Salient Features of Finance Bill, 2008

DIRECT TAXES

Ved Jain

Introduction

The Finance Minister, Mr. P. Chidambaram presented his 5th consecutive budget and overall his 7th budget on 29th February, 2008. It is a budget that is truly inclusive and relief-oriented. The Finance Minister has skillfully balanced the need to step up the economic growth with meeting the socio-economic needs of the nation. Large allocations have been made to several sectors including education and health.

The growth rate of the GDP for the year 2007-08 has been projected to be 8.7% which is lower than 9.6% and 9.4% in the immediate preceding two years. However, growth in revenue continues to be better as compared to preceding years. An idea of the growth in gross tax revenue can be have from Table 1.

Table 1
Growth in Tax Revenue

Year	Tax Revenue (In Crores of Rupees)	Growth in percentage as compared to last year
2001-02	1,87,060	(-) 0.81%
2005-06	3,66,151	20.06%
2006-07	4,73,512	29.32%
2007-08 (Revised Estimates)	5,85,410	23.63%
2008-09 (Budget Estimates)	6,87,715	17.47%

A cursory look at the above Table indicates that tax collections in 2007-08 have grown by more than three hundred per cent in a short period of six years. On the basis of these trends, one can expect a tax revenue of more than Rs. 35,00,000 crores in next six years i.e. by 2013-14. The revised estimates of tax collection for the year 2007-08 at Rs. 5,85,410 crores are much higher as

against the budget estimate of Rs. 5,48,122 crores, which is another good signal for inspiring confidence in the budget.

The interesting feature of the year 2007-08 budget is that the direct tax collections have gone up to Rs. 3,04,760 crores as against Rs. 2,30,711 crores in the year 2006-07, whereas indirect tax collections have gone up to Rs. 2,80,650 as against Rs. 2,42,801 crores in the year 2006-07. This is for probably the first time since independence that contribution of direct taxes in the gross tax revenue will be more than of indirect taxes. The increase in direct taxes in the year 2007-08 is around 32% whereas the increase in indirect taxes is about 15%. The total tax collections for the year 2008-09 have been estimated at Rs. 6,87,715 crores, out of which the share of direct taxes have been estimated at Rs. 3,65,000, which is about 53 per cent of the total tax revenue. The comparative figures of the tax collection under different heads are given in Table 2.

Table 2

Comparative figures of tax collections under different heads

(in Crores of Rupees)

Year	2001-02	2005-06	2006-07	2007-08	2008-09
Direct Taxes					
Income Tax on Corporates	36609	101277	144318	186125	226361
Income Tax on others	32004	55985	75093	118320	138314
Others	1877	8416	11306	315	325
Total Direct Taxes	69297	165678	230711	304760	365000
Indirect Taxes					
Customers	40268	65067	86327	100766	118930
Excise Duties	72555	111226	117613	127947	137874
Service Tax	3302	23055	37598	50603	64460
Other Tax	545	1125	1263	1334	1451
Total Indirect Tax	116670	200473	242801	280650	322715
Gross Tax Revenue	187160	366151	473512	585410	687715
Percentage of Direct Taxes in Gross Tax Revenue	37.02	45.24	48.72	52.05	53.07

The Finance Minister encouraged by the growth in tax collections and being confident that the high growth is sustainable, has given more focus on inclusive growth, and has taken a very bold step of waiving off the loans of the farmers, which is expected to be around Rs. 60,000 crores. However, the Finance Minister has not provided for the expected expenditure, which the Central Government will be required to incur consequent to the Sixth Pay Commission and also the expenditure consequent to the waiving off of farm loans. All that the Finance Minister has clarified in his post-budget meetings is that the expenditure on this account shall be met from the surplus and the expected growth in the revenue. One would expect that budget being estimates of income and expenditure likely to be incurred in the next year, all significant income and expenditure which are to be incurred including any expenditure on account of increase in salaries of Central Govt. employees consequent to the Sixth Pay Commission or on account of writing off of farm loans should have been specifically provided while preparing the budget.

With the phenomenal growth in the direct taxes collection, as stated above, everyone, whether it be an individual taxpayer or a corporate, was expecting large relief in the direct taxes. The Finance Minister has obliged all the individual taxpayers across the board by giving substantial relief by restructuring the tax slabs, even beyond what was expected, but no relief to corporates so far as tax rates are concerned. Following the tradition, the Finance Minister along with this budget has proposed to amend various provisions of the Income Tax Act and Wealth Tax Act in the Finance Bill, 2008. The Finance Bill, 2008 has 62 clauses, proposing amendments to the various provisions of Income Tax Act and Wealth Tax Act. The changes made in the tax rates applicable to the individuals and the amendments to the various provisions of the Income Tax and Wealth Tax Act have far reaching implications. The changes proposed in the Finance Bill, 2008 are analyzed below. Unless otherwise stated, all these amendments are proposed to be effective from 1st April, 2009, i.e., Assessment Year 2009-10 relevant to the income earned in financial year 2008-09.

A. Tax Rates

1. Changes in Tax Rates

The Finance Bill, 2008 has made significant changes to the tax rates applicable to an individual, Hindu Undivided Family, association of person and body of individuals whether incorporated or not and every artificial juridical person. The threshold limit for these entities has been increased from Rs. 110,000 to Rs. 150,000. The tax rate applicable for income exceeding Rs. 1,50,000 to Rs. 3,00,000 shall be 10% and for income exceeding Rs. 3,00,000 to Rs. 5,00,000 shall be 20% and in respect of income exceeding Rs. 5,00,000 shall be 30%. However, in the case of woman taxpayers, resident in India, the threshold limit shall be Rs. 1,80,000 and in the case of a senior citizen, i.e., who is of the age of 65 years or more at any time during the previous year, the threshold limit shall be Rs.2,25,000. The amount of the relief given by the Finance Minister can be judged from Table 3.

Table 3

Amount of relief in the case of individual, HUF etc. consequent to change in tax rates

(Amount in Rs.)

Income	Tax payable as per existing rates	Tax payable as per proposed rates	Relief per annum
Rs. 1,10,000	Nil	Nil	Nil
Rs. 1,50,000	4,120	Nil	4,120
Rs. 2,00,000	14,420	5,150	9,270
Rs. 2,50,000	24,720	10,300	14,420
Rs. 3,00,000	40,170	15,450	24,720
Rs. 4,00,000	71,070	36,050	35,020
Rs. 5,00,000	1,01,970	56,650	45,320
Rs. 10,00,000	2,56,470	2,11,150	45,320
Rs. 11,00,000	3,16,107	2,06,255	49,852
Rs. 15,00,000	4,92,067	4,02,215	49,852

There is no change in tax rates in respect of other assesses such as partnership firms, companies, and cooperative societies. On going through this table one can notice that a person having taxable income of Rs. 3,00,000 per annum i.e. Rs. 25,000 per month will save an income tax of Rs. 24,720 annually i.e. more than Rs. 2,000 per month, whereas a person having taxable income of Rs. 5,00,000 will save an income tax of Rs. 45,320 annually i.e. about Rs. 4,000 per month. This is a big relief and that too not for one year but available year after year.

2. Security Transaction Tax to be allowed as expenditure, not as tax credit

The Finance Bill, 2008 proposes a major amendment to Security Transaction Tax (STT) provision, whereby STT paid shall not be considered as tax deducted but an expenditure incurred in carrying on the business. The provision of Section 88 E of the Act, whereby STT paid was allowed as a tax credit against the tax liability in respect of the business income arising from the taxable income from securities transactions is being deleted. As per the amendment, the STT paid shall be considered an expenditure and deduction shall be allowed while computing the business income. The proposed amendment has far reaching implications not in terms of tax impact but also in terms of change of principles on the basis of which STT was introduced less than four years back. The Finance Minister in his budget for the year 2004 while introducing the levy of STT in Para 111 of his speech had stated:-

"Capital gains tax is another vexed issue. When applied to capital market transactions, the issue becomes more complex. Questions have been raised about the definitions of long-term and short-term, and the differential tax treatment meted to the two kinds of gains. There are no easy answers, but I have decided to make a beginning by revamping taxes on securities transactions. Our founding fathers had wisely included entry 90 in the Union List in the Seventh Schedule of the Constitution of India. Taking a cue from that entry, I propose to abolish the tax on long-term capital gains from securities transactions altogether. Instead, I propose to levy a small tax on transactions in securities on stock exchanges. The rate will be 0.15 per cent of the value of security. Thus, a transaction involving securities valued at, say, Rs. 100,000 will now bear a small tax of Rs. 150. The tax will be levied on the buyer. In the case of short-term capital gains from

securities, I propose to reduce the rate of tax to a flat rate of 10 per cent. My calculation shows that the new tax regime will be a win-win situation for all concerned".

A reading of the above statement shows that the Security Transaction Tax had been introduced in the year 2004 as a presumptive tax to capture the income tax element in respect of the transactions carried out as investment in securities. This presumptive tax was considered to be equivalent to the 20 per cent of the gain in sale/purchase of securities, and accordingly the long-term capital gain, which was liable to tax @ 20 per cent, was exempted in respect of STT paid transactions. In line with the same principle tax @ 10 per cent was levied on short-term capital gain, which was chargeable to the tax @ 30 per cent after giving credit of presumptive STT tax of 20 per cent. To ensure a level playing field to those who carry out the transactions in the securities not an investment but as business, the STT paid in respect of the business transactions was considered to be tax paid at source and rebate to the extent of the tax payable on such income was allowed by introducing Section 88E of the Act. With the proposed amendment, this principle is being given a go by and STT shall now become a new indirect tax for those who are doing trading in securities and will be even worse than Value Added Tax (VAT) since in the case of STT, it will be payable each time a security is traded as against in the case of VAT where there is no cascading effect and tax is to be paid on the value addition made i.e. after taking credit of tax already paid. Now, the STT will not be a win-win situation for all concerned. It will be win-win for revenue, and additional expenditure for the taxpayers.

Looking at this trend in recent years, whereby the principles explained in earlier years are being given a different meaning in the subsequent years, one wonders what is likely to happen to the perquisites in the hands of the employees on which Fringe Benefit Tax, introduced in the year 2005, is being paid at present by the employer. The days are not far off whereby an amendment may be proposed for taxing the value of the perquisites enjoyed by the employees in respect of the hospitality, entertainment, conveyance, telephone etc. in the hands of the employees in addition to the continuation of the fringe benefit tax in the hands of the employer. To ensure building confidence in the system, the taxation policy of a country needs to be based on sound

principles and these principles should not be changed frequently and given different meaning later on.

3. Commodity Transaction Tax

The Finance Bill, 2008 proposes to levy a new tax named Commodity Transaction Tax (CTT) in respect of the commodity transactions entered in recognized associations exactly on the lines on which STT shall now be leviable in respect of transaction in the nature of business carried on in respect of securities. This tax shall be leviable in respect of the transactions entered in a recognized association of:-

(i) Option in goods; or

(ii) Option in commodity derivative;

(iii) Any other commodity derivative.

The tax rates applicable shall be as under:-

S. No.	Taxable commodities transaction	Rate	Payable by
1.	Sale of an option in goods or an option in commodity derivative.	0.017 per cent on option premium	Seller
2.	Sale of an option in goods or an option in commodity derivative, where option is exercised	0.125 per cent on the settlement price of the option.	Purchaser
3.	Sale of any other commodity derivative	0.017 per cent of the price at which the commodity derivative is sold.	Seller

This tax shall be leviable from the day the Finance Bill, 2008 comes into force by way of notification in the Official Gazette, which is likely to be the 1st week of May, 2008.

This Commodity Transaction Tax (CTT) shall be allowed as a deduction, not as tax credit as is proposed for STT explained above. In view of its nature, whereby the incidence and impact both shall be on the same person, CTT will get classified as indirect tax having cascading effect and can be considered to be an additional Sales Tax levied by Central Govt. As one reads the earlier years' literature and gathers its intention therefrom, the purpose of introducing CTT on the lines of STT can be to capture the income tax element at the threshold of the transaction itself to avoid tax evasion in case the transaction goes unreported and to avoid any adjustments and bring more transparency i.e. what was stated as win-win situation for all concerns.

4. Short-term capital gain in respect of STT paid security transaction increased to 15 per cent

The Finance Bill, 2008 proposes to increase the tax rate in respect of the short-term capital gain arising from the transfer of equity shares in a company or a unit of equity-oriented firm on which STT has been paid from 10 per cent to 15 per cent. The reason given by the Finance Minister in his budget speech Para 177 is that it is meant to equate the rates to Dividend Distribution Tax rate of 15 per cent. However, this logic probably does not appear to be so good in view of the fact that in respect of the short-term capital gain, the tax payer has already paid security transaction tax at the time of purchase and sale of securities and as explained above, the logic for reducing the short-term capital gain to 10 per cent given by the Finance Minister himself in his budget speech of 2004 was not the same as has been explained in this budget. STT was introduced as a presumptive tax to capture tax at the threshold to avoid any tax evasion.

5. No Dividend Distribution Tax in respect of dividend received from subsidiary company

The Finance Bill, 2008 proposes to amend the existing provision of Section 115-O whereby Dividend Distribution Tax at the rate of 15 per cent is payable in respect of the amount declared, distributed or paid by a domestic company to its shareholders irrespective of the fact whether the dividend is being distributed out of dividend received from any other company which has already paid dividend distribution tax on such dividend. A small concession is being given in this existing

provision. As per the proposed amendment, the dividend distribution tax shall not be payable in respect of the dividend received by such domestic company from a subsidiary company, provided the subsidiary company has paid tax on such dividend and the domestic company is not a subsidiary of any other company. For the purpose of this exemption, a company shall be a subsidiary of another company only, if such other company holds more than half of nominal value of the equity share capital of the company. The explanation given for bringing this amendment is to mitigate the cascading effect of Dividend Distribution Tax. However, the proposed amendment does not address the issue in full. The amendment will give benefit to only such companies which hold more than 50 per cent equity capital meaning thereby that company holding less than 50 per cent capital shall continue to bear the cascading effect and pay tax in respect of dividend distributed out of the dividend received. Once the principle that levying tax on distribution of dividend at each stage has a cascading effect is accepted by the Government, the benefit of the same should be extended to all companies in respect of the dividend received by it on which dividend distribution tax has been paid by the another company on the lines on which there used to be an earlier exemption under section 80-M of the Act in respect of dividend received by a company from another company to the extent the same was distributed by it without any condition of a subsidiary status. Further the condition that only such company shall be considered as subsidiary company of another company if such other company holds more than 50 per cent of the equity share capital of the company will not also help domestic companies to efficiently structure their business. It is normal that in structuring of the business, particularly between two collaborations, one holds 51 per cent equity share capital and the other one holds 49 per cent. In such a situation, one company will avoid the cascading effect and the other will have to bear the cascading effect of dividend distribution.

This amendment shall be effective from 1st April, 2008.

6. Modification of STT Rate on sale of Derivatives

The provision relating to the levy of STT which presently provides that in case of sale of a derivative STT at the rate of 0.017 per cent will be payable by a seller, is being amended to provide that:

i) in case of sale of an option in securities, STT shall be levied at the rate of 0.017 per cent of the option premium and shall be paid by the seller;

ii) in case of sale of an option in securities, where option is exercised, STT shall be levied at the rate of 0.125 per cent of settlement price and shall be paid by the purchaser; and

iii) in case of sale of a [futures in securities], STT shall be levied at 0.017 per cent and shall be payable by the seller.

The above amendment shall be effective from 1st June, 2008.

B. Deductions

1. Deduction in respect of Health Insurance Premium to be allowed in respect of Parents

The Finance Bill, 2008 has proposed a deduction upto Rs. 15,000 to an individual assessee in respect of the payment made to keep enforced insurance on the health of his parent/s. There shall be no condition that such parent/s be dependent on such individual. Further deduction shall be of Rs. 20,000, in case, the parent so medically ensured is a senior citizen. The above deduction shall be in addition to the existing deduction of Rs. 15,000 available in respect of the premium paid on the health of the assessee or his family (family means the spouse and dependent children of the assessee). It may be noted that this additional deduction in respect of the parents shall be available to individual only and not to the HUF.

2. Eligible saving instrument under Sec. 80C to include Post Office Deposits and Senior Citizen Saving Schemes.

The scope of Section 80C, which provides for deduction upto Rs. 100,000 to an individual and to the HUF in respect of contribution to Provident Fund, payment of Life Insurance Premium etc. is being widened to include the payments/investments:

(i) Five-year time deposit under Post Office Time Deposit Rules, 1981.

(ii) Deposit in Senior Citizen Saving Schemes Rules, 2004

Further, it is being further provided that if any amount including interest accrued thereon is withdrawn by the assessee before the expiry of the period of five years from the date of its deposit, the amount so withdrawn shall be deemed to be the income of the assessee of the previous year in which the amount is so withdrawn.

3. Exemptions

i. Areas for setting up hospitals for tax holiday being enlarged

The Finance Bill, 2008 proposes to enlarge the area in respect of tax holiday presently available to hospitals in rural area under Section 80IB (11B) of the Act. Now this tax holiday shall be available to a hospital, which is constructed and has started or which will start functioning at any time during the period beginning on the 1st day of April, 2008 and ending on 31st day of March, 2013 in any area other than urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmedabad, and the districts of Faridabad, Gurgaon, Ghaziabad, Gautambudh Nagar, Gandhi Nagar and the city of Secunderabad. The urban agglomerations shall comprise of the area on the basis of the 2001 Census. The amount of deduction shall be 100 per cent of the profits and gains derived from such business for the period of five consecutive assessment years. The existing conditions that the hospital should have 100 beds for patients and that the construction of the hospital is in accordance with the regulation or byelaws of the local authority shall continue to be applicable. It may be noted that as per the existing provision, the benefit would have been available only to the hospitals constructed till 31st day of March, 2008. With the proposed new amendment, this exemption will now be available to hospitals constructed even after 1st day of April, 2008 but before 31st day of March, 2013 and there is no condition that the hospital should be in a rural area. As stated above, the benefit shall be available to all hospitals except those in the excluded area.

ii. Tax Holiday for Hotels in districts having a world heritage site.

The Finance Bill, 2008 proposes to enlarge the deduction introduced last year under Section 80ID of the Act in respect of hotels and convention centres in National Capital Territory of Delhi and districts of Faridabad, Gurgaon, Gautambudh Nagar and Ghaziabad, particularly in view of the

upcoming Commonwealth Games. As per the proposed amendment, a deduction of an amount equal to 100 per cent of the profit and gains derived from the business of hotel located in specified districts having a world heritage site, shall be available provided such hotel has been constructed and has started or starts functioning at any time during the period beginning from the 1st day of April, 2008 and ending on the 31st day of March, 2013. The deduction shall be available for five consecutive assessment years.

iii. Tax Holiday for refining of mineral oil being withdrawn

The Finance Bill, 2008 has proposed an amendment restricting 100 per cent deduction in respect of an undertaking which begins commercial production or refining of mineral oil for a period of seven assessment years only to such an undertaking which begins refining before 1st day of April, 2009. Accordingly, no deduction shall be available to undertaking, which begins refining of mineral oil on or after 1st day of April, 2009. This amendment is being inserted w.e.f. 1st April, 2008.

iv. Scope of charitable purpose being restricted

A far-reaching amendment is being proposed to restrict the meaning of the 'Charitable Purpose'. At present, as per Section 2 (15) of the Act, charitable purpose means "to include relief of the poor, education, medical relief and the advancement of any other object of general public utility". The Finance Bill, 2008 proposes to provide that '*the advancement of any other object of general public utility'* shall not be a charitable purpose if it involves carrying on of :

(a) any activity in the nature of trade, commerce or business or

(b) any activity of rendering of any service in relation to any trade, commerce or business.

for a fee or cess or any other consideration irrespective of the nature of use or application of the income from such activity or the retention of such income, by the concerned entity.

The effect of this amendment will be that any activity which is not a relief of the poor or which is not related to education or medical relief shall not be a charity, unless the same is extended free of cost. All activities of general public utility shall become taxable in case the same is not provided absolutely free. If any amount, howsoever small it may be, is recovered from the

person to whom such charitable activity is extended which despite being of general public utility shall not be considered charitable. This will bring in its ambit almost all NGOs, which are rendering valuable service to the society by providing shelter home, subsidized food etc. and also various trade chambers which may be providing certain useful services not necessarily to its members etc. The impact of this amendment will be very wide and may be an impediment in providing valuable services which society is presently getting from the NGO's by charging a small fee to avoid misuse or wastage.

The best criteria to judge a charitable purpose is to ensure that any surplus arising is not distributed or paid as dividend and is to be used for the purposes for which the trust or institution has been established. Accordingly, so long as any income and surplus arising therefrom is not distributed as dividend or profit and applied for the purposes for which such trust or institution has been established, it should not be a matter of concern for the revenue. The objective of granting exemption for advancement of any other object of public utility as charitable activity is that such activity achieves the same social welfare for which taxes collected are used. In view of the above, the proposed amendment will in fact be counterproductive and may cause undue hardship to all such organizations which by and large are being run with the help of honorary persons.

D. Business Income

1. Weighted Deduction for contribution towards Scientific Research

The Finance Bill, 2008 proposes to allow a weighted deduction of 125 per cent by way of business deduction of the amount paid by a person to be used for scientific research to a company, which is registered in India, having the main object of scientific research and development and is approved by the prescribed authority. This amendment is being proposed in Section 35 (1) by inserting a new Clause (iia) so that even the small assessees, who are not in a position to make big investment for in-house scientific facilities can also get the benefit. However, it has been clarified that such company, which is approved to receive this contribution shall not be eligible to claim weighted deduction of 150 per cent under Section 35 (2AB) in its computation of income to avoid double claim of deduction i.e. first the person contributing to such company claims

deduction and then again the company to whom such contribution is made claims the deduction. This amendment may encourage small companies engaged in similar trade to form another company jointly to carry out the research by receiving contribution from each one of such small companies and these small companies shall be eligible to claim weighted deduction of 125 per cent.

2. Deductions on account of Preliminary Expenses to be allowed to all

The scope of Section 35D is being widened to allow deduction of an amount equal to 1/5th of preliminary expenses relating to a period after the commencement of business for five successive years to all undertakings as against the existing provision whereby this deduction is allowed only to industrial undertakings. This amendment is being made to provide a level playing field to all for amortization of specified post-commencement preliminary expenses by substituting the word 'unit' for industrial undertaking.

3. Disallowance of expenditure incurred or payment made exceeding Rs. 20,000 in a day

The scope of existing Section 40A(3), which presently provides that any expenditure incurred in respect of which payment is made otherwise than by crossed cheque or draft exceeding Rs. 20,000 shall not be allowed as deduction while computing profit and gains of business or profession is being widened. As per the proposed amendment, as against the present ceiling of Rs. 20,000 per transaction now the ceiling of Rs. 20,000 will be aggregate in one day of all such transactions. However, no disallowance shall be made where a payment is made in such cases and in such circumstances as may be prescribed having regard to the nature and extent of banking facilities available, consideration of business expediencies and other relevant factors. These circumstances have been prescribed in Rule 6 DD of the Income Tax Rules, 1962. The purpose of above amendment is to overcome the splitting of payment made to the same person during a day.

4. Clarificatory retrospective amendment regarding written down value

The Finance Bill, 2008 proposes to introduce Explanation (6) below Section 43(6) of the Act, clarifying that where an assessee was not required to compute his total income for the purpose by this Act for any previous year, the written down value in such cases shall be computed after adjusting the actual cost, by the amount attributable to the revaluation of such assets, if any, and the total amount of depreciation provided in the books of accounts in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration and such depreciation shall be deemed to be the depreciation actual allowed under this act for the purpose of computing written down value. This amendment is being introduced retrospectively w.e.f. 1st April, 2003 to overcome the judicial interpretation whereby in the case of person whose income was exempt and, therefore, not required to compute their income, the depreciation provided in such a case in the books of accounts cannot be treated as actually allowed for computing written down value on which depreciation is to be allowed. The proposed amendment may still be advantageous to those entities which have not been providing depreciation in books or providing depreciation lower than what would have been as per Income tax Rules.

E. CAPITAL GAINS

1. Reverse mortgage not to be considered as transfer

The Finance Bill, 2008 proposes to insert a new Clause (xvi) in Section 47 providing that transfer of capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be considered a transfer liable for capital gains. This is being done to overcome the provision of Section 2(47) where transfer includes certain cases of mortgage of property. The concept of reverse mortgage was proposed by the Finance Act, 2007 and accordingly the amendment is being made retrospectively from 1st April, 2008 i.e. assessment year 2008-09.

2. Conversion of foreign currency exchangeable bonds – not liable for capital gains

An amendment is being proposed to provide that conversion of foreign exchangeable bonds into shares or debentures of any company shall not be treated as a transfer liable for capital gain by

inserting a new clause (xa) in Section 47 of the Act. This amendment is also being made retrospectively from 1st April, 2008 i.e. assessment year 2008-09.

F. Minimum Alternate Tax

1. Book Profit to include deferred tax, dividend distribution tax, interest, surcharge etc

A retrospective amendment effective from 1st April, 2001 is being made in Section 115 JB to clarify that the book profit for the purpose of the levy of minimum alternate tax shall be calculated by increasing the same by the amount of deferred tax, if any, debited to the Profit & Loss Account. Further, the following amount shall also be added back to the book profit, if the same have been debited to the Profit & Loss Account.

i. Dividend Distribution Tax
ii. Any interest charged under this Act
iii. Surcharge, if any, levied by the provision of the Central Acts from time to time.
iv. Education cess on income tax including secondary and higher education cess.

The above amendment is being made to overrule certain decisions whereby it was held that the above-mentioned expenditure need not be added back while computing book profit. It may be noted that while the amount debited to Profit and Loss Account on account of deferred tax liability is to be included, no corresponding amendment has been proposed for the deduction of any amount included in the Profit and Loss Account on account of deferred tax.

G. Fringe Benefit Tax

1. Employee welfare to have restricted meaning

The provisions of Fringe Benefit Tax (FBT) are proposed to be amended in respect of employee welfare to provide that expenditure incurred by the employer to provide crèche facility for the children of the employees or sponsoring a sportsman being an employee or organizing sports events for employees shall not be considered as expenditure for employees' welfare liable for FBT.

Further, expenditure incurred through prepaid electronic meal card shall also not be considered as expenditure incurred on hospitality for computing value of the fringe benefit liable for tax in case such electronic meal card is not transferable and useable only at eating joints or outlets and fulfills such other conditions as may be prescribed.

2. Guest house expenditure not liable for FBT

The expenditure incurred for the maintenance of any guest house accommodation shall not be considered as expenditure liable for FBT.

3. Festival celebration to be valued at 20 per cent

The expenditure incurred on festival celebration shall be included in the fringe benefits by taking a value @ 20 per cent as against the existing value of 50 per cent.

4. Tax recovered from the employee on account of fringe benefits to be deemed as tax paid by such employee

The Finance Bill, 2008 gives statutory recognition to the clarification given by the Central Board of Direct Taxes to the effect that where FBT in respect of allotment or transfer of specified security or sweat equity shares has been recovered by the employer from the employee, the recovery of FBT shall be deemed to be the tax paid by such employee in relation to the value of fringe benefit provided to him. This deeming fiction shall apply only to the extent to which the amount recovered from the employee relates to the value of fringe benefits. Further the employee shall not be entitled to any refund of such tax and shall also not be entitled to claim any credit of such deemed tax against any tax liability on other income or any other tax liability. The proposed amendment may, however, still not serve the purpose for which the amendment has been introduced as under Double Taxation Avoidance Agreement this may not be considered as tax paid by the employee. The purpose can be achieved if the tax paid by the employer is considered tax deducted at source. This amendment shall be effective from 1st April, 2008.

H. ASSESSMENT PROCEDURE

1. Due date of filing return for tax payers required to get accounts audited being preponed to 30th September

The due date for filing income tax return and Fringe Benefit Tax return for all companies and such persons, who are required to get their accounts audited and working partners of such firm is being preponed from 31st October to 30th September. This provision shall be effective from 1st April, 2008 and accordingly returns for the assessment year 2008-09 shall now be required to be filed by 30th September. It is to be noted that a corresponding amendment in Section 44AB preponing the specified date, which requires the accounts to be audited before the specified date is not in the proposal. This appears to be an omission and may be rectified at the time of the passage of the Finance Bill. With the preponement of this date to 30th September, probably the issue of extending the due date because of the Diwali Festival coming in the last days of October will no longer be an issue and both the taxpayers and professionals will be able to enjoy Diwali Festival and more so considering the fact that FBT shall now be charged on the expenditure incurred on festival celebration at 20 per cent value as against the existing 50 per cent value. A corresponding amendment is being made in respect of Fringe Benefit Tax return by preponing the same to 30th September.

2. Time period for issue of notice for scrutiny under Section 143(2) being reduced to six months from the end of the financial year

The time period for issue of notice under Section 143(2) for scrutiny of assessment is being modified. As per the proposal, a notice for scrutiny shall not be served on the assessee after the expiry of the six months from the end of the financial year in which the return is furnished as against the existing provision whereby no notice can be served after expiry of 12 months from the end of the month in which the return is furnished. Though the time period is being reduced to six months, the same is to be counted from the end of financial year as against existing provision of counting 12 months from the end of the month in which return is filed. Accordingly, the time period available with the department where the return is filed in the beginning of the assessment year shall be more than the existing period of 12 months, as notice can be served upto 30th September of next year. However, the time period shall be less where the return is filed late just before the end of the financial year, say in March, in which case the notice has to be served by September, as the six month period will be counted form the end of the financial year i.e. March.

Now there will be no motivation for early filing of tax returns unless there is a refund and the department comes out with a plan of issuing refund within a fixed period from the date of filing the return. This amendment shall be effective from 1st April, 2008 and this being a machinery provision notice for all the returns filed during financial year ending 31st March, 2008 can be issued upto 30th September, 2008.

3. Scheme of prima-facie adjustment while processing income tax return being revived

The Finance Bill, 2008 proposes to revive the scheme empowering the department for making adjustment in the income tax return on account of any arithmetical error or any incorrect claim, if such claim is apparent from any information in the return. For this purpose, the incorrect claim shall mean to be an item, which is inconsistent with another entry of the same or some other item in such return, or information required to be furnished to substantiate any entry has not been furnished, or a deduction where such deduction exceeds a specified statutory limit. The above mentioned adjustment shall be made through computerized processing without any human interface and for this purpose a software will be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of income. An intimation shall be sent to the assessee to this effect except where no tax is payable or no refund is due. It appears that by omission intimation to be issued in cases where the returned loss gets reduced due to adjustment has been left out. Such intimation shall be deemed to be a notice of demand under Section 156 of the Act. The time period for sending such intimation, however, shall be restricted to one year from the end of the financial year in which the return is made. Further, the board has been empowered to make a scheme for centralized processing of returns to expeditiously determine the tax payable or refund due. Furthermore, the Central Government has been empowered to issue notification to restrict, modify, and adapt any provisions of the Act relating to processing of returns. Similar amendment is being made for Fringe Benefit Tax returns by amending Section 115 WE of the Act. This amendment shall be effective from 1st April, 2008.

4. Assessing Officer being empowered for extending on his own the time period initially granted for Special Audit

As per the existing provision of Special Audit under Section 142 (2A), the Assessing Officer with the previous approval of the Commissioner, can direct the assessee to get the accounts audited and to furnish a report within such period as may be specified by the Assessing Officer. After having initially issued the direction for furnishing the report within the period specified, the Assessing Officer cannot extend the period on his own but can extend the same only when an application is made by the assessee. To address this issue and remove this anomaly, the amendment proposes to empower the Assessing Officer to extend the period 'Suo Motu' (on his own) also besides on an application made by the assessee. This amendment shall be effective from 1st April, 2008 and accordingly, the Assessing Officer shall have the power to extend the period of Special Audit under Section 142 (2A) on his own from 1st April, 2008 only.

5. Scope of reassessment under Section 147 being widened

The scope of reassessment under Section 147 of the Act is proposed to be widened by inserting a proviso empowering the Assessing Officer to assess such income other than the income involving matters which are the subject matter of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. The objective for introducing this amendment is stated to be to overcome the judicial interpretation. Another clarification is being inserted below Section 151 to overcome a judicial interpretation providing that notice under Section 148 need not be issued by the Joint Commissioner or the Commissioner whose approval has to be obtained before the issue of notice under Section 148. This amendment shall be applicable w.e.f. 1st April, 2008.

6. Abated assessment proceedings, in case reassessment proceedings initiated consequent to search getting annulled, to get revived

The Finance Bill, 2008 proposes to make a retrospective amendment effective from 1st June, 2003 providing that if any assessment proceedings initiated under Section 153A are annulled in any appeal, then the original assessment or reassessment proceedings shall stand revived and the time limit for completion of such assessment shall be one year from the end of the month in which the abated assessment is revived or within the period already specified in Section 153(1) whichever is later. This amendment is being done to overcome the difficulties arising consequent to the provision of Section 153A of the Act, whereby all assessments pending on the date of

search get abated. Later on in case such reassessment proceedings initiated under Section 153A get quashed for one reason or the other, the earlier assessment proceeding could not be taken up again as the same were time barred by that time.

7. Appearance before Assessing Officer to be deemed proper service of notice and in time

An interesting amendment is being proposed by inserting a new Section 292 BB to provide that where an assessee appears in any proceedings or has cooperated in any enquiry in respect of any assessment year, the same shall be deemed to mean that notice required under the Act has been served upon him and in time and also in a proper manner and the assessee shall not be entitled to raise any objection in any proceeding under the Act on the ground that the notice was not served upon him or not served in time or was served upon him in an improper manner. The effect of the above amendment will be that where the assessee is of the view that notice has not been served upon him or not received in time or served upon him in an improper manner probably, he will have no choice but not to appear consequent to such notice or to cooperate in any such enquiry so as not to loose the right to challenge the validity of notice including service, if any. The proposed amendment may have far reaching implications particularly where time limitation can be an issue. The revenue may try to force the attendance of the assessee or his appearance even in those cases where proceedings have been time barred. On the other side it may now be a reasonable cause for a person to defy a summon or notice on the ground that such appearance will lead to losing the legal right. Probably the better alternative would have been to restrict the right of assessee in case he does not raise an objection before the Assessing Officer. The above amendment shall be effective from 1st April, 2008 and being a machinery provision shall be applicable to all notices served on or after 1st April, 2008.

I. Tax Deduction at Source

1. Scope of Tax deduction at Source (TDS) on payment to contractor being widened

The scope of Section 194C providing for deduction of tax at source in respect of any sum credited or paid to a resident contractor for carrying out any work is being expanded to include payment made by Association of Persons (AOP) and Body of Individuals (BOI). As there is no threshold limit being provided as is in the case of individuals or HUF whereby only those individuals or HUF are required to deduct tax whose turnover exceed the prescribed limit, the implication of this amendment will be that howsoever small an AOP or BOI it may be, it will be required to go through the complete procedure of obtaining TDS number, deduction and filing of TDS return. It may affect a large number of welfare associations. This amendment shall be effective from 1st June, 2008.

2. No tax deduction at source on income by way of interest on Corporate Bonds

The provision of Section 193 is being relaxed to provide that there will be no requirement to deduct tax at source on any interest payable to a resident on any security issued by a company where such security is in demat form and is listed on a recognized stock exchange. This amendment shall be effective from 1st June, 2008 and as such there will be no requirement to deduct tax at source on or after that date. This amendment will help in addressing the difficulty being faced by the corporate bond market in identifying the beneficiary for the purpose of deduction of tax at source at the time of accrual of such interest in the books of account.

3. Credit of tax deducted at source to be allowed as per the rules to be framed by the Board

The provision of Section 199 is being amended to empower the Board to frame rules for giving credit in respect of tax deducted to a person other than the person from whom the same has been deducted and also the assessment year for which such credit has to be given. Presently under Section 199, the credit for tax deducted at source has to be given for the assessment year for which such income from which tax has been deducted is assessable and also to the person from whose income the deduction has been made. The above-mentioned amendment is being made to address the difficulty arising consequent to the fact that tax is deductible at the time of credit or payment which is earlier irrespective of the method of accounting being followed by the person from whose income the same is being deducted and such income from where it has been

deducted may not be taxable in the year in which the same has been deducted. This amendment is proposed to be effective from 1st April, 2008.

4. The undertaking and certificate in respect of payment to non-residents to be filed in electronic mode

The provision of Section 195 is being amended to provide that the undertaking and certificate, which has to be submitted to the Reserve Bank of India by the bank for remittance to a non-resident, will now be submitted electronically. The Board is being empowered to prescribe the form and the manner in which the same has to be submitted. This amendment shall be effective from 1st April, 2008.

5. Requirement to issue TDS certificate in physical form to continue

The Finance Bill, 2008 proposes to extend the deadline of 1st April, 2008, by which the requirement to issue TDS certificate by the deductor in physical form was to be abolished to 1st April, 2010. This is being done on the ground that computerization has not received the desired level. Earlier the government had fixed the date as 1st April, 2005 for non-issuance of TDS certificate. The same was extended to 1st April, 2006 and then to 1st April, 2008. By this finance bill, it is being extended to 1st April, 2010 meaning thereby that complete demutualisation of the TDS procedure shall not be completed before 1st April, 2010. Corresponding amendment is being made in respect of tax collection at source certificate.

6. Scope of non-deduction of tax at source being clarified

The provision of Section 201 for treating the assessee in default is being amended to clarify that the person, who has failed to deduct tax at source as well as where he has failed to deposit tax at source after the same has been deducted shall include the principal officer of the company. This amendment is being made to overcome the judicial interpretation whereby a view was being expressed that the existing provision does not cover failure to deduct tax at source but covers only whereby an assessee does not deduct the whole or any part of the tax. This amendment shall be effective retrospectively from 1st June, 2002.

J. Miscellaneous

1. Presumption as to the ownership of assets, books of accounts found during search being extended to survey proceedings

The scope of Section 292C of the Act, which raises a presumption that the books of accounts, other documents and assets found during the course of search belong to such person in whose possession or control the same is found and the contents of such books of accounts and document are correct is being extended to the books of accounts and assets found during the course of survey. This amendment is being made with retrospect effect from 1st June, 2002. A corresponding amendment is being made to Section 42D of the Wealth Tax Act.

2. Direction in the assessment order for initiating penalty for concealment of income to be deemed to constitute satisfaction of the Assessing Officer

The Finance Bill, 2008 proposes to introduce an amendment retrospectively from 1st April, 1989 to provide that where an assessment order contains a direction for initiation of penalty proceedings, such an order of assessment shall be deemed to constitute satisfaction of the Assessing Officer for initiation of penalty proceedings for concealment in respect of any amount added or disallowed in computing the total income or loss of the assessee. The above amendment is being proposed to overrule the judgment of the Delhi High Court in the case of CIT vs. Ram Commerce Enterprises Ltd. 246 ITR 568 (Del). This amendment will have far reaching implications as a large number of appeals have been disposed of by the Court and Tribunal applying the above judgement.

3. Non-filing of appeal consequent to tax effect being low not to preclude department from filing an appeal on same issue

The Finance Bill, 2008 proposes to make an amendment retrospectively from 1st April, 1999 to provide that where an appeal has not been filed by the revenue on any issue against any order passed by any appellate authority consequent to the tax effect being less than the prescribed monetary limit, the revenue shall not be precluded from filing an appeal on the same issue in any other case, either of the same assessee or any other assessee and it shall not be lawful for the assessee to contend that the revenue has accepted the decision on the disputed issue by not filing the appeal in any other case or earlier issues. The above amendment is being made to

overcome the Supreme Court judgment delivered in the case of M/s Berger Paints India Ltd. Vs. CIT 266 ITR 99 (SC) where it was held that the revenue cannot challenge the correctness in the case of an assessee where the law laid down in the other case by the High Court has been accepted by the revenue

4. The power of Income tax Appellate Tribunal to grant stay being restricted to 365 days in aggregate

The Finance Bill, 2008 proposes to make an amendment overruling the interpretation of the earlier amendment by the Court so as to restrict the period of stay by the Income tax Appellate Tribunal (ITAT) to 365 days in aggregate, even if the delay in the disposing of the appeal is not attributable to the assessee. Accordingly, even if an appeal is not heard by the bench may be due to non-functioning of the bench or due to department seeking adjournment, the stay granted by the ITAT shall stand vacated after a period of 365 days even though the assessee has taken all steps to ensure speedy disposal of the appeal and has got a good prima facie case. This amendment shall be effective from 1st October, 2008.

5. Amendment to the settlement procedure

The Finance Act, 2007 had made drastic changes in respect of settlement applications and the procedure to be followed. It has inserted a deadline for deciding all pending settlement applications by 31st March, 2008 and in case of non-disposal of the same, the application despite being admitted were to abate. However, considering the fact that a large number of applications are pending for disposal by the Settlement Commission without any fault of the applicant, there was an expectation that in this Finance Bill the deadline for these applications would get extended. However, no such extension has been proposed. The Finance Bill, 2008 in respect of such settlement applications proposes to empower the Commissioner of Income Tax to grant immunity from penalty and prosecution in case the following conditions are fulfilled:

(a) **<u>For immunity from penalty</u>**

i. The application for immunity must be made by the assessee (person whose case has been abated under section 245HA) to the Commissioner of Income-tax.

ii. If penalty was levied before or during the pendency of settlement proceedings, then the assessee can approach the commissioner for immunity at any time.

iii. If no penalty was levied till the time of abatement of proceedings before the Settlement Commission, then the assessee must make an application for immunity before the imposition of penalty by the income tax authority.

iv. Immunity can be granted by the Commissioner on his satisfaction.

v. The satisfaction required is that the assessee has cooperated in the proceedings after abatement and has made a full and true disclosure of his income and the manner in which such income has been derived.

vi. Immunity can be subject to such conditions as the Commissioner may think fit to impose.

vii. The immunity granted shall stand withdrawn, if such assessee fails to comply with any condition subject to which the immunity was granted.

viii. The immunity granted may be withdrawn by the Commissioner, if he is satisfied that the assessee had, in the course of proceedings, after abatement, concealed any particulars from the income-tax authority or had given false evidence.

(b) **For immunity from prosecution**

i. The application for immunity must be made by the assessee (person whose case has been abated under section 245HA) to the Commissioner of Income-tax before institution of the prosecution proceedings after abatement.

ii. If prosecution proceedings were instituted before or during the pendency of settlement proceedings, then the assessee can approach the Commissioner for immunity any time. However, if the assessee has received any notice etc. from the income tax authority for institution of prosecution, that he must apply to the Commissioner for immunity, before actual institution of prosecution.

iii. Immunity can be granted by the Commissioner on his satisfaction.

iv. The satisfaction required is that the assessee has cooperated in the proceedings after abatement and has made a full and true disclosure of his income and the manner in which such income has been derived.

v. Where an application for settlement under section 245C had been made before the 1st day of June, 2007 the Commissioner can also grant immunity from prosecution for any offence under this Act or under the Indian Penal code or under any other Central Act.

vi. Immunity can be subject to such conditions as the Commissioner may think fit to impose.

vii. The immunity granted shall stand withdrawn, if such assessee fails to comply with any condition subject to which the immunity was granted.

viii. The immunity granted may be withdrawn by the Commissioner, if he is satisfied that the assessee had, in the course of proceedings, after abatement, concealed any particulars from the Income-tax authority or had given false evidence.

The above amendment may not able to address the various issues arising in the pending applications for settlement.

The above amendment shall be effective from 1st April, 2008. Corresponding amendment has been proposed in the Wealth Tax Act.

6. Income derived from saplings or seedlings to be deemed as agriculture income

The scope of agriculture income is being widened so as to include income derived from saplings or seedlings grown in a nursery as agriculture income and hence shall be exempt from tax.

7. Income of Sikkimese individual to be exempt

The Sikkimese individual shall be exempt from income tax in respect of income from any source in the state of Sikkim and income by way of dividend or interest on securities. However, the above exemption shall not be available to a Sikkimese woman, who on or after 1st April, 2008 marries a non-Sikkimese individual. This amendment is being made retrospectively from 1st April, 1990.

8. Income of Coir Board to be exempt

The income of Coir Board is being exempted by including the same under Section 10 (28A).

9. Exemption to special undertakings of Unit Trust of India proposed to be extended till 31st March, 2009

Income tax exemption available to such undertakings of UTI, which has come to an end on 31st January, 2008 is being extended w.e.f. 1st January, 2008 to 31st March, 2009 as its two schemes namely US 64 Bonds and 6.6 per cent ARS bonds are still pending.

10. Time period for Recognized Provident Fund to obtain exemption from the PF Commissioner being extended

The Finance Act 2006 had introduced an additional condition on the Recognized Provident Fund to obtain exemption by 31st March 2007 from the Provident Fund Commissioner in order to have the benefit of recognition under the Income tax Act. The period was extended to 31st March 2008 by the Finance Act 2007. The same is now proposed to be extended to 31st March 2009.

This extension is being given considering the fact that the Finance Act, 2006 had put a condition to obtain exemption under Section 17 for retaining recognition under the Income Tax Act. The extension is being proposed as the applications filed by a large number of existing recognised provident funds are pending with the Employees Provident Fund Organisation. This amendment shall be effective from 1st April, 2008.

11. Banking cash transaction tax being abolished

The Finance Bill, 2008 proposes to withdraw the levy of banking cash transaction tax (BCTT) from next year i.e. with effect from 31st day of March, 2009. Accordingly, the levy of BCTT shall continue for one more year i.e. during the financial year 2008-09 despite admission of the fact that the purpose for which BCTT was levied is being achieved through the Annual Information Return.
