual Fund to discriminate between two categories of investors.
 - 3.2. It may not be right for the Government to discriminate between two types of assesseees. In fact, if at all, the discrimination could have been the other way round because a corporate has to further suffer dividend distribution tax down the line.
4. UTI and open-ended equity oriented mutual funds continue to enjoy the exemption from such tax.

Sr. No.	Subject	
13	Double Tax Avoidance	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
90	+	1.4.1962

Highlights

A Foreign Company will not be denied the relief on the ground that it has not made (prescribed) arrangement for declaration and payment within India of the dividend out of its income in India.

Comments

1. One of the most important cannon of Double Tax Relief is Non-discrimination.
2. By Finance Act 2001, an explanation was inserted in Sec. 90 with retrospective effect from 1.04.92 which said that merely because a higher rate of taxation is prescribed by the Act in respect of a Non-Resident Company as compared with the rate of tax prescribed for a Resident Company, it cannot be construed as

discrimination between a Resident and a Non-Resident where such Foreign Company has not made the prescribed arrangement for declaration and payment within India of the dividends payable out of its income in India.

3. In the case of Decca Survey Overseas before Mumbai ITAT, when a Foreign Company challenged the differential rate, it argued that because you have not prescribed any arrangement, that part of the condition could not be met and accordingly the differential was not valid.

4. The law-makers had 2 options :-

4.1. Retain the law – bring in the rule.

4.2. Rectify the law – forget the rule.

5. They have taken the second option and deleted the reference to the rule again retrospectively.

Sr. No.	Subject	
14	Education Cess	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
--	-	1.4.2004

Highlights

1. There is no change in the rate of tax applicable to individuals, Hindu Undivided Family (HUF), firms, companies etc.
2. However, additional surcharge, called the Education Cess, is being levied at the rate of 2 per cent on the amount of tax payable inclusive of surcharge.

Comments

1. This tax, which is in the nature of surcharge for purposes of the Union, is to be called the Education Cess to fulfill the commitment of Govt. to provide and finance universalized quality basic education.

2. The Cess is being applied on various central taxes – duties like excise duty, import duty, service tax and, of course, income tax.

3. One will have to compute one's tax liability on the basis of existing tax rates, add surcharge to that and on the amount a further 2 per cent has to be added. This applies to all the forms of income tax i.e. advance tax, TDS and TCS. This is also to be added while computing tax deductible at source by the deductor.

4. As per Clause 2(11) of the Finance Bill, Education Cess is payable with effect from 1st April, 2004 and no exception has been provided in respect of the tax deducted at source or advance tax paid during the period starting from 1st April, 2004 to the date when Finance Act, 2004 will be officially notified.

5. This may cause unintended hardship where tax has already been deducted and paid without taking into consideration the 2 per cent Education Cess.

Sr. No.	Subject	
15	Income-Gift	
	Introduced	
Sec.	+ / -	w.e.f.
2(24))	-	1.9.2004

Highlights

1. Sec. 2(24): Gift Tax is reintroduced in the form of income under the Income-tax Act.
2. Coverage : It covers :-
 - 2.1. Any sum received
 - 2.2. By an individual or HUF from any person
 - 2.3. On or after 1.09.04
 - 2.4. In cash or by cheque/DD or credit
 - 2.5. Otherwise then by way of consideration for goods and services.
3. Exclusions : -
 - 3.1. From relatives out of natural love and affection.
 - 3.2. Under a will or by way of inheritance.
 - 3.3. From employer by way of bonus, gratuity etc solely in recognition of services rendered.
 - 3.4. Sums received in contemplation of death.
 - 3.5. point removed
 - 3.6. point removed
4. Further Exclusions: The above exclusions are u/s 2 itself. That apart, there are following further exclusions :-
 - 4.1. under Sec 56(2)(v) Gifts upto Rs. 25,000/- are not to be excluded. under Sec 56(2)(v) Gifts upto Rs. 25,000/- are not to be excluded.
 - 4.2. point removed
5. Head of Taxation: Under Sec. 56(2)(v): This income will be taxed as Income from other sources.

Comments

1. The law at present did not tax the gifts unless the same remains unexplained by the assessee from the angles of identity, creditworthiness and financial capacity of the donor. The CBDT guidelines way back in 1974 stated that the gifts of personal nature are not chargeable to tax.
2. This position no longer sustains and the gifts now stand unconditionally taxed as income.
3. Treats: The following will get a good treat:-
 - 3.1. As it mentions individuals and HUFs, it may not apply to AOP, BOI, firms, companies, etc.
 - 3.2. As the term is "Any sum received", it may not cover receipt in kind.
4. Traps: Though the provision is understood generally as a tax on gift, it is so badly drafted that it will lead to a lot of controversies. The word 'receipt' if broadly construed could cover even following cases also: -

- 4.1. Loans or deposits received by an individual or HUF
- 4.2. Advances received for any purpose whether they are adjustable or not.
- 4.3. Capital withdrawn by the partners.
- 4.4. Donations received from trusts
5. Caution: One shall not believe that all gifts received prior to such date are allowed. The present (case) law is sufficient to cover such gifts.

Sr. No.	Subject	
16	Interest to NRIs	
	Amended	
Sec.	+ / -	w.e.f.
10(4)/(15A)	-	1.04.2005

Highlights

Exemption on the Interest payable on NRE, FCNR and RFC Accounts is proposed to be withdrawn.

Comments

1. As per the existing provisions, an Non Residents get a tax exemption of interest

Who	Section	Accounts
NRIs	10(4)(ii)	NRE
NR/NORs	10(15)(iv)(fa)	FCNR/RFC

2. There is a comfortable foreign exchange position. There is also a need to discourage "hot money" which can run out of country suddenly. Hence it has been decided to withdraw the exemptions.

Sr. No.	Subject	
17	Miscellaneous	
	Amended	

Sec	+/-	w.e.f.
10(15A)	-	01.09.04

Income of Foreign Government or a Foreign Enterprise from leasing of an aircraft or engine under any new agreement will not be exempt.

Sec	+/-	w.e.f.
10(23FB)	+	01.10.04

The definition of Venture Capital Undertaking in the existing Sec. 10(23FB) Expl. 1(c) is to be substituted by the definition appearing in the Security and Exchange Board of India (Venture Capital Funds) Regulations 1996.

Sec	+/-	w.e.f.
88	+	1.04.05

Rebate extended to repayment of loan taken from an employer, which is an authority or a board etc established under Central or State Act.

Sec	+/-	w.e.f.
139(9)	+	1.04.05

Return of income filed without TDS/TCS Certificate will not be treated as defective. Also, credit will be given on the absence of such certificate.

Sec	+/-	w.e.f.
139A	-	1.10.04

A Non-Resident will now be required to intimate his PAN to the person responsible for deduction of tax at source.

Sec	+/-	w.e.f.
153	-	1.10.04

The time limit for completion of assessments will now exclude the time taken before the Authority for Advance Rulings (AAR).

Sr. No.	Subject	
18	Minimum Alternate Tax (MAT)	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
115JB	-	1.4.2005

Highlights

The income of Infrastructure Capital Company (ICC) in the form of dividend income other than dividend referred to in Sec. 115-O is proposed to be included in the book profits for the purpose of MAT.

Comments

- As per existing provisions, while computing MAT u/s. 115JB, the book profit was computed excluding the income exempt u/s. 10(23G) i.e. the dividend (other than Sec. 115-O), interest and LTCG.
- With a view to bring such companies within the tax net, it is proposed to include these incomes for MAT.

Sr. No.	Subject	
19	Pension	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
10(19)/80CCD	+	1.1. 2004

Highlights

- There are 2 provisions dealing with Pension:-
 - U/s 10(18) : Army men –Pension Scheme
 - U/s 80CCD : CG Staff – Pension Scheme
- As regards Sec. 10(18), the family pension received by the widow or children or a nominated heir of a member of the armed force is proposed to be exempt from income tax. However the exemption is allowed only if the death of the member has occurred during the operational duties.
- As regards Sec. 80CCD,
 - As per the newly introduced provision, deduction is allowed in respect of the Contribution made towards Central government employees' pension scheme.
 - It is also proposed that the aforesaid amounts together with accrued interest on the same will be taxable in the hands of the employee in the year of withdrawal.

Comments

As regards Sec. 10(18),

- Under the existing provisions, the pension income received by the recipients of Param Vir Chakra, Mahavir Chakra, Vir Chakra or certain other notified gallantry awards is allowed exemption.
- The scope of the said provisions is enhanced to include the pension income of the member of the armed force in general who has died during the operational duty.

As regards Sec. 80CCD,

- As per the new "Defined Contribution", Pension Scheme introduced by the Central Government w.e.f. 01.01.04 as applicable to the new entrants to the Government service, it is mandatory to contribute 10% of their salary to the Pension Account. A matching contribution is required to be made by the Government.
- The following amendments are made to the law :-
 - Under the new Sec. 17(vii), the CG contribution will be included as salary.
 - U/s 80CCD(2), both the components of the contribution will be deductible.
 - U/s 80CCD(3), the principal amount (on closure or opting out) and the revenue amount (pension) will be taxed as income.
 - U/s 80CCD(4), it is clarified that correspondingly no rebate will be allowable u/s 88.

Sr. No.	Subject
20	Prosecution
A	Falsification of books
B	Companies

Sr. No.	Subject
---------	---------

20A	Falsification of books	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
277A	-	1.10.2004

Highlights

1. The provisions relating to prosecution for offence have been proposed to be enlarged.
2. It has been proposed that if a person willfully makes any false entry or statement in the books of account or other document, with an intention to enable any other person to evade the tax, he shall be punishable with rigorous imprisonment for a term of 3 months onwards.

Comments

1. So far, under section 288, an evader is punished only if tax evasion was established with the insertion of the above proposal; it is now sufficient for a tax officer to allege general intent to commit fraud.
2. This may amount to criminal punishment without the crime being committed. It is an attempt to override the Indian Penal Code under the Income-tax Act.
3. The proposed amendment may also hit the persons like accountant, clerks, etc. who may willingly or unwillingly make false entry in the above circumstances.

Sr. No.	Subject	
20B	Companies	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
278B & 35BA (WT ACT)	-	1.10.2004

Highlights

It has been provided that now onwards the prosecution can be launched against the companies and the directors, etc. may be imprisoned in case of defaults specified under the Act.

Comments

1. As per the existing provisions, where a non-juridical persons like a company is found to be guilty for an offence, the punishment of rigorous imprisonment and fine have been provided.
2. The Supreme Court had recently held in the case of Asstt. Commissioner v. Velliappa Textiles Ltd. [263 ITR 550] that since the words used in the Act are 'imprisonment and fine', and since the

non-juridical person cannot be imprisoned, prosecution cannot be launched against such non-juridical person.

3. This proposal seeks to overcome, the above verdict.
4. However, the amendment applies to companies only and do not apply to other non-juridical entities like, partnership firm, AOP, etc.

Sr. No.	Subject
21	Rebate
A	Tax Exemption
B	STT Deduction

Sr. No.	Subject	
21A	Tax Exemption	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
88D	+	1.4.2005

Highlights

No tax is payable by an Individual whose Taxable Income does not exceed Rs. 1 lakh. Thus, the income of an individual to the extent of Rs. 1,00,000/- , i.e. tax to the extent of Rs. 9,000/- will get exempt. Marginal relief is also provided on income exceeding Rs. 1,00,000/-.

Comments

1. Presently the rebates are allowed
 - 1.1. U/s 88 : Indls/HUF on LIP etc.
 - 1.2. U/s 88B: Indls above 65 yrs
 - 1.3. U/s 88C: Women below 65 yrs
2. There is an insertion of one more provision the benefit of which is available :
 - 2.1. Only to an Individual and not to other assessee like HUF, AOP, etc.
 - 2.2. Only after Ss. 88, 88B and 88C are exhausted.
 - 2.3. Only if income is lower than Rs. 1,00,000/-. Otherwise the full tax applies. There is no lifting of exemption limit.
3. To illustrate the last point, if Taxable Income of a person is Rs. 1,05,000/-, he is required to pay tax of Rs. 10,000/- plus additional surcharge. The table explains the provisions more clearly:

<u>Income payable</u>	<u>Tax</u>
1,00,000	NIL
1,05,000	10,200
1,10,000	11,400

Sr. No.	Subject
21B	STT Deduction

	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
88E	+	1.4.2005

Highlights

The Securities Transactions Tax paid on transaction in taxable securities shall be allowed to be reduced from the tax payable on such income where it is offered as business income.

Comments

This amendment is like butter on a hot toast. Yet a positive move.

Sr. No.	Subject	
22	Shipping Companies -Tonnage Tax	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
115V	-	1.4.2005

Highlights

- The Finance Bill has proposed to insert a new Chapter incorporating special provisions vide sections 115V to 115VZC of an optional scheme of taxation for Indian Shipping Companies, viz. Tonnage Tax Regime (TTR).
- The chapter has 7 parts :-
 - Part A meaning of certain expressions.
 - Part B computing tonnage income.
 - Part C procedure for option under TTR.
 - Part D conditions for applicability.
 - Part E amalgamation and demerger.
 - Part F miscellaneous.
 - Part G avoidance and exclusion.
- The following are broad features :-
 - Qualifying Company** : A company owning at least 1 qualifying ship may opt for the scheme.
 - Qualifying Ship** : Qualifying ship is one with a minimum tonnage of 15 tons and having a valid certificate under Merchant Shipping Act, 1958.
 - Qualifying Process** : The company may exercise option to join this scheme by making an application to the Joint CIT at any time between 1.10.2004 and 31.12.2004. Companies incorporated or becoming qualified after 1/1/2005 should apply within 3 months of incorporation/qualifying.
 - Qualifying Period** : It may or may not opt for it. Once it opts for it, it has also a right to opt out. But once it opts out, it cannot re-enter for a period of 10 years.
 - Qualifying Terms** : Separate accounts are to be maintained. It has to be accompanied by a C.A. certificate.

3.6. Quantifying Income :

Daily Tonnage Income
X No. of days Ship operated
Annual Tonnage Income

3.7. Quantifying Tax : One has to apply the normal tax on such income.

Comments

- Presently the Shipping Industry is subject to a normal tax after Sec. 33AC which :-
 - Applies to Govt. and Public Cos.
 - Allows a 100% deduction
 - Subject to creation of reserves
- Now Sec. 33AC is withdrawn and the Industry has an option either to go by the normal provisions of the TTR, which is one of the longest text of law.
- The new chapter XII-G has the following features :-
 - Applies only to Companies
 - Is an optional scheme
 - And a preferential regime
 - Of presumptive tax
 - Of notional income and normal tax
 - Is in the nature of a regime
- Let us see these features in detail: -
 - It applies only to Companies like Sec. 33AC
 - It is optional as mentioned above
 - It is a preferential regime and accordingly certain conditions like creation of reserve, training of personnel are applicable. The scheme also lays certain restrictions as regards purpose and time of its utilization.
 - It is a presumptive tax based on assets rather than revenues, as is the usual case. It is applicable even if there is a loss. No deduction, allowance, set off or carry forward of losses relating to business will be available.
 - It first works out notional income and then applies normal tax.
 - It is a regime of 10 years and not a one-off affair.
- The comparative computation is as under :-

Present	Proposed
Tonnes	Tonnage income
Rate	No. of days
Normal Income	Notional Income
Less: 33AC	Xxxxxxx
	Taxable Income
	Normal Tax

6. The Shipping Industry may not welcome the loss of Sec. 33AC and may face immediate practical difficulties, as advance tax would have been paid taking into account the benefit.

Sr. No.	Subject
----------------	----------------

23	Tax deduction and collection at source
A	TDS on contractors
B	TDS on compulsory acquisition-Compensation
C	TDS – Integration
D	Tax collection at source

Sr. No.	Subject	
23A	TDS on contractors	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
194C	-	1.10.2004

Highlights

- An amendment is proposed whereby the TDS in respect of contracts u/s 194C will apply if :-
 - Rs. 20,000/- per payment
 - Rs. 50,000/- in the aggregate
- Further, it has been proposed that even if such credit or payment is likely to exceed the above amounts, Tax is required to be deducted.

Comments

- It was felt that in order to avoid the applicability of the TDS provisions, a dubious method is being used whereby the single contract is being divided into several contracts of less than Rs. 20,000/-.
- The amendment seeks to curb this practice.

Sr. No.	Subject	
23B	TDS on compulsory acquisition-Compensation	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.
194LA	-	1.10.2004

Highlights

A new provision has been introduced whereby the compensation received on compulsory acquisition is now liable to TDS and the assessee paying the said compensation will be liable to deducted tax at source if the aggregate payment exceeds Rs. 1,00,000/-.

Comments

With this amendment, the scope of the provisions of TDS is enhanced.

Sr. No.	Subject	
23C	TDS – Integration	
	<i>Introduced</i>	
Sec.	+ / -	w.e.f.

199/203	+	1.4.2005
----------------	----------	-----------------

Highlights

- As a measure to streamline the procedures, the provisions relating to issue of TDS certificate are done away with. Following changes are proposed :-
 - To furnish quarterly statements to the Department instead of the annual TDS return. (s. 200)
 - The requirement of issuing TDS certificate is done away with and the credit for tax deducted will now be computed by the Assessing Officer. (s. 199, 203 and 203AA)
 - TDS number will also be used as Tax collection Number and hence the TCS number will no more be separately required to be obtained. (s. 203A)

Comments

- The new system is a step forward in the On-Line Tax Accounting System (OLTAS).
- The provisions are meant to streamline the procedure to effectively collect the tax at source in order to enhance the revenue :-
 - The annual returns of TDS have been replaced by the quarterly statements of TDS.
 - The issue of TDS certificate by the deductor is replaced with the annual statement of tax credit by the Assessing Officer.
- However, the said new system may cause some trouble to the assessee in as much as the assessee may not get the credit for the TDS deducted from his income if the person deducting tax: -
 - Does not file the quarterly statements to the income-tax department
 - Files incorrect information in the statements.
 - Files the statements after inordinate delay.
- It appears that the hardship to the taxpayers will increase and may result in procedural delays in granting the credit for tax paid.
- Further, failure to furnish such TDS returns by the deductor, penalty is leviable @ Rs. 100/- per day for which the default continues.

Sr. No.	Subject	
23D	Tax collection at source	
	<i>Amended</i>	
Sec.	+ / -	w.e.f.
206C	-	1.10.2004

Highlights

- Extension : Some more transactions are included in the net. The scope of TCS is proposed to be extended to the charges collected: -
 - On Parking lot, Toll plaza, Mine or quarry
 - By way of Lease or license, Contract, Transfer or

right or interest.

The TCS is applicable at 2%.

2. **Consolidation:** The requirement of obtaining tax collection number is proposed to be done away with. Instead, the tax collection number and the tax deduction number would be common.
3. Moreover, there will be annual filing of return instead of half yearly return.

Comments

1. **Extension :**
 - 1.1. Present Sec. 206C only applied to a seller. This is being extended to other type of

activity like Lease etc.

- 1.2. The tax has to be collected irrespective of the fact whether the right or interest in any parking lot or toll plaza or mine or quarry is transferred in whole or in part.

2. **Consolidation:** The credit is available in respect of the said TCS in accordance with the amended provision of the Act and no certificate will be required to be issued by the person collecting the tax. The statement of tax credit will be made available by the Assessing Officer.

3. This is a positive move towards streamlining of the procedure for Electronic credit for TDS.

HIGHLIGHTS OF THE IMPORTANT AMENDMENTS UNDER SECURITIES TRANSACTIONS TAX

Sr. No.	Subject	
24	Securities Transactions Tax	
Sec.	+ / -	w.e.f.
VII	-	10.09.2004

Highlights

1. As a corollary to the abolition of the provisions of Long Term Capital Gains on shares and securities, it has been proposed to levy Securities Transaction Tax.
2. According to the said provision, a tax @ 0.15% was proposed to be levied on the value of the securities transacted on the recognized stock exchange. Such tax shall be collected by the stock exchange from the purchaser of the securities and paid to the credit of the Central Government within the specified time.
3. Such tax is also applicable to the securities like 'Options' and 'Futures'. The value of the security for the purpose of tax shall be :-
 - 3.1. In the case of 'Options', the amount comprising of the strike price and premium;
 - 3.2. In the case of 'Futures', the price at which such futures is traded.
 - 3.3. And in the case of other securities, purchase price of the security.
4. Detailed provisions and procedures have been laid down under Chapter VII of the Finance Bill, 2004 with respect to definitions, value of taxable security, filing of return, assessment procedure, interest and penalties, recovery and appeals.
5. Various amendments were announced in the course of the debate as under :-
 - 5.1. The S.T.T. of 0.15% shall be applicable only to delivery-based transactions.
 - 5.2. The S.T.T. shall also be applicable to transaction related to Mutual Fund units outside the

stock exchange @ 0.15% payable by seller.

5.3. The S.T.T. shall be split equally between the buyers and the sellers i.e. buyer will pay 50% of the S.T.T. at the time of purchase and at the same time the seller will pay balance 50% of the S.T.T.

5.4. For non-delivery transactions (squared off transaction) S.T.T. will be 0.015% and for transaction in derivate segment i.e. Future and Option Segment, the S.T.T. will be 0.01%. (payable only by sellers).

5.5. The S.T.T. @ 0.9% shall be applicable on sale of derivatives.

6. S.T.T. shall not be applicable for the transactions in Government Securities and Corporate Bonds, which are mainly traded on wholesale Debt Market Segment.

7. The trader shall be allowed to adjust S.T.T. towards his total tax liability. (See Sec. 88E).

Comments

1. According to the Finance Minister, the Transaction tax is efficient, neat, and non-discretionary and eliminates tax avoidance. Further, rationalising the tax regime was the basic idea behind eliminating tax on long-term capital gains, reducing the rate on short-term gains from a peak of 30 percent to 10 percent and proposing transaction tax.

2. Though the budget proposals have been revised, the investors will hit hard as they as they will have to bear transaction tax over and above service tax, which may result in nullifying the effect of LT gain tax exemption.

3. The beauty is that crores of rupees will be collected from a handful of assesseees, who have no temptation to save, as the same will be collected from the final investors.