

The Finance Bill 2005- Two New Taxes

- Fringe Benefit Tax

- Banking Cash Transaction Tax

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To carry out the mandate of the NCMP the Government has introduced a special scheme to unearth black money and assets. There would, however, be no undeserved relief or an amnesty. The Government is concerned about large cash transactions, specially withdrawal of cash, when there is no ostensible purpose to withdraw such large amounts of cash. These cash withdrawals leave no trail, and presumably become part of the black economy. The Banking Cash Transaction Tax is an attempt to plug this loophole. However, this proposal is a subject matter of heated debate and perhaps requires a reconsideration by the Government. This article deals with Fringe Benefits Tax as well as Banking Transaction Tax.

Before one analyses the direct tax proposals of Finance Bill, 2005. One should look at statement of Finance Minister laid before parliament under Fiscal Responsibility and Budget Management Act, 2003 with respect to Tax Policy Evolution in para 33. This para states:

“The guiding principles of present Indian tax policy are widening the tax base by reducing exemptions, incentives and concessions; reducing multiplicity of rates; lowering tax rates; shifting the incidence of the tax burden from production to consumption; moving away from the excessive reliance on manufacturing and taxing all value additions including from services; enhancing the neutrality between present and future consumption; enhancing the neutrality of the tax system to forms of business organizations and sources of finance; and reengineering business processes of tax administration to reduce compliance cost and

overcome the culture of tax avoidance and evasion.”

A. Fringe Benefit Tax

I. Rationale for Levy

The need for introducing fringe benefits tax on the employer arose on account of the inherent difficulty in identifying the ‘personal element’ where there is collective enjoyment of certain perquisites, amenities & benefits and attributing the same directly to the employee. This is so specially where the expenditure incurred by the employer is ostensibly for purposes of the business but inherently includes, at least partially, the benefit of a personal nature. Moreover, in cases where the employer directly reimburses the employee for expenses incurred, it becomes difficult to effectively capture the true extent of the perquisite provided because of the problem of cash flow in the hands of the employer.



II. Fringe Benefit Tax:

The Bill proposes insertion of a new Chapter XII H containing 13 sections 115W to 115WL which provides for levy of Additional Income Tax on Fringe Benefits. Chapter is divided in three parts:-

- ✓ Part A contains meaning of *Employer* and *Fringe Benefit Tax*.
- ✓ Part B enumerates the basis of charge. This contains three sections 115WA, 115WB and 115WC. 115WA provides for levy of tax at the rate of 30% in addition to Income tax on employer for the Fringe Benefits provided or

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deemed to have provided by employer to his employees during the previous year.

- ✓ Part C is related to procedure for filing of return, interest, assessment and payment of tax in respect of fringe benefit.

III. Fringe Benefit

Proposed section 115WB (1) provides the meaning of Fringe Benefit as:

- a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer to his employees (including former employee or employees) by reason of their employment, or
- b) any reimbursement, directly or indirectly, made by the employer to his employees for any purpose,
- c) any free or concessional ticket provided by the employer for private journey of employees and their family members, and
- d) any contribution by the employer to an approved superannuation fund.

IV. Deemed Fringe Benefit

Proposed section 115 WB(2) provides that *Fringe Benefit shall be deemed to have been provided if the employer has, in the course of business or profession incurred any expenditure on or made any payment for the purpose of* (A) Entertainment; (B) festival celebrations; (C) gifts; (D) use of club facilities; (E) provision of hospitality of every kind to any person whether by way of food and beverage or in any other manner, excluding food or beverages provided to the employees in the office or factory; (F) maintenance of guest house; (G) conference; (H) employee welfare (I) use of health club, sports and similar facilities; (J) sales promotion including pub-

licity; (K) conveyance, tour and travel including foreign travel expenses; (L) hotel boarding and lodging; (M) repair, running and maintenance of motor cars; (N) repair, running and maintenance of aircrafts; (O) consumption of fuel other than industrial fuel; (P) use of telephone; (Q) scholarship to the children of the employees.

It is pertinent to consider the distinction between 'Fringe Benefit' and 'Deemed Fringe Benefit'. The later does not bear any reference to expenditure on employees except that in item no. (Q).

V. Computation of Fringe Benefit

Proposed section 115WC provides the method of computation of Fringe Benefit for the purpose of levy of Fringe Benefit Tax. It is *aggregate* of following:-

- a) cost of free or concessional tickets for private journeys of the employees or their family members as provided by the employer to the general public as reduced by any amount paid or recovered from the employee;
- b) the actual amount of contribution made by the employer to the approved superannuating fund;
- c) a specified percentage of each of the expenses enumerated as items (A) to (Q) in the earlier paragraph.

It is 50% for A to J, 20% for K to O, 10% for P and actual for Q. However incase where the employer is engaged in the business of carriage of passengers or goods by motor car or by aircraft, a lower percentage (i.e.5%) of expenses on repair, running and maintenance of motor cars or aircrafts or fuel expenses has been specified. Similarly, for hotels, a lower percentage (i.e. 5%) of the expenses incurred on hospitality

has been specified for purposes of calculating the liability under the fringe benefit tax.

It is important to note that item (a) & (b) of section 115WB are not included in computation of fringe benefit aggregation. These are being considered in employee's income.

VI. Tax Incidence:

- (A) This tax is payable by employer as per section 115W the *employer* means: –
- (i) an individual or a HUF engaged in a business or profession, the profits & gains whereof are assessable to Income Tax under the head 'Profits & gains of the business or profession'.
 - (ii) a company
 - (iii) a firm
 - (iv) an association of persons or a body of individuals, whether incorporated or not
 - (v) a local authority
 - (vi) every artificial juridical person, not falling within any of the preceding sub-clauses.

Any individual or HUF carrying on business or profession is employer. However Firm, Company, AOP, Local Authority, Artificial Person would fall within the definition of employer even without carrying on business. The benefits defined in section 115WB(1) are to employees whereas section 115WB(2) refers to deemed benefit on incurring the expenditure in course of business. The expenditure ought to be actual but benefit is presumptive quantification without any judgment.

- (B) Sum paid on account of fringe benefit tax is not a allowable deduction.

VII. Implications –Difficulties:

The apparent contradiction in legislative intent and proposed provi-

sion would lead to litigation. The issues which need focus and deliberation are the following: –

- It is an independent or additional tax with independent provision of filing the return, assessment, payment of tax. The chapter XII H is complete code for this tax.
- The tax is impossible even where assessee does not have taxable income, but expenditure are incurred in course of business.
- Even charitable institution carrying incidental business without profit motive will also be required to pay tax.
- The tax rate is 30% irrespective of the level of remuneration of employees or income of assessee.
- Purpose of expenditure i.e. entertainment, gift, conveyance etc. will cause lot of litigation to explain their meanings.
- The levy of tax may be even where the number of employees is one or more.
- Where the expenditure is disallowed on the allegation of personal nature, this can again be taxed under this section.
- Even where part of expenditure mentioned in section 115 WB(2) is recovered, the deemed fringe benefit would be a proportion of gross amount debited in the books without allowing credit.
- In certain cases, the provisions may lead to encourage the incurring the expenditure out of books.

VIII. Procedure

An employer liable to pay fringe benefit tax is required to furnish a return of fringe benefits before the due date as given in section 115WD. Section 115WE outlines the procedure for the assessment of the return of fringe benefits filed by the employer and the deter-

mination of tax or interest payable or refund due and in either case the issue of intimation to that effect. Section 115WF provides for a best judgment assessment where the employer fails to furnish the return under section 115WD or fails to comply with a notice issued under section 115WE. Where the assessing officer has reason to believe that any fringe benefits chargeable to tax have escaped assessment for any assessment year, section 115WG provides for the reassessment of such fringe benefits which have escaped assessment and section 115WH provides for issue of notice for assessment or reassessment under section 115WG.

The provisions of section 115WI and section 115WJ provide for the payment of advance tax in respect of fringe benefits and the interest payable by the employer in case of delay in making such payment. Section 115WK provides for the charging of interest for default in furnishing return of income and section 115WL provides for the application of all other provisions of the income-tax Act in relation to fringe benefits as well, save as otherwise provided.

IX. Other Provisions:

Consequential amendments have also been proposed in section 2, section 17, section 40, section 119, section 124, section 139A, section 140, section 140A, section 142, section 153, section 238, section 239, section 244A, section 246A, section 271, section 273B, section 276CC and section 278 to include a reference to the provisions of this chapter.

A new section 271FB is proposed to be inserted to provide for the levy of penalty for the failure to furnish a return of fringe benefits.

X. Suggestions

In order to reduce likely litigation

and make the provisions more effective, the following suggestion could be of some help: -

- ☞ The rate of fringe benefit tax should be moderate e.g. 15% or at the most 20%.
- ☞ The provision should not apply where the employer employs less than 20 persons to avoid its application across the board.
- ☞ In case of separate disallowance out of the expense concerned in assessment to fringe benefit should not be taken to that extent.
- ☞ The recovery out of expenses should be reduced from the amount of fringe benefits.
- ☞ The proportion of expenses to be regarded, as fringe benefit should be linked to the number of employees.
- ☞ Instead of an independent return, assessment order and other proceedings, it should be part of the same return, assessment order, Appellate procedure etc. to avoid procedural and litigation cost.

Thus, if the proposed amendment is carried out without notification, it would have severe consequences which need to be focused.

B. Banking Cash Transaction Tax

I. Rationale for Levy

New levy of banking cash transaction tax has been proposed as measure to check tax evasion. Chapter VII of the Finance Bill, 2005, contains provisions relating to Banking Cash Transaction Tax. This proposed new Chapter shall be applicable to the whole of India except the State of Jammu and Kashmir. This Chapter shall come into force with effect from 1st June, 2005. This is an independent levy proposed under by

Chapter VII and being regulated by income tax authority.

II. Tax Incidence

Tax event is on following banking transaction and it will be levied on person mentioned against these:

S. No.	Events	Leviable On
i)	Cash withdrawal exceeding Rs. 10,000 from any scheduled bank on a single day	Person withdrawing cash from any scheduled bank
ii)	Cash withdrawal exceeding Rs. 10,000 from scheduled bank on a single day by bearer cheques.	Bearer of cheques or instrument.
iii)	Purchase of a bank draft or a banker's cheques exceeding Rs. 10,000 on a single day from any scheduled bank	Person purchasing any such instrument from the bank.
iv)	Receipt of cash from a scheduled bank on a single day exceeding Rs. 10,000 on encashment of term deposit whether on maturity or otherwise.	Concerned Depositor.

Provided that no tax will be payable if credit to bank account. For this tax person has been assigned following meaning:-

- i) as assigned in section 2(31) of the I.T. Act, 1961.
- ii) office or establishment of the Central Government or State Government.

III. Tax Rate

Bill clause 95(1) proposes to levy a banking transaction tax on taxable banking transaction at the rate of 0.1% of the value of each such taxable transaction.

IV. Procedural Requirements

(a) Collection & deposition of tax:

- ✓ Recovery of BCT tax by every scheduled bank at 0.1% from every person entering into a taxable banking transaction.

- ✓ Tax collected by bank has to be deposited to the credit of Central Govt. by the 15th day of the month following the month in which BCT tax is collected.

- ✓ Any Scheduled Bank failing to collect BCT tax shall also be liable to pay the same to Central Govt. and Furnishing returns to AO by scheduled bank.

(b) Furnishing of Return:

- ✓ Return is to be filed within prescribed time in prescribed manner.
- ✓ Confer power to AO to issue notice to furnish

returns by persons responsible for collecting tax.

Revised return before assessment is made.

(c) Assessment, Rectification, Appeals:

- ✓ No assessment after expiry of 2 years from end of relevant assessment year.
- ✓ Refund amount shall be returned to the person from whom it was collected.
- ✓ Rectification of mistake apparent from record within 1 year from the end of financial year in which order sought to be amended was passed.
- ✓ Appeal to CIT(A), sec. 249 to 251 of I.T. Act apply.
- ✓ Appeal to Appellate Tribunal sec. 252 to 255 apply.

IV. Interest and Penalties

- ✓ Interest @ 1% per month or part thereof, if amount not credited to Central Govt.

- ✓ Penalty on bank if BCT tax not deducted/ deposited. If not collected- equal penalty. If not deposited - Rs. 1000/- per day but restricted to amount not deposited

- ✓ Failure to furnish return - Penalty Rs. 100/- per day

- ✓ Failure to comply notice – Rs. 100/- per day

- ✓ If proves reasonable cause- no penalty

- ✓ Punishment by way of imprisonment up to 3 year and fine for false statement. It will be a non-cognizable offence & CPC 1973 apply.

- ✓ Prosecution, only with permission of CCIT.

V. Allowable Deduction

Proposed section 36(1)(xiii) of finance bill allow the payment of this tax as deduction. Where, the transaction must be part of his business.

VI Implication and suggestions.

The levy of this tax will definitely regulate the monetary transaction through banking channel in course of time. It would prove to be an effective measure to check tax evasion yet the time has not ripe for the levy at such a low amount of Rs. 10,000. The amount should be increased to at least Rs. 50,000/-. Further, this tax is levied not to collect revenue but to discourage the cash transaction therefore the levy should be adjustable against Income Tax payable. The assessee may be require to list out these transactions in its return.

Conclusion

The above dealt two taxes does not meet the guidance principles mentioned in tax policy evaluation statement and therefore need to relooked by the Finance Minister. ■