The Institute of Chartered Accountants of India

Post-Budget Memorandum-2003

EXECUTIVE SUMMARY

(Numbers in brackets correspond with the serial numbers in the detailed memorandum).

(Due to limitations of space - for printing in the Journal the full text as submitted to the Finance Ministry has been edited at certain places which are marked by an asterik (*). The full text is however the available on the website of the Institute.)

(1) A uniform surcharge may be maintained in respect of all assessees. Correction in drafting as suggested may be effected.

(2) The amendment in section 6 may be modified to give suitable relief in respect of expatriates and non-residents who settle in India after a considerable stay abroad

(3) In regard to section 10(10D) the following changes are suggested:

- **It may be clarified that only the excess over premium paid and not the entire sum received will be taxable.**
- **Taxability should arise only when the premium payable in terms of policy and not actual premium paid during the year exceeds 20% of the capital sum assured.**
- **Clarificatory amendment including surplus received on maturity of policy within the definition of income as defined in section 2(24) be made.**
- **The proposed amendment should be made applicable only in respect of policies effected after 1.4.2003.**

(4) The benefit in respect of income from transfer of units of US-64 may be provided by way of deduction under Chapter VIA so that those tax payers who have incurred losses in US - 64 are not put to hardship. Alternatively, the proposed amendment may be made prospectively.

(5) The exemption of long-term capital gains on transfer of listed equity shares should be limited only in respect of shares purchased or subscribed from the primary or the secondary market.

(6) The standard deduction may be simplified as 40% of the salary or Rs.30,000, whichever is less, irrespective of the level of income.

(7) The amendment in sections 30 and 31 may be dropped or alternatively, capital expenditure disallowed may be allowed the benefit of depreciation.

(8) i)The proposed amendment in section 36(1)(iii) may be dropped since all the issues have been dealt with in the Accounting Standard.

ii) Alternatively, provision may be made that if the borrowing costs are debited in the books in accordance with the Accounting Standard applicable, then the same may be treated as allowable expenditure.

(9) In regard to section 40(a)

- **where tax is paid by the non-resident on the chargeable interest, deduction should not be denied to the payer.**
- **the words "deducted and" may be omitted from the first proviso.**
- **sub-clause (b) may be omitted.**
- **proviso be introduced in S.40(a) (iii) on similar lines with the proviso to S.40(a) (i).**

(10)i) Proposal to extend the applicability of section 43B(e) to interest payable on loans and advances may be dropped.

ii)Amendment in section 36(1)(va) is necessary so as to put employees' contribution at par with the employer's contribution under section 43B.

(11) (i)The language of section 72A(2)(a)(i) may be modified so as to clarify that the amalgamating company should have been engaged in the business for at least 3 years prior to the date of such amalgamation and losses may have been incurred in any of the 8 preceding previous years.

(ii) The additional conditions imposed on amalgamating companies may be withdrawn or the benefit of this section may be extended to all businesses.

(12) (i)In regard to sections 80DD, 80DDB and 80U, the requirement regarding medical certificate may be modified *

(ii)Suitable change in the meaning of "dependant" so as to include grandparents may be effected.

(iii)Harmonisation of the two sections as suggested may be effected.

(13) (i)In section 80QQB, the restrictive words "derived by him in the exercise of his profession" may be deleted.

(ii)An Explanation similar to the one in section 80HHC(2) may be inserted in the new sections 80QQB and 80RRB.

(14) In line with the Railway Budget, the age limit for senior citizens may be harmonised.

(15) The proposed amendment in section 133A(6) to include a tax recovery officer in the definition of "income-tax authority" may be omitted.

(16)The continuance of the existing provisions of block assessment is desirable. However, if this is not possible, certain improvements which would (i) reduce controversy over the year of taxability of income, (ii) provide suitable incentive for a person to make the necessary disclosure without indulging in litigation and (iii) remove administrative difficulties such as multiplicity of appeals, bunching together of assessments, etc. may be introduced.

(17)To make the provisions of section 191 equitable, a proper mechanism may be introduced for providing refund in case the tax has also been paid directly by the payee.

(18)A similar amendment like the one made in section 194J may be made in sections 194A, 194C, 194H and 194I.

(19) (i)Charitable trusts registered under section 12A should be covered by the provisions of section 197A.

(ii)This benefit may also be made available to all individuals having nil tax payable.

(20)The proposed amendment in section 206 may be made applicable only to listed companies and companies whose TDS payments exceed Rs.1 lakh.

Minor corrections to rectify possible anomaly are required in the following clauses.

(i) Clauses (7) and (8) - Sections 10A and 10B.

(ii) Clause (10) - Section 11.

(iii) Clause (17) - Section 43(6).

(iv) Clause (25) - New Section 44DA.

Service tax

(1) Exemption for foreign currency receipts to be reinstated.

(2) Option to the assessee to pay service tax at a lower rate without across the Board Service Tax Credit.

(3) "Business, auxillary services" - Scope to be specific and clear.

(4) Forex broking provided by non-corporate brokers.

(5) Advance Ruling mechanism to be widened.

(6) Provisions of the Customs Act, 1962 to be directly adopted.

(7) Matters not considered in the Finance Bill, 2003 and requiring immediate attention.

A. INTRODUCTION

1.0 The Council of the Institute of Chartered Accountants of India considers it a privilege to submit this Post-Budget Memorandum to the Government.

1.1 Every year the Institute submits its Pre-Budget Memorandum to the Government suggesting various measures for widening the tax base, checking tax avoidance and rationalization of the provisions of the tax laws. The Pre-Budget Memorandum - 2003 was submitted to the Government at the end of year -2002. It is a matter of great pleasure that some of the suggestions like on section 43B and section 269T have been accepted by the Government and incorporated in the Finance Bill, 2003.

1.2 The Institute also submits every year a Post Budget Memorandum to the Government giving an analysis and the implications of the various proposed amendments in the Finance Bill. It is a matter of privilege for the Institute that the various suggestions made in the memorandum have always been considered seriously. In this Post Budget Memorandum - 2003 we are submitting our observations and suggestions which need to be taken care of to achieve the desired objectives.

1.3 The Finance Bill, 2003, contains many positive features like increased standard deduction, rebate for educational expenditure, higher rebate for senior citizens, deductions for physical disability, incentive for coffee industry, etc. The fact that major changes have been proposed to be made only prospectively is also a welcome feature.

1.4 Service tax coverage has been extended to cover 10 more services. The rate of tax also been increased from 5% to 8%. The increase in rate of service tax is quite steep considering the fact that the incidence of service tax is ultimately borne by the common man. While appreciating the compulsions and the overall policy directions of the Government; the Institute feels that in order to ensure a better rate of voluntary compliance the levy of service tax should be maintained at a low rate of 5% only. When expanding the scope of coverage, the applicability of service tax to selective sectors may be avoided as this would increase litigation. Further, since the service sector is the most rapidly growing sector of the economy, the increase in rates of service tax may act as a dampener to this rapidly growing sector, which is making significant contribution to the economic growth of the country.

1.5 Our suggestions on the specific clauses of the Finance Bill, 2003 are given in the following pages.

1.6 By way of Annexure we are also giving certain important areas in regard to which we have made representations in the past but which have not found mention in the present Finance Bill. Since the matter is of fundamental importance, you may kindly reconsider our detailed submissions made in regard to need for rationalization/deletion of section 50C and section 145A.

B. CLAUSE WISE SUGGESTIONS

1. Clause 2 - Uniform rate of surcharge *

The Finance Bill proposes varying rates of surcharge for different persons and on different slabs of income.

- In the case of individuals, HUFs, AOPs and BOIs where the total income exceeds Rs.8.5 lakhs.a surcharge of 10% is to be applied on the entire tax payable.
- In the case of every co-operative society, firm, local authority and company it would be 2.5%.
- In the case of an artificial juridical person, a surcharge of 10 % would apply to all such entities

It is submitted that such varying rates of surcharge needlessly complicate the tax structure. This is all the more so because the Finance Minister has been kind enough not to modify any of the tax rates in the budget proposals.

Surcharge is basically a levy to meet special contingencies and should, as far as possible, be avoided. If for various reasons it is unavoidable, it is felt that a uniform policy is necessary in regard to various classes of assessees. The reduction of surcharge for certain categories such as corporates, although welcome has come with a corresponding increase for other categories. This differentiation in rates may yield nominal revenue gain but would result in needless complexity in computation.

Drafting of Part III of First Schedule *

In sub para (ii) relating to surcharge, para A of part III of the First Schedule the use of the words "any other person" can lead to some ambiguity in interpretation and may therefore be rectified.

It is suggested that

- **a uniform surcharge may be maintained in respect of all assessees and**
- **correction in drafting as suggested above**

may be effected.

2. Clause 4 - Section 6 - Not ordinarily resident

This amendment is an amendment of substantive nature as it entirely changes the understanding of law that has prevailed ever since the Indian Income-tax Act of 1922. It is therefore suggested that the said amendment should not be treated as one of a clarificatory nature as has been mentioned in the Notes on Clauses as this would have the effect of unsettling numerous assessments and increasing litigation in regard thereto.

Under the proposed amendment the global income of non-residents will become taxable if they stay in India for 2 years or more. This amendment has far-reaching implications not only on the taxability of certain incomes of expatriate foreigners but also on a significant number of persons of Indian origin who maintain close emotional and family ties with their homeland. In fact the Government recently took steps to honour and encourage such persons of Indian origin by organizing Bharitya Pravasi Sammelan. The amendment would affect all such persons in as much as they would now be required to submit significant number of details (and be subject to inquiry in regard thereto) in order to establish that certain incomes earned outside India either fall within the scope of the DTAA or are entitled to certain benefits of tax credit. Perhaps, the intention of the amendment is primarily directed to prevent tax avoidance by certain persons who arrange their affairs in such a manner as to artificially become entitled to such NOR status. However a move to plug such avoidance may result in considerable hardship being caused to a vast number of persons without significant revenue gains in the case of large majority of such affected persons.

Further, the proposed amendment unsettles a legal position recognised and settled for more than seven decades. It is felt that if such an amendment is imperative; instead of drastically reducing the period to 2 years a reasonable period of 4 or 5 years may be prescribed at the initial stage of making such an important shift in status.

It is suggested that the amendment may be modified in the lines indicated above.

3. Clause 6(c) - Section 10(10D) - Life Insurance Policies

Under the proposed amendment any sum received under an insurance policy in respect of which the premium paid in any of the years during the term of policy exceeds 20% of the actual capital sum assured will not be exempt under the provisions of section 10(10D).

It appears that the intention of the amendment is to bring to charge in such cases the sum received in excess of the premium paid.

Since there can be some debate whether the amount so received against a policy is income or a capital receipt, it may be desirable to make a suitable amendment in the definition of income in section 2(24). Further the fact that it is only the excess over the premium paid and not the total sum received which is chargeable may be brought out clearly in the definition in section 2(24) or in section 10(10D).

At times arrears of premium are paid by the policy holders in one year although the premium payable annually as per the terms of the policy is less than 20% of the capital sum assured. Genuine hardship will be experienced in such cases. Taxability may be provided for only when the premium payable per annum exceeds 20% of the capital sum assured and not the actual premium paid.

The benefit of exemption may be denied in the case of insurance policies which are taken prior to the date on which the amendment comes into force. Even though the principle of promissory estoppel does not apply to taxation laws, it will be inequitable to cause hardship to a large number of policy holders who have taken the policies on the strength of earlier exemption. Therefore it is suggested that the amended provisions of section 10 (10D) be made applicable only to policies issued after 1st April 2003.

(i) It may be clarified that only the excess over premium paid and not the entire sum received will be taxable.

(ii) Taxability should arise only when the premium payable in terms of policy and not actual premium paid during the year exceeds 20% of the capital sum assured.

(iii) Clarificatory amendment including surplus received on maturity of policy within the definition of income as defined in section 2(24) be made.

(iv) The proposed amendment should be made applicable only in respect of policies effected after 1.4.2003.

4. Clause 6(k) - section 10 (33) - Income from trans-

fer of units of US - 64

The exemption sought to be provided in regard to income arising from the transfer of units of US 64 will have the impact of disentitling the investors from setting off the losses made on transfer of such units. Since this provision is sought to be effective in regard to transfers taking place on or after 1st April 2002, persons who have already transferred such units and have thus incurred losses will now face the additional burden of not being able to set-off such losses. In view of the losses made by the Unit Trust of India, the exemption sought to be provided may be illusory whereas genuine investors who have invested in units will suffer one more hardship which is apparently unintended.

It is suggested that this benefit may be provided by way of deduction under Chapter VIA so that those taxpayers who have incurred losses in US 64 are not put to hardship. Alternatively, this amendment may be made prospectively.

5. Clause 6(l) - new section 10(36) - Long term capital gains on listed equity shares

Under the proposed section any income arising from the transfer of a long term capital asset being equity share in a company listed in a recognised stock exchange in India and acquired on or after the first day of March, 2003 but before the first day of March, 2004 would be exempt. This amendment arises out of the recommendation of the National Task Force headed by Dr. Vijay Kelkar. The Institute in its considered response to the recommendations of the National Task Force indicated that this exemption might be used as a tax avoidance tool. This amendment is intended to activate the capital market. However, capital gains arising from shares acquired through gift or inheritance will also get the benefit which cannot be the intention of the legislature.

It is suggested that the exemption should be limited only in respect of shares purchased or subscribed from the primary or the secondary market.

6. Clause 11 - Section 16 - Standard deduction

As per the proposed amendment standard deduction @ 40% of the gross salary income or Rs.30,000 whichever is less would be allowed in respect of salary income not exceeding Rs.5 lakhs. Where the salary income exceeds Rs.5 lakhs, the standard deduction will be limited to Rs.20,000. Standard deduction is allowed in respect of salary income to enable the salary earners to meet expenditure relating to conveyance to and from the office. Apart from this, there is no equivalent deduction like the one available under section 37 in respect of profits and gains of business or profession. Further, there is no rationale to limit the standard deduction in respect of salary income exceeding Rs.5 lakhs. It also introduces a further computation with limited revenue benefit.

It is suggested that the standard deduction may be simplified as 40% of the salary or Rs.30,000, whichever is less, irrespective of the level of income.

7. Clause 12 - Section 30, Clause 13 - Section 31 - Repairs

(a) It is proposed to be clarified that the amount paid on account of cost of "repairs" referred to in section 30(a)(i) and "current repairs" referred to in section 31(i) shall not include any expenditure in the nature of capital expenditure. The intention of the legislature is not to allow any expenditure in the nature of capital expenditure while admitting a deduction in respect of cost of repairs or current repairs. While there can be no issue with this proposition, difficulties may arise because where the asset is not owned by the assessee, whether such repairs / current repairs could at all be considered to result in an enduring advantage would be a debatable proposition. It is therefore, felt that a new area of litigation may arise.

(b) Corresponding feature would be that once such expenditure on repairs / current repairs on assets are treated as being in the capital field, it would have to be treated as part of the cost of acquisition. In the absence of amendment to section 43, this also could involve litigation. By adoption of either alternative namely treating repairs as allowable revenue expenditure or by allowing depreciation on the capitalised element, the net gains to revenue may be marginal as compared to the possible litigation involved.

It is suggested that the proposed amendment may be dropped. Alternatively, amendment suggested in (b) may be incorporated.

8. Clause 15 - Section 36(1)(iii) - Interest on capital borrowed for extension of business *

The proposed amendment is perhaps, intended to take care of a situation where interest borrowed for acquisition of an asset is capitalised in the books of account but claimed as a deductible expenditure under section 36(1)(iii). It may however, be pertinent to note that these matters related to a period prior to Accounting Standard 16 dealing with Borrowing Costs being made mandatory. Therefore, the difficulty as envisaged may not arise now that the Accounting Standard is in force. It is therefore suggested that the problem has already been resolved by introduction of section 145(2) and issuance of Accounting Standard 16 by ICAI. As such the same objective would largely be achieved even without the amendment. The proposed amendment may create difficulty in regard to some assets (particularly those which do not take a significant period of time to acquire, construct or produce); where capitalisation would now be required. This would lead to one more area of divergence between accounting income and taxable income.

Difficulties would also arise in concept of "extension of existing business."

In regard to "capital borrowed for the acquisition of the asset", there could be a controversy when other funds not specifically earmarked for such purpose are utilised.

(i) These issues have all been dealt with in the Accounting Standard 16 and this standard may be notified under section 145(2) of the Act. It is, therefore, felt that the proposed amendment may be deleted.

(ii) Alternatively provision may be made that if the borrowing costs are debited in the books in accordance with the Accounting Standard applicable, then the same may be treated as allowable expenditure.

9. Clause 16 - Section 40(a) - Disallowance of payment without deduction of tax *

The proposed amendment intends to bring any interest, royalty, fees for technical services or other sum chargeable under the Income-tax Act which is payable in India to a non-resident not being a company or to a foreign company, within the scope of section 40(a)(i). It will be difficult to determine the status of the payee during the currency of the relevant previous year. To this extent it will create practical difficulties.

(a) In the proposed new sub-clause (i) the expression used "on which tax has not been deducted or, after deduction, has not been paid under Chapter XVII - B" may create a practical problem. In the existing sub-clause (i) the expression used is "on which tax has not been paid or deducted under Chapter XVII-B." Under the existing provision, if tax on the interest in question is paid by the non-resident, deduction is permissible under section 40(a)(i) which is not possible under the proposed amendment.

(b) The first proviso to the proposed sub-clause (i) provides that where in respect of any such sum, tax has been deducted under Chapter XVII-B and paid in any subsequent year, such sum shall be allowed as a deduction in computing income of the previous year in which such tax has been deducted and paid. The expression "previous year in which such tax has been deducted and paid" could cause difficulty in situations where the deduction is in one year and payment is in another.

(c) The subject matter of the proposed new sub-clause (iii) is already covered by the expression "other sum chargeable under this Act".

(d) The apparent difference in treatment where there is a default in the case of deduction of tax on interest, royalty etc as compared to non-deduction from salaries should not be continued A deduction in this regard may be allowed only in the year in which the TDS is paid to the government but should not be totally denied merely because of a technical oversight.

It is suggested as follows:

(a) where tax is paid by the non-resident on the chargeable interest, deduction should not be denied to the payer.

(b) the words "deducted and" may be omitted from the first proviso.

(c) sub-clause (b) may be omitted.

(d) Proviso be introduced in S.40(a) (iii) on similar lines with the proviso to S.40(a) (i).

10. Clause 18 - Section 43B(e) - Section to cover interest on loans and advances

It is proposed to make section 43B applicable to interest payable on any loan or advances from a scheduled bank as opposed to only interest payable on any term loan under the existing provisions.

Various difficulties in determining the quantum of interest actually paid in an overdraft / cash credit account would arise because these are running accounts. Further, the Income-tax Act should not be used to further social causes like tackling NPA problems of banks. Separate and stringent provisions of law (including the recently enacted Securitisation Act) are available for enforcing recovery of NPAs. To use the provisions of the Income-tax Act for this purpose is counter-productive as this could also be misused for purpose of tax planning by deferring the payment of interest in the year in which concerns are making losses.

(i) It is suggested that the earlier section 43B(e) may be retained.

(ii) Amendment in section 36(1)(va) is necessary so as to put employees contribution at par with the employer's contribution under section 43B.

11. Clause 30 - Section 72A

One of the conditions prescribed in the proposed new sub-section (2)(a)(i) is that the amalgamating company must have been engaged in the business for at least 3 years during which the accumulated loss has occurred or the unabsorbed depreciation has accumulated. Such a condition is likely to give an interpretation that for a minimum period of 3 years for which the company should be in existence it should have made losses and if by chance any year out of these years is a profit year, it would lose the be benefit of section 72A.

We may also mention that the introduction of additional conditions in regard to amalgamating company particularly with regard to holding of fixed assets may make the provision of this section very difficult to comply with. It is suggested that the benefit of this section may be extended to all businesses in which case the additional restrictions imposed would be justified.

(i) It is suggested that the language of section 72A(2)(a)(i) may be modified as follows:

"has been engaged in the business for at least 3 years prior to the date of such amalgamation."

(ii) The additional conditions imposed on amalgamating companies may be withdrawn or the benefit of this section may be extended to all businesses.

12. Clause 31 - New Section 80DD, Clause 32 - New Section 80DDB, Clause 40 - New Section 80U

Sub-section (4) of the new section 80DD, the first proviso to new section 80DDB and sub-section (2) to the new section 80U provide for furnishing a medical certificate. While under section 80DD and 80U copy of the certificate is to be attached with the return, in the case of section 80DDB the original certificate is to be attached. Further, it appears that such certificate should be obtained from the doctor every year for which the deduction is claimed which will cause difficulties to the assessee.

In section 80 DD and section 80 DDB benefit is given where the person having disability is the spouse, child, parent or brother/sister of the individual. Earlier this benefit was available where the person having disability was falling within the category of "relative" which by definition also included not only parents but also the grandparents. It is suggested that the earlier terminology of "dependent relative" may be continued. This would extend the benefit to persons who spend on treatment of grandparents and would also avoid a change in the phraseology used.

In Clause (1)(a) of S. 80DD - the word used is "incurred" whereas for similar purpose in Clause 32- section 80 DDB the reference is to expenditure "actually incurred". There is no apparent reason for making a distinction between "incurred" and "actually incurred" and the same may be harmonized.

(i) It is suggested that in all the three Sections the requirement regarding medical certificate may be modified to require the assessee to file the original certificate in the first year and in the subsequent years copy of the original certificate should serve the purpose.

(ii) Suitable change in the meaning of "dependant" so as to include grand parents may be effected.

(iii) Harmonisation of the two sections as suggested above may be effected.

13. Clause 38 and 39 - New Sections 80QQB and 80RRB - Income from royalty and patents *

In section 80QQB restrictive implication of using the words "derived by him in the exercise of his profession" is not necessary as a person whose profession is not writing but who writes a work of literary, artistic or scientific merit may be denied this benefit.

The proposed sections 80QQB and 80RRB being similar in nature to Section 80HHC may include an

explanation similar to Explanation 1 to section 80HHC(2) so as to bring the proposed sections on par with the relief allowed under section 80HHC.

(i) In section 80QQB the restrictive words "derived by him in the exercise of his profession" may be deleted.

(ii) It is suggested that an Explanation similar to the one in section 80HHC(2) may be inserted in the new sections 80QQB and 80RRB.

14. Clause 42 - Section 88B - Rebate to senior citizens

The Railway Minister while presenting the Railway Budget has also made provisions for certain concessions to persons who are 60 years or more who are considered as senior citizens. In the interest of harmony the criteria of age for deciding status of senior citizens should be uniform.

In line with the Railway budget, the age limit for senior citizens may be harmonized.

15. Clause 55 - Section 133A(6) - Survey power to Tax Recovery Officer

A new clause (a) is proposed to be substituted. The proposed clause includes a Tax Recovery Officer in the definition of "income-tax authority". It is felt that the power of survey is to be exercised in totally different circumstances than the role that the Tax Recovery Officer is expected to perform. The objective of survey under section 133A is to help the Department in proper determination of income from business or profession. Therefore, the need for granting such power to Tax Recovery Officer does not appear necessary. To perform their duties effectively the Tax Recovery Officers are vested with wide powers.

It is suggested that the proposed amendment may be omitted.

16. Clause 59 - Insertion of new sections 153A, 153B and 153C relating to assessment in case of search or requisition made after 31.5.2003

These new sections replace chapter XIV-B (block assessment) with effect from 1.6.2003.

The provisions of block assessment have now become well known and the case law on these provisions has just settled. In replacing the current scheme of block assessment the following difficulties would arise.

(a) Substantial litigation may arise for identifying an income to the year in which it is earned. Considerable litigation on this issue prompted the introduction of block assessment scheme. While doing away with this concept, no remedy to this difficulty has been proposed.

(b) Due to the present amendment a person would take immunity from penalty and prosecution only if he gives a confession in the course of search vide Explanation 5 to section 271(1)(c).

(c) The provisions require complete re-assessment for all the six years prior to the date of search and encompass all aspects of assessment, despite the fact that no undisclosed income or objectionable papers are found as a result of search.

(d) The provisions require an assessment to be made for all six years prior to the date of search even in the case of other person.

(e) In each case, assessee will have to file separate appeal and passing of separate appellate orders will lead to multiplicity of proceedings and enormous paper work.

Under the present scheme of block assessment the tax rate is 60% which under the proposed scheme may not be effectively higher including interest and penalty. Under the new provisions, incentive to disclose true and full income in the return in response to notice under section 153A is not available as penalty under section 271(1)(c) will be imposable by the Assessing Officer the moment the assessee files return disclosing income higher than the declared originally. It is therefore felt that this concept of block assessment may continue since it discourages litigation and encourages better compliance along with immediate revenue collection.

If it is felt that the new scheme is desirable, clarifications are required in regard to;

- Assessees who are connected persons covered by section 153C should not be imposed with penalty if they file the return before the receipt of notice under section 153A.
- Credit for prepaid taxes will be available in course of such assessment proceedings.
- The section contemplates that the assessment proceeding on the date of search or acquisition will abate. However, all appeals under revision proceedings may continue even after search or acquisitions. Amendments are necessary to clar-

ify how the synchronisation will be made once the appellate or revisionary order is received.

The continuance of the existing provisions is desirable. However, if this is not possible, certain improvements which would;

(i) reduce controversy over the year of taxability of income,

(ii) provide suitable incentive for a person to make the necessary disclosure without indulging in litigation and

(iii) remove administrative difficulties such as multiplicity of appeals, bunching together of assessments, etc. may be introduced.

17. Clause 65 - Section 191- Direct payment of taxes

Under the proposed amendment, if any person referred to in section 200 and in the cases referred to in section 194 the principal officer and the company of which he is the principal officer does not deduct tax and such tax has not been paid by the assessee direct, then such person and the principal officer and the company shall be deemed to be an assessee in default in respect of such tax. It is possible that the payee might have paid the tax and it may be difficult to determine whether the payee has paid the taxes directly or not. As such there is a possibility of double payment of tax on the same income. Presently there is no mechanism for refund of tax in such cases.

To make the provision equitable a proper mechanism may be introduced for providing refund in case the tax has also been paid directly by the payee.

18. Clause 71 - Section 194J - Payments of professional services for personal purposes

This amendment is welcome; but having made this amendment only in regard to section 194J would strengthen the impression that in all other cases deduction has to be effected even when the sum is paid for purely personal purposes. It is suggested that a similar amendment may be made in the other relevant sections so as to clear any doubts in regard thereto.

A similar amendment like the one made in section 194J may be made in sections 194A, 194C, 194H and 194I.

19. Clause 78 - Section 197A - Form 15H for senior citizens*

Where senior citizens submit a declaration in the prescribed form then no deduction of tax at source will be made in regard to certain incomes. Similar hardship is faced by charitable trusts registered under section 12A whose income is exempt under section 11 but whose incomes are subjected to tax deduction at source. Option to file a similar form may be given to such trusts.

(i) Charitable trusts registered under section 12A should be covered by provisions of section 197A.

(ii) This benefit may also be made available to all individuals having Nil tax payable.

20. Clause 79 - Section 206 - Computerized TDS returns by companies

The proviso to the sub-section (2) makes every company responsible for furnishing the relevant returns on computer media under the proposed scheme. It may be difficult for small companies to comply with the requirements in the initial stages. Making such format mandatory for furnishing of data by smaller companies may cause hardship particularly where the number of deductees may range between 1 to 20. In such cases, submitting the data manually may be easier. The provision may therefore be applied only to the listed companies or companies whose TDS payments are in excess of Rs. 1 lakh.

It is suggested that the proposed amendment may be made applicable only to listed companies and companies whose TDS payments exceeds Rs.1 lakh.

C. MINOR CORRECTIONS TO RECTIFY POSSIBLE AMBIGUITY.

(i) Clause 7 & 8 - Sections 10 A and 10B - Amalgamation and demerger

In regard to relief available under sections 10 A and 10B - the insertion of sub-clause (7A) (a) is with the idea of ensuring that a double benefit is not claimed in the case of amalgamation/demerger. However, it could happen that the amalgamation/demerger would take place at the record date which is falling within the previous year. Sub-clause (7A)(a) as proposed to be inserted would have the effect that if the amalgamation/demerger takes place on 30th November of a particular previous year, then the amalgamating company or the demerged company which will have taxable income for the period upto 30th November will not be entitled to any deduc-

tion under the exemption sections. This may cause undue hardship and may not be the intention since fundamentally the activity carried on by the amalgamating/amalgamated company and the demerged/resultant company is the same and should therefore be entitled to the relief. Similar provisions are contained in section 32.

(ii) Clause 10 - Section 11 - Charitable Trust - residual funds

Proviso inserted in section 11 is welcome. However since various trusts may have some residual funds collected for specific purposes (such as for Gujarat earthquake relief) and the residual amount may not be capable of being put to use for the purpose intended (eg. construction of houses); similar relief permitting trusts to donate such funds to some specified trusts may also be considered.

(iii) Clause 17 Amendment in section 43 (6) - "Plant" not to include "building"

The settled case law in regard to meaning of "plant" will get unsettled. The meaning of "building" may become a fresh area of litigation.

(iv) Clause 25 - New Section 44DA

In regard to requirement of audit, power has not been assumed for prescribing the form of audit report. It is suggested that after the words "the report of such audit" the words "prescribed under this section" may be added.

D. SUGGESTIONS RELATING TO SERVICE TAX

1. Exemption for foreign currency receipts to be reinstated

The Central Government has issued Notification no. 2/2003 dated 01/03/2003, rescinding the earlier notification no. 6/99 - Service tax dated 9/4/1999, which exempted the taxable service for which payment was received in convertible foreign exchange provided such foreign exchange was not repatriated outside India. Consequently, w.e.f. 01/03/2003, service tax would be leviable on all taxable services irrespective of whether the payment therefor is received in foreign currency or not.

It is suggested that the said exemption should be reinstated and receipts in foreign exchange should continue to remain exempt from service tax due to the following:

(a) Export of services may be affected since it would be costlier by 8%, thus making it less competitive in the international markets.

(b) Export of goods have been exempted from excise duty and sales tax.

(c) The abrupt withdrawal of the exemption w.e.f. 01/03/2003 has affected a lot of assessees since the incidence of service tax has not been factored in the contracts with/ estimates given to their overseas clients.

2. Option to the assessee to pay service tax at a lower rate without across the board service tax credit.

The rate of service tax is proposed to be increased from 5 % to 8 % effective on the enactment of the Bill. The increase is very steep, almost 60%. This is presumably to offset the extension of input tax credit across the board for all services for which rules are expected to be notified and also perhaps due to revenue considerations.

In this respect, it is suggested that an option should be given to the assessee to either pay service tax @ 8% with across the board input tax credit or 5% with input tax credit restricted to the same service category as under the present dispensation.

3. "Business auxiliary services" - scope to be specific and clear *

"business auxiliary service" has been defined in four subclauses

The first three clauses i.e. items (i), (ii) and (iii) clearly specify the nature of service but the words in item (iv) viz., "any incidental or auxiliary support service" is very wide and is likely to create numerous interpretational problems. Further, the words do not specify the nature of service proposed to be taxed. **Hence the said words should be deleted.**

4. Forex broking provided by non-corporate brokers *

Clause (zzk) of sub-clause (104) of section 65 which proposes to bring non-corporate foreign exchange brokers (i.e. individuals, partnership firms, proprietory concerns, etc.) into the service tax net may be redrafted as follows to clearly bring out its import :

5. Advance Ruling Mechanism to be widened *

A new Chapter V-A is proposed to be inserted to provide for Advance Ruling mechanism in service tax. The ruling shall be in respect of a question of law or fact regarding the liability to pay service tax in rela-

tion to a service proposed to be provided by certain categories of non-residents and foreign company-

It is suggested that the Advance Ruling should not be restricted to the said situations but should be extended to all categories of transactions with non-residents.

6. Provisions of the Customs Act, 1952 to be directly adopted *

Section 12 of the Central Excise Act, 1944 is sought to be made applicable to service tax by virtue of an amendment proposed in section 83 of Chapter V of the Finance Act, 1994, **It would be advisable to incorporate the provisions of the Customs Act directly in the law governing service tax rather than in a circuitous manner by referring to Section 12 of the Central Excise Act which adopts certain provisions of the Customs Act.**

7. Matters not considered in the Finance Bill, 2003 and requiring immediate attention :*

Minimum / threshold limit to be provided

A minimum/threshold limit should be provided for registration. In the case of small, unorganized self-employed services (which are now being brought into the service tax net in greater numbers) it would cause undue hardship and costs of compliance to the taxpayer without commensurate revenue to the government. It may be noted that Income tax, sales tax, the UK model of VAT, all provide for a threshold limit. The Expert Group constituted by the Central Government as also The Kelkar Committee recommended a minimum threshold limit of Rs.10,00,000/- and a simple declaration, which suggestions need to be considered.

E. ANNEXURE - NEED FOR WITHDRAWING SECTIONS 50C AND 145A *

(a) Section 50C

This Section provides for adopting value for stamp duty in the place of actual consideration and is similar to section 52(2) withdrawn earlier due to Supreme Court decision in KP Varghese case, 131 ITR 597. This provision causes hardship as is explained by giving 10 specific reasons (list of these reasons is not reproduced here)

(b) Section 145A *

The Institute has issued 28 definitive Accounting Standards on various subjects most of which have been made mandatory. AS 2 (Revised) Valuation of Inventories has been made mandatory from accounting year starting from 1.4.1999 onwards. In view of the above the Institute feels that section 145A may be withdrawn from the statute book. The detailed rationale for the withdrawal of section 145A are not reproduced here. ■