

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 14 of the Bill seeks to amend section 33AB of the Income-tax Act relating to tea development account.

The proposed amendment seeks to allow deduction to an assessee carrying on business of growing and manufacturing coffee in India. The deduction under sub-section (1) of section 33AB shall not be admissible unless the accounts of such business of the assessee for the previous year relevant to the assessment year for which the deduction is claimed have been audited by an accountant as defined in the *Explanation* below sub-section (2) of section 288 and the assessee furnishes, along with his return of income, the audit report in the prescribed form duly signed and verified by such accountant. However, in a case where the assessee is required by or under any other law to get his accounts audited, it shall be sufficient compliance with the provisions of the said sub-section if such assessee gets the accounts of such business audited under such law and furnishes the audit report as required under such other law and a further report in the form prescribed under this sub-section.

It is also proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form in which such audit report shall be signed and verified by the accountant and furnished along with the return of income.

Clause 30 of the Bill seeks to amend section 72A of the Income-tax Act relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger. The proposed amendment seeks to substitute sub-section (2) of the said section, which *inter alia*, provides that the accumulated loss shall not be set-off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless it fulfils such other conditions as may be prescribed.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, such other conditions to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose. The power to prescribe conditions is on the lines of the existing provision contained in the said section.

Clause 31 of the Bill seeks to substitute section 80DD of the Income-tax Act relating to deduction in respect of maintenance including medical treatment of handicapped dependant.

The proposed new section provides for deduction in respect of maintenance including medical treatment of a dependant, being a person with disability. The assessee, claiming a deduction under this section, is required to furnish a copy of the certificate issued by the medical authority in the form and manner, as may be prescribed, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed.

The proposed new section further provides that no deduction shall be allowed unless a new certificate, in case of reassessment of disability, is obtained from the medical authority in the form and manner, as may be specified by the rules made by the Central Board of Direct Taxes and a copy thereof is furnished with the return of income.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which such certificates shall be furnished for the purposes of the said section 80DD.

Clause 32 of the Bill seeks to substitute section 80DDB of the Income-tax Act relating to deduction in respect of medical treatment, etc.

The proposed new section confers power upon the Central Board of Direct Taxes to specify the disease or ailment in respect of which the deduction for the expenditure actually incurred thereon shall be allowed under the said section.

It has further been proposed that no such deduction shall be allowed unless the assessee furnishes with the return of income, a certificate in such form, as may be prescribed, from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist, as may be prescribed, working in a Government hospital.

It is, therefore, proposed to confer power upon the Central Board of Direct Taxes to specify such form in which the certificate, and also such other specialist from whom such certificate shall be furnished along with the return of income for the purposes of availing of deduction under the said section 80DDB.

Clause 35 seeks to insert a new section 80-IC in the Income-tax Act relating to special provisions in respect of certain undertakings or enterprises in certain special category States.

The proposed new section provides that where the gross total income of an assessee includes any profits and gains derived by an undertaking or an enterprise from any business referred to in sub-section (2) thereof, a deduction shall be allowed in computing the total income of the assessee as specified in sub-section (3).

It has been proposed to allow deduction in respect of certain undertakings or enterprises in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park, as notified by the Central Board of Direct Taxes in accordance with the scheme framed and notified by the Central Government in this regard.

It is, therefore, proposed to confer power upon the Central Board of Direct Taxes to specify, by notification in the Official Gazette, for the purpose of the proposed section, any area as "Industrial Area", "Industrial Estate", "Industrial Growth Centre", "Industrial Park", "Integrated Infrastructure Development Centre", "Software Technology Park" or "Theme Park", in accordance with the scheme framed and notified by the Central Government in this regard.

It is also proposed to confer power upon the Central Government to notify said scheme for the purposes of the new section 80-IC.

Clause 38 of the Bill seeks to insert a new section 80QQB in the Income-tax Act relating to deduction in respect of royalty income, etc., of authors of certain books other than text books.

The proposed new section provides that deduction under the section shall not be allowed to the assessee unless he furnishes a certificate setting forth such particulars as may be prescribed duly verified by any person responsible for making such payment to the assessee, as referred to in sub-section (1), along with the return of income. It is, therefore, proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which such certificate shall be furnished.

It has also been proposed that no deduction under this section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate in the prescribed form from the prescribed authority along with the return of income. It is, therefore, proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which such certificate shall be furnished and also the authority from whom such certificate shall be obtained.

Clause 39 of the Bill seeks to insert a new section 80RRB in the Income-tax Act relating to deduction in respect of royalty on patents.

The proposed new sub-section (2) provides that no deduction under this section shall be allowed unless the assessee furnishes a certificate in the form, duly signed by the authority, along with the return of income setting forth such particulars as may be prescribed. It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which such certificate shall be furnished.

The proposed new sub-section (3) provides that no deduction under the section shall be allowed in respect of any income earned from any source outside India, unless the assessee furnishes a certificate in the form, from the authority, as may be prescribed, along with the return of income.

It is also proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which such certificate shall be furnished.

Clause 40 of the Bill seeks to substitute section 80U of the Income-tax Act relating to deduction in the case of permanent physical disability (including blindness).

The proposed new section provides that every individual, who is a person with disability and claiming a deduction under this section shall be required to furnish a copy of the certificate issued by the medical authority in the form and manner as may be prescribed, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed.

It has also been proposed to provide that no deduction shall be allowed unless a new certificate, in case of reassessment of disability, is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished with the return of income.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which such certificate shall be furnished.

Clause 43 of the Bill seeks to amend section 90 of the Income-tax Act relating to agreement with foreign countries.

The proposed amendment confers power upon the Central Government to assign by notification, the meaning to any term used in the agreement entered into under section 90 of the Income-tax Act if such term is neither defined in the Act nor in the agreement and such meaning is not in consistent with the Act or the agreement.

Clause 56 of the Bill seeks to amend section 139 of the Income-tax Act relating to return of income.

The proposed new sub-section (1B) of the said section gives an option to any person who is required to furnish a return of income under sub-section (1), to furnish, on or before the due date, a return of his income for any previous year, in accordance with such scheme as may be specified, in such form (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media) and in the manner specified in the scheme, and in such case, the return of income furnished under such scheme shall be deemed to be a return furnished under sub-section (1), and the provisions of this Act shall apply accordingly.

It is proposed to confer power upon the Central Board of Direct Taxes to specify the said scheme by notification in the Official Gazette.

Clause 59 seeks to insert new sections 153A, 153B and 153C in the Income-tax Act relating, *inter alia*, to assessment in case of search or requisition.

The proposed new section 153A provides that the Assessing Officer shall issue notice to the person referred to in that section,

requiring him to furnish within such period as may be specified in the notice, the return of income in respect of each assessment year, falling within six assessment years referred to in that section.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which the return shall be furnished.

Clause 78 of the Bill seeks to amend section 197A of the Income-tax Act providing that no deduction shall be made in certain cases specified in that section.

The proposed new sub-section (1C) provides that no deduction of tax shall be made under any of the sections referred to in the said sub-section in the case of an individual resident in India, who is of the age of sixty-five years or more at any time during the previous year and is entitled to a deduction from the amount of income-tax on his total income referred to in section 88B, if such individual furnishes to the person responsible for paying any income of the nature referred to in section 193 or section 194 or section 194A or section 194EE or section 194K, as the case may be, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *nil*. It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the form and manner in which such declaration shall be furnished by the said individual and also the manner in which he shall verify the said form.

Clause 79 of the Bill seeks to amend section 206 of the Income-tax Act relating to persons deducting tax to furnish prescribed returns.

The proposed amendment, *inter alia*, provides that the person responsible for deducting tax under the provisions of Chapter XVII of the Income-tax Act (other than the principal officer in the case of every company), may, at his option, deliver or cause to be delivered such return to the prescribed income-tax authority in accordance with such scheme as may be specified, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media and in the manner as may be specified in that scheme. However, the principal officer in the case of every company shall furnish such return in accordance with such scheme.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by notification in the Official Gazette, the scheme and the conditions in accordance with which and the manner in which the return shall be filed by such person and the principal officer.

Clause 81 of the Bill seeks to amend section 230 of the Income-tax Act relating to tax clearance certificate.

The proposed new sub-section (1) of the said section requires a person who is not domiciled in India and who has come to India in connection with business, profession or employment and who has income derived from any source in India to furnish to such authority as may be prescribed, an undertaking in the prescribed form, to the effect that the tax payable by such person shall be paid by the employer or the person from whom income is received.

The proposed new sub-section (1A) of the aforesaid section also seeks to provide that a person who is domiciled in India shall be required to furnish details regarding the permanent account number, the purpose of his visit and estimated period of stay outside India, in the prescribed form to the income-tax authority or such other authority, as may be prescribed.

It is proposed to confer power upon the Central Government to specify, by notification in the Official Gazette, the exceptions for the purposes of the proposed sub-sections.

It is further proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, the income-tax authority to

whom undertaking, as specified, shall be furnished by a person not domiciled in India.

It is also proposed to confer the power upon the Central Board of Direct Taxes to specify, by rules, the form as also the income-tax authority and such other authority to whom the form is to be furnished in case of a person domiciled in India.

It is also proposed to confer power on the Central Board of Direct Taxes to specify, by rules, the form and the authority to whom certificate shall be furnished by the persons who have not been allotted permanent account number or whose income is not chargeable to income-tax or who are not required to obtain permanent account number under the Income-tax Act.

Clause 91 of the Bill seeks to insert a new section 285BA in the Income-tax Act relating to annual information return.

The proposed new section requires every assessee, who enters into any financial transaction, as may be prescribed, with any other person to furnish, within the prescribed time, an annual information return in the form and manner, as may be prescribed, in respect of such financial transaction entered into by him during any previous year.

It is proposed to confer power upon the Central Board of Direct Taxes to specify, by rules, such financial transaction, the form and manner and also the time in which such return shall be furnished by the assessee.

Clause 105 of the Bill seeks to substitute sub-section (1) of section 30 of the Customs Act, 1962. This clause, *inter alia*, proposes to empower the Central Government, to specify, by notification in the Official Gazette, the persons who shall be required to deliver to the proper officer import manifest or import report. This clause also empowers the Central Government to make rules relating to form of import manifest and import report under sub-section (1) of section 30 of the said Act.

Clause 129 of the Bill seeks to substitute sub-section (4) of section 4A of the Central Excise Act, 1944. The said sub-section (4), *inter alia*, proposes to empower the Central Government to make rules laying down the manner of ascertaining retail sale price of excisable goods specified under sub-section (1) of that section.

Clause 132 of the Bill seeks to insert a new section 11DD in the Central Excise Act, 1944. The said new section, *inter alia*, proposes to empower the Central Government to fix, by notification in the Official Gazette, the rate of interest which shall not be below ten per cent. and not exceeding thirty-six per cent. per annum, where an amount has been collected in excess of the duty assessed or determined and paid on any excisable goods under the said Act or the rules made thereunder from the buyer of such goods.

Clause 150 of the Bill seeks to modify certain provisions of Chapter V of the Finance Act, 1994 relating to service tax. Sub-clause (c) of the said clause seeks to insert a new clause (cc) in sub-section (2) of section 94 of the said Act so as to empower the Central Government to make rules laying down the manner in which the person liable to pay service tax shall furnish the return to the Central Excise Officer under section 71A of the said Act.

Clause 151 of the Bill seeks to amend Chapter V of the Finance Act, 1994.

Sub-clause (b) of the said clause seeks to amend section 66 of the Finance Act, 1994 relating to charge of service tax. This sub-clause, *inter alia*, empowers the Central Government to make rules for laying down the manner in which service tax may be collected.

Sub-clause (h) empowers the Central Government to make rules for the purpose of the credit of service paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service.

Sub-clause (i) of the said clause seeks to amend section 95 of the Finance Act, 1994 to insert sub-section (1A) therein so as to empower the Central Government to issue order, for removal of any difficulty which may arise in giving effect to any taxable services brought within the purview of Chapter V of the said Act by the proposed legislation. The proviso to the said sub-section (1A) seeks to provide that every order published under that sub-section shall be laid before each House of Parliament.

Sub-clause (j) of the said clause seeks to insert a new Chapter VA in the Finance Act, 1994 so as to empower the Authority for Advance Rulings constituted under section 28F of the Customs Act, 1962 also to deal with the matters relating to advance rulings in respect of service tax. This sub-clause, *inter alia*, seeks to insert section 96-I in the Finance Act, 1994 which empowers the Central Government to make rules relating to the form and manner of making applications under sub-section (1) of section 96C; the manner of certifying a copy of the advance ruling pronounced by the Authority under sub-section (7) of section 96D and any other matter which is required to be, or may be, prescribed.

Every rule made under Chapter VA shall be laid before both the Houses of Parliament.

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

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