

# Amendments proposed by the Taxation Laws (Amendment) Bill, 2005-Direct Taxes

The Hon'ble Finance Minister while presenting his budget for the year 2005-06 stated his intention to introduce a separate bill containing amendments to the direct and indirect tax laws during the budget session itself. Keeping his commitment, the Finance Minister introduced the Taxation Laws (Amendment) Bill, 2005 in the Lok Sabha on 12<sup>th</sup> May, 2005. The important changes proposed in the Bill are as under:

## 1. Filing of Income Tax Return by Educational and Medical Institution having annual receipt less than Rs. 1 Crore

All educational and medical institutions claiming exemption under Section 10(23C) would be required to file the income tax return in case their total income exceeds (before claiming exemption under Section 10(23C)) the maximum amount not chargeable to tax, i.e., Rs. 1 lakh at present. Presently only those institutions which have annual receipts of more than Rs. 1 Crore are required to file returns. The new amendment requires that even institutions where annual receipts are less than 1 Crore but total income before exemption exceeds the maximum amount not liable to tax would also be required to file the return of income.

## 2. Audit of Educational and Medical Institutions having annual receipt of exceeding 1 Crore

All educational and medical institutions claiming exemption under Section 10(23C) would be required to get their accounts audited by a Chartered Accountant in case their total income exceeds the maximum amount which is not chargeable to tax (presently Rs. 1 lakh).

This requirement of audit would be applicable to all educational and medical institutions where the annual receipt exceeds Rs. 1 Crore. The criteria for audit would be the total income before claiming exemption under Section 10(23C).

Further, trusts and institutions notified by the Central Government claiming exemption under section 10(23C)(iv) and public religious institutions notified by the Central Government and claiming



exemption under section 10(23C)(v) would also be required to get their account audited in case their total income exceeds the maximum amount which is not chargeable to tax, i.e., Rs. 1 lakh at present.

The new requirement of getting the accounts audited and filing return would be effective from the A.Y. 2006-07.

## 3. Educational Institutions, Hospital and Medical Institutions to obtain one time approval

The present system of obtaining approval periodically in case the annual receipts are more than Rs. 1 Crore is being replaced by one-time approval. This approval would be granted or rejected within a period of 12 months from the end of the month in which such application is received. The approval granted before this Bill receives the assent of the President would be effective for the period for which the same has been given.

## 4. Audit of Charitable Trust and Institutions claiming exemption under Section 11

The condition of getting the accounts audited by the trust and institutions claiming exemption under Section 11 or 12 of the Act in case the total income without giving effect to the provisions of Sections 11 and 12 exceeds Rs.50,000 is being amended to provide now that audit would be required when the total income of the trust or insti-

*(Contributed by Fiscal Laws Committee)*

tutions exceeds the maximum amount not liable to tax, i.e., Rs. 1 lakh at present. Further, charitable trust or institutions whose total receipts including voluntary donation, donation towards corpus, income from rent, interest etc., less than Rs. 1 lakh in the previous year would also not be required to file their returns as under the provisions of Section 139(4A) only those trusts and institutions are required to file returns whose total income including from voluntary donations, contribution towards corpus exceeds the maximum amount not chargeable to tax. In view of the basic exemption limit having been raised by the Finance Act, 2005 from Rs.50,000 to Rs.1,00,000, the trusts and institutions falling in the total income bracket of Rs.50,000 to Rs.1,00,000 have got the exemption from the requirement of filing the return of income.

#### **5. Approval under Section 35 to University, College and Institution for scientific research**

Approval by Central Government to an association, university, college or other institution under clause (ii) and (iii) of Section 35(1) of the Act would now be one time affair and would be granted within a period of 12 months from the end of the month in which such application is received. Under Section 35(1) expenditure on scientific research is eligible for weighted deduction and includes payment to approved university, college or other institution to be used for scientific research. Further, it is proposed to empower the Central Board of Direct Taxes to lay down the rules for granting approval and the guidelines and conditions to be fulfilled. The amendment would be effective from the date from which this bill receives the assent of the President. Approval granted before that date would continue to be effective for the period for which the approval was given.

#### **6. Approved Institutions under Section 35(1) to file return of income**

A new sub-section (4D) is being inserted in Section 139 to provide that university, college or other institutions which are approved under clause (ii) and clause (iii) of Section 35(1) of the Act for scientific research would be required to file returns of income. The requirement of filing returns of income would be deemed to be a requirement of Section 139(1) and as such the penalty for failure to file return of income would be governed in such

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cases by Section 271F of the Act which prescribe penalty of Rs.5,000 in case return is not filed before the end of the assessment year as against minimum penalty of Rs.100 per day and maximum penalty of Rs.200 per day leviable under Section 272A(2)(e) of the Act for delay in filing the return in the case of charitable trust, institution, claiming exemption under Section 11 or 12 which are required to file return of income under Section 139(4A) of the Act.

#### **7. Payment for expenditure to be made by account payee cheque**

Section 40A(3) is being amended to ensure that the payment for expenditure is made only by account payee cheque. The present provision of allowing the expenditure in case the payment has been made by crossed cheque is being amended to ensure that the cheque or draft is issued in the name of the payee only and it gets credited in payee's bank account to have an effective audit trail. This will discourage payment being made through crossed draft which usually gets endorsed. However, it may create practical difficulty in case of those buyers who come from different cities to buy goods and bring draft in their own name for making spot payment as in such cases the draft has to be in the name of the payee only which the buyer may not be aware at the time when he gets the draft prepared. The above amendment would be effective from the date when the bill receives the assent of the President.

#### **8. Exemption limit for gift increased to Rs.50,000**

Provision of Section 56(a)(v), whereby any sum of money received without consideration by an individual or HUF is considered income, are being

amended to provide that the same will be treated income when the aggregate value of money received without consideration in any previous year from any person or persons exceeds Rs.50,000. By this amendment a cap has been put on the total amount of gift, one can receive during the year. As per the existing provision, there was a possibility of receiving gift of Rs.25,000 each on different dates or from different persons and avoiding tax liability. However, with the above amendment the total amount of gifts has been restricted to Rs.50,000 during the year irrespective of the fact whether the same has been given on different dates or from different persons.

Further, the list of exemption has been expanded to exclude sum of money (gift) or gift, donation or grant received from any trust or institution registered under Section 12AA or covered by provision of Section 10(23C) or from a local authority, i.e., panchayat, municipality, district board and cantonment board etc. It may be noted that the provisions of Section 2(24)(xiii) have not been covered by the amendment to include the sum received by way of gift as income by including sub-clause (vi) of Section 56(2) which would be applicable in respect of gift received on or after 1<sup>st</sup> April, 2006. The above amendment would be effective in respect of the sum of money/gift received on or after the 1<sup>st</sup> day of April, 2006. However, exemption in respect of the gift received from local authority or charitable institution would have retrospective effect i.e., from the A.Y. 2005-06.

### 9. TDS provisions extended

- (i) The scope of Section 194-I in respect of tax to be deducted on payment of rent is being extended by including payment of rent for machinery, plant, equipment, furniture or fittings also. The

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liability to deduct tax would be irrespective of the fact whether any or all of these assets are owned by the payee or not. The above amendment would be effective from the date when the bill receives the assent of the President.

- (ii) Provision of Section 194J in respect of deduction of tax at source on payment of professional and technical services are being extended to include payment of royalty and payment of non-compete fee. Now the tax will be required to be deducted at source in case where payment of such sum is of Rs.20,000 or more. Royalty will have the meaning as given in Explanation 2 to Section 9(1)(vi) of the Act which will include lumpsum consideration excluding those payments which are chargeable under the head capital gain in the hands of recipient. The above amendment would be effective from the date when the bill receives the assent of the President.

### 10. Expenditure on account of rent and royalty to be disallowed on failure to deduct tax at source

Provision of Section 40(a)(ia) are being extended to include payment of rent and royalty also. As per this section, where any payment is made to a resident, of any amount which is liable for deduction of tax at source, then the said amount, in case of fail-

ure to deduct tax at source or make payment of such tax within the time prescribed, will not eligible to be allowed as an expenditure while computing income of the business or profession. The above amendment shall be effective from the A.Y. 2006-07. Since the liability to deduct tax at source in respect of royalty and rent for plant

and machinery would arise from the date when this bill is approved by the President, the default for such payment will be taken into account from that date only. However, the default in respect of payment of rent for land and building which is already liable for tax deduction at source, would be effective from the 1<sup>st</sup> day of April, 2005 itself.

#### 11. Power to enhance or reduce penalty

Provisions of Section 275 relating to the bar of limitation for imposing penalties are being amended to provide that in case where the assessment is the subject matter of appeal either before the Commissioner (Appeals), Appellate Tribunal, High Court or Supreme Court or revision before the Commissioner and if an order imposing penalty has been passed before the order of appeal or revision is received by the Commissioner or Chief Commissioner or order under Section 263 or Section 264 is passed by the Commissioner a further order, imposing or enhancing or reducing or canceling or dropping the proceeding for imposing the penalty can be passed on the basis of the assessment order as revised after giving the appeal effect. However, this order has to be passed within a period of 6 months from the end of the month in which the appeal order or revision order is received by the Commissioner.

This provision will help both the taxpayer as well as the Revenue. In case the taxpayer gets a relief in the quantum appeal and penalty has been imposed before that, he can get it amended under this provision. Similarly, in case penalty has been imposed on a reduced amount consequent to the order of the Appellate Authority and the Revenue succeeds in the further appeal, the Revenue would be entitled to levy or increase the penalty. Since the time limit

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prescribed is with reference to the date of the Appellate order only, it may further help the taxpayer to get the penalty order amended or cancelled where he succeeds in quantum appeal and no appeal, per chance, has been filed against the penalty order. Provision of Section 246A are being amended simultaneously to provide that such amended order of penalty would be an appealable order. The above

amendment would be effective from the date when the bill received the assent of the President.

#### 12. Income of North-eastern Development Finance Corporation Ltd. would be exempt under Section 10(23BBF)

A new section 10(23BBF) is being introduced to provide that the income of North-eastern Development Finance Corporation Ltd. would be exempt. The above amendment would be effective from the Assessment Year 2006-07.

#### 13. Rectification to be carried out in case the export proceeds are received late

The benefit of rectification under Section 155 in case export proceeds are realized late is being extended to include those assesses who are eligible for claiming deduction under Section 10A, 10B or 10BA of the Act. The above amendment would be effective from the A.Y. 2006-07.

#### 14. Tax Recovery Officer to perform the function of Assessing Officer

Provision of Section 2(44) are being amended to provide that the Tax Recovery Officer (TRO) can also exercise or perform such powers or functions which are conferred or assigned to an Assessing Officer (AO) under the Act. The above amendment would also be effective from the date the bill receives the assent of the President.

#### 15. Tax to be rounded off to Rs. 10

Provision of Section 288B are being amended to provide for that tax is to be round off to the nearest multiple of Rs. 10 as against the present provision of rounding off to nearest Re. 1. The above amendment would be effective from the date when the bill receives the assent of the President. ■