(*5*) The incidental activities shall be the activities which are incidental to the core activities and which may be prescribed for the purpose.

(*6*) Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.

(*7*) Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company, or where any goods or services held for the purposes of any other business carried on by such tonnage tax company are transferred to the tonnage tax business and, in either case, the consideration, if any, for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date:

Provided that where, in the opinion of the Assessing Officer, the computation of the relevant shipping income in the manner hereinbefore specified presents exceptional difficulties, the Assessing Officer may compute such income on such reasonable basis as he may deem fit.

Explanation.—For the purposes of this sub-section, "market value", in relation to any goods or services, means the price that such goods or services would ordinarily fetch on sale in the open market.

(*8*) Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this Chapter, take the amount of income as may be reasonably deemed to have been derived therefrom.

Explanation.—For the purposes of this Chapter, in case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

Treatment of common costs.

115VJ. (*1*) Where a tonnage tax company also carries on any business or activity other than the tonnage tax business, common costs attributable to the tonnage tax business shall be determined on a reasonable basis.

(*2*) Where any asset, other than a qualifying ship, is not exclusively used for the tonnage tax business by the tonnage tax company, depreciation on such asset shall be allocated between its tonnage tax business and other business on a fair proportion to be determined by the Assessing Officer, having regard to the use of such asset for the purpose of the tonnage tax business and for the other business.

Depreciation.

115VK. (*1*) For the purposes of computing depreciation under clause (*iv*) of section 115VL, the depreciation for the first previous year of the tonnage tax scheme (hereafter in this section referred to as the first previous year) shall be computed on the written down value of the qualifying ships as specified under sub-section (*2*).

(*2*) The written down value of the block of assets, being ships, as on the first day of the first previous year, shall be divided in the ratio of the book written down value of the qualifying ships (hereafter in this section referred to as the qualifying assets) and the book written down value of the non-qualifying ships (hereafter in this section referred to as the other assets).

(*3*) The block of qualifying assets as determined under sub-section (*2*) shall constitute a separate block of assets for the purposes of this Chapter.

(*4*) For the purposes of sub-section (*2*), the book written down value of the block of qualifying assets and the block of other assets shall be computed in the following manner, namely:—

(*a*) the book written down value of each qualifying asset and each other asset as on the first day of the previous year and which form part of the block of assets to be divided shall be determined by taking the book written down value of each asset appearing in the books of account as on the last day of the preceding previous year:

Provided that any change in the value of the assets consequent to their revaluation after the date on which the Finance (No. 2) Bill, 2004 receives the assent of the President shall be ignored;

(*b*) the book written down value of all the qualifying assets and other assets shall be aggregated; and

(*c*) the ratio of the aggregate book written down value of the qualifying assets to the aggregate book written down value of the other assets shall be determined.

(*5*) Where an asset forming part of a block of qualifying assets begins to be used for purposes other than the tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of that block and shall be added to the block of other assets.

Explanation.—For the purposes of this sub-section, appropriate portion of the written down value allocable to the asset, which begins to be used for purposes other than the tonnage tax business, shall be an amount which bears the same proportion to the written down value of the block of qualifying assets as on the first day of the previous year as the book written down value of the asset beginning to be used for purposes other than tonnage tax business bears to the book written down value of all the assets forming the block of qualifying asset.

(*6*) Where an asset forming part of a block of other assets begins to be used for tonnage tax business, an appropriate portion of the written down value allocable to such asset shall be reduced from the written down value of the block of other assets and shall be added to the block of qualifying asset.

Explanation.—For the purposes of this sub-section, appropriate portion of written down value allocable to the asset which begins to be used for the tonnage tax business shall be an amount which bears the same proportion to the written down value of the block of other assets as on the first day of the previous year as the book written down value of the asset beginning to be used for tonnage tax business bears to the total book written down value of all the assets forming the block of other assets.

(*7*) For the purposes of computing depreciation under clause (*iv*) of section 115VL in respect of an asset mentioned in sub-sections (*5*) and (*6*), depreciation computed for the previous year shall be allocated in the ratio of the number of days for which the asset was used for the tonnage tax business and for purposes other than tonnage tax business.

Explanation 1.—For the removal of doubts, it is hereby declared that for the purposes of this Act, depreciation on the block of qualifying assets and block of other assets so created shall be allowed as if such written down value referred to in sub-section (*2*) had been brought forward from the preceding previous year.

Explanation 2.—For the purposes of this section, "book written down value" means the written down value as appearing in the books of account.

General exclusion of deduction and set off, etc.

115VL. (*1*) Notwithstanding anything contained in any other provision of this Act, in computing the tonnage income of a tonnage tax company for any previous year (hereafter in this section referred to as the "relevant previous year") in which it is chargeable to tax in accordance with this Chapter–

(*i*) sections 30 to 43B shall apply as if every loss, allowance or deduction referred to therein and relating to or allowable for any of the relevant previous years, had been given full effect to for that previous year itself;

(*ii*) no loss referred to in sub-sections (*1*) and (*3*) of section 70 or sub-sections (*1*) and (*2*) of section 71 or sub-section (*1*) of section 72 or sub-section (*1*) of section 72A, in so far as such loss relates to the business of operating qualifying ships of the company, shall be carried forward or set off where such loss relates to any of the previous years when the company is under the tonnage tax scheme;

(*iii*) no deduction shall be allowed under Chapter VI-A in relation to the profits and gains from the business of operating qualifying ships; and

(*iv*) in computing the depreciation allowance under section 32, the written down value of any asset used for the purposes of the tonnage tax business shall be computed as if the company has claimed and has been actually allowed the deduction in respect of depreciation for the relevant previous years.

Exclusion of loss.

115VM. (*1*) Section 72 shall apply in respect of any losses that have accrued to a company before its option for tonnage tax scheme and which are attributable to its tonnage tax business, as if such losses had been set off against the relevant shipping income in any of the previous years when the company is under the tonnage tax scheme.

(*2*) The losses referred to in sub-section (*1*) shall not be available for set off against any income other than relevant shipping income in any previous year beginning on or after the company exercises its option under section 115VP.

(*3*) Any apportionment necessary to determine the losses referred to in sub-section (*1*) shall be made on a reasonable basis.

Chargeable gains from transfer of tonnage tax assets.

115VN. Any profits or gains arising from the transfer of a capital asset being an asset forming part of the block of qualifying assets shall be chargeable to income-tax in accordance with the provisions of section 45, read with section 50, and the capital gains so arising shall be computed in accordance with the provisions of sections 45 to 51:

Provided that for the purpose of computing such profits or gains, the provisions of section 50 shall have effect as if for the words “written down value of the block of assets”, the words “written down value of the block of qualifying assets” had been substituted.

Explanation.—For the purposes of this Chapter, “written down value of the block of qualifying assets” means the written down value computed in accordance with the provisions of sub-section (*2*) of section 115VK.

Exclusion from provisions of section 115JB.

115V-O. The book profit or loss derived from the activities of a tonnage tax company, referred to in sub-section (*1*) of section 115V-I, shall be excluded from the book profit of the company for the purposes of section 115JB.

C.—Procedure for option of tonnage tax scheme

Method and time of opting for tonnage tax scheme.

115VP. (*1*) A qualifying company may opt for the tonnage tax scheme by making an application to the Joint Commissioner having jurisdiction over the company in the form and manner as may be prescribed, for such scheme.

(*2*) The application under sub-section (*1*) may be made by any existing qualifying company at any time after the 30th day of September, 2004 but before the 1st day of January, 2005 (hereafter referred to as the "initial period"):

Provided that—

(*i*) a company incorporated after the initial period; or

(*ii*) a qualifying company incorporated before the initial period but which becomes a qualifying company for the first time after the initial period,

may make an application within three months of the date of its incorporation or the date on which it became a qualifying company, as the case may be.

(*3*) On receipt of an application for option for tonnage tax scheme under sub-section (*1*), the Joint Commissioner may call for such information or documents from the company as he thinks necessary in order to satisfy himself about the eligibility of the company and after satisfying himself about such eligibility of the company to make such option for tonnage tax scheme, he—

(*i*) shall pass an order in writing approving the option for tonnage tax scheme; or

(*ii*) shall, if he is not so satisfied, pass an order in writing refusing to approve the option for tonnage tax scheme,

and a copy of such order shall be sent to the applicant:

Provided that no order under clause (*ii*) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(*4*) Every order granting or refusing the approval of the option for tonnage tax scheme under clause (*i*) or clause (*ii*), as the case may be, of sub-section (*3*) shall be passed before the expiry of one month from the end of the month in which the application was received under sub-section (*1*).

(*5*) Where an order granting approval is passed under sub-section (*3*), the provisions of this Chapter shall apply from the assessment year relevant to the previous year in which the option for tonnage tax scheme is exercised.

Period for which tonnage tax option to remain in force.

115VQ. (*1*) An option for tonnage tax scheme, after it has been approved under sub-section (*3*) of section 115VP, shall remain in force for a period of ten years from the date on which such option has been exercised and shall be taken into account from the assessment year relevant to the previous year in which such option is exercised.

(*2*) An option for tonnage tax scheme shall cease to have effect from the assessment year relevant to the previous year in which—

(*a*) the qualifying company ceases to be a qualifying company;

(*b*) a default is made in complying with the provisions contained in section 115VT or section 115VU or section 115VV;

(*c*) the tonnage tax company is excluded from the tonnage tax scheme under section 115VZC;

(*d*) the qualifying company furnishes to the Assessing Officer, a declaration in writing to the effect that the provisions of this Chapter may not be made applicable to it, and the profits and gains of the company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

Renewal of tonnage tax scheme.

115VR. (*1*) An option for tonnage tax scheme approved under sub-section (*3*) of section 115VP may be renewed within one year from the end of the previous year in which the option ceases to have effect.

(*2*) The provisions of sections 115VP and 115VQ shall apply in relation to a renewal of the option for tonnage tax scheme in the same manner as they apply in relation to the approval of option for tonnage tax scheme.

Prohibition to opt for tonnage tax scheme in certain cases.

115VS. A qualifying company, which, on its own, opts out of the tonnage tax scheme or makes a default in complying with the provisions of section 115VT or section 115VU or section 115VV or whose option has been excluded from tonnage tax scheme in pursuance of an order made under sub-section (*1*) of section 115VZC, shall not be eligible to opt for tonnage tax scheme for a period of ten years from the date of opting out or default or order, as the case may be.

D.—Conditions for applicability of tonnage tax scheme

Transfer of profits to Tonnage Tax Reserve Account.

115VT. (*1*) A tonnage tax company shall, subject to and in accordance with the provisions of this section, be required to credit to a reserve account (hereafter in this section referred to as the Tonnage Tax Reserve Account) an amount not less than twenty per cent. of the book profit derived from the activities referred to in clauses (*i*) and (*ii*) of sub-section (*1*) of section 115V-I in each previous year to be utilised in the manner laid down in sub-section (*3*):

Provided that a tonnage tax company may transfer a sum in excess of twenty per cent. of the book profit and such excess sum transferred shall also be utilised in the manner laid down in sub-section (*3*).

Explanation.—For the purposes of this section, "book profit" shall have the same meaning as in the *Explanation* to sub-section (*2*) of section 115JB so far as it relates to the income derived from the activities referred to in clauses (*i*) and (*ii*) of sub-section (*1*) of section 115V-I.

(*2*) Where the company has book profit from the business of operating qualifying ships and book loss from any other sources, and consequently, the company is not in a position to create the full or any part of the reserves under sub-section (*1*), the company shall create the reserves to the extent possible in that previous year and the shortfall, if any, shall be added to the amount of the reserves required to be created for the following previous year and such shortfall shall be deemed to be part of the reserve requirement of that following previous year:

Provided that to the extent the shortfall in creation of reserves during a particular previous year is carried forward to the following previous year under this sub-section, the company shall be considered as having created sufficient reserves for the first mentioned previous year:

Provided further that nothing contained in the first proviso shall apply in respect of the second year in case the shortfall in creation of reserves continues for two consecutive previous years.

(*3*) The amount credited to the Tonnage Tax Reserve Account under sub-section (*1*) shall be utilised by the company before the expiry of a period of eight years next following the previous year in which the amount was credited—

(*a*) for acquiring a new ship for the purposes of the business of the company; and

(*b*) until the acquisition of a new ship, for the purposes of the business of operating qualifying ships other than for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

(*4*) Where any amount credited to the Tonnage Tax Reserve Account under sub-section (*1*),—

(*a*) has been utilised for any purpose other than that referred to in clause (*a*) or clause (*b*) of sub-section (*3*); or

(*b*) has not been utilised for the purpose specified in clause (*a*) of sub-section (*3*); or

(*c*) has been utilised for the purpose of acquiring a new ship as specified in clause (*a*) of sub-section (*3*), but such ship is sold or otherwise transferred, other than in any scheme of demerger by the company to any person at any time before the expiry of three years from the end of the previous year in which it was acquired,

an amount which bears the same proportion to the total relevant shipping income of the year in which such reserve was created, as the amount out of such reserve so utilised or not utilised bears to the

total reserve created during that year under sub-section (*1*) shall be taxable under the other provisions of this Act—

(*i*) in a case referred to in clause (*a*), in the year in which the amount was so utilised; or

(*ii*) in a case referred to in clause (*b*), in the year immediately following the period of eight years specified in sub-section (*3*); or

(*iii*) in a case referred to in clause (*c*), in the year in which the sale or transfer took place:

Provided that the income so taxable under the other provisions of this Act shall be reduced by the proportionate tonnage income charged to tax in the year of creation of such reserves.

(*5*) Notwithstanding anything contained in any other provision of this Chapter, where the amount credited to the Tonnage Tax Reserve Account in accordance with sub-section (*1*) is less than the minimum amount required to be credited under sub-section (*1*), an amount which bears the same proportion to the total relevant shipping income, as the shortfall in credit to the reserves bears to the minimum reserve required to be credited under sub-section (*1*) shall not be taxable under the tonnage tax scheme and shall be taxable under the other provisions of this Act.

(*6*) If the reserve required to be created under sub-section (*1*) is not created for any two consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the failure to create the reserve under sub-section (*1*) had occurred.

Explanation.—For the purposes of this section, "new ship" includes a qualifying ship which, before the date of acquisition by the qualifying company was used by any other person, if it was not at any time previous to the date of such acquisition owned by any person resident in India.

Minimum training requirement for tonnage tax company.

115VU. (*1*) A tonnage tax company, after its option has been approved under sub-section (*3*) of section 115VP, shall comply with the minimum training requirement in respect of trainee officers in accordance with the guidelines framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.

(*2*) The tonnage tax company shall be required to furnish a copy of the certificate issued by the Director-General of Shipping along with the return of income under section 139 to the effect that such company has complied with the minimum training requirement in accordance with the guidelines referred to in sub-section (*1*) for the previous year.

(*3*) If the minimum training requirement is not complied with for any five consecutive previous years, the option of the company for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the fifth consecutive previous year in which the failure to comply with the minimum training requirement under sub-section (*1*) had occurred.

Limit for charter in of tonnage.

115VV. (*1*) In the case of every company which has opted for tonnage tax scheme, not more than forty-nine per cent. of the net tonnage of the qualifying ships operated by it during any previous year shall be chartered in.

(*2*) The proportion of net tonnage referred to in sub-section (*1*) in respect of a previous year shall be calculated based on the average of net tonnage during that previous year.

(*3*) For the purposes of sub-section (*2*), the average of net tonnage shall be computed in the following manner, namely:—

(*a*) the net tonnage of each qualifying ship owned by the tonnage tax company as at the end of the last day of the previous year shall be aggregated; and

(*b*) the sum so arrived at shall be divided by the number of qualifying ships owned by the company.

(*4*) Where the net tonnage of ships chartered in exceeds the limit under sub-section (*1*) during any previous year, the total income of such company in relation to that previous year shall be computed as if the option for tonnage tax scheme does not have effect for that previous year.

(*5*) Where the limit under sub-section (*1*) had exceeded in any two consecutive previous years, the option for tonnage tax scheme shall cease to have effect from the beginning of the previous year following the second consecutive previous year in which the limit had exceeded.

Explanation.—For the purposes of this section, the term "chartered in" shall exclude a ship chartered in by the company on bareboat charter-cum-demise terms.

Maintenance and audit of accounts.

115VW. An option for tonnage tax scheme by a tonnage tax company shall not have effect in relation to a previous year unless such company—

(*i*) maintains separate books of account in respect of the business of operating qualifying ships; and

(*ii*) furnishes, along with the return of income for that previous year, the report of an accountant, in the prescribed form duly signed and verified by such accountant.

Explanation.—For the purposes of this section, "accountant" shall have the same meaning as in the *Explanation* below sub-section (*2*) of section 288.

Determination of tonnage.

115VX. (*1*) For the purposes of this Chapter,—

(*a*) the tonnage of a ship shall be determined in accordance with the valid certificate indicating its tonnage;

(*b*) "valid certificate" means,—

(*i*) in case of ships registered in India—

(*a*) having a length of less than twenty-four metres, a certificate issued under the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958;

44 of 1958.

(*b*) having a length of twenty-four metres or more, an international tonnage certificate issued under the provisions of the Convention on Tonnage Measurement of Ships, 1969 as specified in the Merchant Shipping (Tonnage Measurement of Ship) Rules, 1987 made under the Merchant Shipping Act, 1958;

44 of 1958.

(*ii*) in case of ships registered outside India, a licence issued by the Director-General of Shipping under section 406 or section 407 of the Merchant Shipping Act, 1958 specifying the net tonnage on the basis of Tonnage Certificate issued by the Flag State Administration where the ship is registered or any other evidence acceptable to the Director-General of Shipping produced by the ship owner while seeking permission for chartering in the ship.

44 of 1958.

E.—Amalgamation and demerger of shipping companies

Amalgamation.

115VY. Where there has been an amalgamation of a company with another company or companies, then, subject to the other provisions of this section, the provisions relating to the tonnage tax scheme shall, as far as may be, apply to the amalgamated company if it is a qualifying company:

Provided that where the amalgamated company is not a tonnage tax company, it shall exercise an option for tonnage tax scheme under sub-section (*1*) of section 115VP within three months from the date of the approval of the scheme of amalgamation:

Provided further that where the amalgamating companies are tonnage tax companies, the provisions of this Chapter shall, as far as may be, apply to the amalgamated company for such period as the option for tonnage tax scheme which has the longest unexpired period continues to be in force:

Provided also that where one of the amalgamating companies is a qualifying company as on the 1st day of October, 2004 and which has not exercised the option for tonnage tax scheme within the initial period, the provisions of this Chapter shall not apply to the amalgamated company and the income of the amalgamated company from the business of operating qualifying ships shall be computed in accordance with the other provisions of this Act.

Demerger.

115VZ. Where in a scheme of demerger, the demerged company transfers its business to the resulting company before the expiry of the option for tonnage tax scheme, then, subject to the other provisions of this Chapter, the tonnage tax scheme shall, as far as may be, apply to the resulting company for the unexpired period if it is a qualifying company:

Provided that the option for tonnage tax scheme in respect of the demerged company shall remain in force for the unexpired period of the tonnage tax scheme if it continues to be a qualifying company.

F.—Miscellaneous

Effect of temporarily ceasing to operate qualifying ships.

115VZA. (*1*) A temporary cessation (as against permanent cessation) of operating any qualifying ship by a company shall not be considered as a cessation of operating of such qualifying ship and the company shall be deemed to be operating such qualifying ship for the purposes of this Chapter.

(*2*) Where a qualifying company continues to operate a ship, which temporarily ceases to be a qualifying ship, such ship shall not be considered as a qualifying ship for the purposes of this Chapter.

G.—Provisions of this Chapter not to apply in certain cases

Avoidance of tax.

115VZB. (*1*) Subject to the provisions of this Chapter, the tonnage tax scheme shall not apply where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme.