

THE DIRECT TAXES CODE, 2010

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THE TWENTY-FIRST SCHEDULE.

THE TWENTY-SECOND SCHEDULE.

TO BE INTRODUCED IN LOK SABHA

Bill No. 110 of 2010

THE DIRECT TAXES CODE, 2010

A

BILL

to consolidate and amend the law relating to direct taxes.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Direct Taxes Code, 2010. Short title,
extent and
commencement.
- 5 (2) It extends to the whole of India.
- (3) Save as otherwise provided in this Code, it shall come into force on the 1st day of April, 2012.

PARTA

INCOME-TAX

10 CHAPTER II

BASIS OF CHARGE

2. (1) In accordance with the provisions of this Code, every person shall be liable to pay income-tax in respect of his total income of the financial year. Liability to
pay, and
charge of,
income-tax.

(2) Subject to the provisions of this Code, income-tax, including additional income-tax, shall be charged in respect of the total income of a financial year of every person.

(3) Where the income-tax referred to in sub-section (2) is to be charged in respect of the income of a period other than the financial year, the income-tax for such period shall be charged accordingly. 5

(4) The income-tax referred to in sub-section (2) shall be charged at the rate specified in the First Schedule in the manner provided therein.

(5) In respect of the income chargeable under sub-section (2), income tax shall be deducted or collected at source or paid in advance, in accordance with the provisions of this Code. 10

(6) The chargeability of income-tax on the income of a financial year under the foregoing provisions shall be determined in accordance with the provisions of this Code as they stand on the 1st day of April of that financial year.

Scope of total income.

3. (1) Subject to the provisions of this Code, the total income of any financial year of a person, who is a resident, shall include all income from whatever source derived which— 15

(a) accrues, or is deemed to accrue, to him in India during the year;

(b) accrues to him outside India during the year;

(c) is received, or is deemed to be received, by him, or on his behalf, in India during the year; or

(d) is received by him, or on his behalf, outside India during the year. 20

(2) Subject to the provisions of this Code, the total income of any financial year of a person, who is a non-resident, shall include all income from whatever source derived which—

(a) accrues, or is deemed to accrue, to him in India during the year; or

(b) is received, or is deemed to be received, by him, or on his behalf, in India during the year. 25

(3) Any income which accrues to a resident outside India during the year, or is received outside India during the year by, or on behalf of, such resident, shall be included in the total income of the resident, whether or not such income has been charged to tax outside India.

Residence in India.

4. (1) An individual shall be resident in India in any financial year, if he is in India— 30

(a) for a period, or periods, amounting in all to one hundred and eighty-two days or more in that year; or

(b) for a period, or periods, amounting in all to—

(i) sixty days or more in that year; and

(ii) three hundred and sixty-five days or more within the four years immediately preceding that year. 35

(2) The provisions of clause (b) of sub-section (1) shall not apply in respect of an individual who is—

(a) a citizen of India and who leaves India in that year as a member of the crew of an Indian ship; or 40

(b) a citizen of India and who leaves India in that year for the purposes of employment outside India.

(3) A company shall be resident in India in any financial year, if—

(a) it is an Indian company; or

(b) its place of effective management, at any time in the year, is in India.

(4) Every other person shall be resident in India in any financial year, if the place of control and management of its affairs, at any time in the year, is situated wholly, or partly, in India.

5 **5.** (1) The income shall be deemed to accrue in India, if it accrues, whether directly or indirectly, through or from: Income deemed to accrue in India.

(a) any business connection in India;

(b) any property in India;

(c) any asset or source of income in India; or

10 (d) the transfer of a capital asset situated in India.

(2) Without prejudice to the generality of the provisions of sub-section (1), the following income shall be deemed to accrue in India, namely:—

(a) income from employment, if it is for—

(i) service rendered in India;

15 (ii) service rendered outside India by a citizen of India and the income is receivable from the Government; or

(iii) the rest period, or leave period, which precedes, or succeeds, the period of service rendered in India and forms part of the service contract of employment;

20 (b) any dividend paid by a domestic company outside India;

(c) any insurance premium including re-insurance premium accrued from or payable by any resident or non-resident in respect of insurance covering any risk in India;

(d) interest accrued from or payable by any resident or the Government;

25 (e) interest accrued from or payable by any non-resident, if the interest is in respect of any debt incurred and used for the purposes of—

(i) a business carried on by the non-resident in India; or

(ii) earning any income from any source in India;

(f) royalty accrued from or payable by any resident or the Government;

30 (g) royalty accrued from or payable by a non-resident, if the royalty is for the purposes of—

(i) a business carried on by the non-resident in India; or

(ii) earning any income from any source in India;

35 (h) fees for technical services accrued from or payable by any resident or the Government;

(i) fees for technical services accrued from or payable by any non-resident, in respect of services utilised for the purposes of—

(i) a business carried on by the non-resident in India; or

(ii) earning any income from any source in India;

40 (j) transportation charges accrued from or payable by any resident or the Government;

(k) transportation charges accrued from or payable by any non-resident, if the transportation charges are in respect of the carriage to, or from, a place in India.

(3) For the purposes of clause (a) of sub-section (1), in the case of a business of which all the operations are not carried out in India, the income of the business deemed to accrue in India shall be only such part of the income as is reasonably attributable to the operations carried out in India. 5

(4) The income deemed to accrue in India under sub-section (1) shall, in the case of a non-resident, not include the following, namely:—

(a) any income accruing through, or from, operations which are confined to the purchase of goods in India for the purposes of export out of India; 10

(b) interest accrued from or payable by a resident, in respect of any debt incurred and used for the purposes of—

(i) a business carried on by the resident outside India; or

(ii) earning any income from any source outside India;

(c) royalty accrued from or payable by a resident for the purposes of— 15

(i) a business carried on by the resident outside India; or

(ii) earning any income from any source outside India;

(d) royalty consisting of lump sum consideration accrued from or payment made by a resident for the transfer of any rights (including the granting of a licence) in respect of computer software supplied by the non-resident manufacturer, along with a computer or computer-based equipment, under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986 issued by the Government of India; 20

(e) fees for technical services accrued from or payable by a resident, in respect of services utilised for the purposes of— 25

(i) a business carried on by the resident outside India; or

(ii) earning any income from any source outside India;

(f) transportation charges for the carriage by aircraft or ship accrued from or payable by any resident, if the transportation charges are in respect of the carriage from a place outside India to another place outside India, except where the airport or port of origin of departure of such carriage is in India; 30

(g) income from transfer, outside India, of any share or interest in a foreign company unless at any time in twelve months preceeding the transfer, the fair market value of the assets in India, owned, directly or indirectly, by the company, represent at least fifty per cent. of the fair market value of all assets owned by the company; 35

(h) interest accrued from or payable by a non-resident as referred to in sub-clause (ii) of clause (e) of sub-section (2), if such interest has not been claimed by the non-resident as a deduction from his tax bases chargeable in India.

(5) The provisions of clauses (c) to (k) of sub-section (2) shall be applicable, whether or not,— 40

(a) the payment is made in India;

(b) the services are rendered in India;

(c) the non-resident has a residence or place of business or any business connection in India; or

(d) the income has accrued in India. 45

(6) Where the income of a non-resident, in respect of transfer, outside India, of any share or interest in a foreign company, is deemed to accrue in India under clause (d) of sub-section (1), it shall be computed in accordance with the following formula—

$$\frac{A \times B}{C}$$

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Where A = Income from the transfer computed in accordance with provisions of this Code as if the transfer was effected in India;

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B = fair market value of the assets in India, owned, directly or indirectly, by the company;

C = fair market value of all assets owned by the company.

6. The following income shall be deemed to be received in the financial year, namely:— Income deemed to be received in the financial year.

(a) any contribution made by an employer, in the financial year, to the account of an employee under a pension fund;

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(b) any contribution made by an employer, in the financial year, to the account of an employee in any other fund;

(c) the annual accretion, in the financial year, to the balance at the credit of any employee in a fund referred to in clause (b) to the extent it exceeds the limit as may be prescribed.

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7. For the purposes of inclusion in the total income of an assessee— Dividend income.

(a) any dividend declared, distributed or paid by a company within the meaning of item (a) or item (b) or item (c) or item (d) or item (e) of clause (81) of section 314 shall be deemed to be the income of the financial year in which it is so declared, distributed or paid, as the case may be;

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(b) any interim dividend shall be deemed to be the income of the financial year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.

8. (1) The total income of any person, being a transferor, shall include the following, namely:— Total income to include income of any other person.

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(a) any income accruing to any other person, by virtue of a transfer, whether revocable or not, without transfer of the asset from which the income accrues; or

(b) any income accruing to any other person, by virtue of a revocable transfer of an asset.

(2) The provisions of clause (b) of sub-section (1) shall not apply in a case where—

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(a) any income accrues from an asset transferred to any trust, if the transfer is not revocable during the life time of the beneficiary of the trust; or

(b) any income accrues from an asset transferred to any other person, not being a trust, if the transfer is not revocable during the lifetime of such other person.

(3) In this section,—

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(a) a transfer shall be deemed to be revocable if—

(i) it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or assets to the transferor; or

(ii) it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or assets;

45

(b) a transfer shall include any settlement, trust, covenant, agreement or arrangement.

Income of individual to include income of spouse, minor child and others.

9. (1) The total income of any individual shall include—
- (a) all income which accrues, directly or indirectly,—
- (i) to the spouse, by way of salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which the individual has a substantial interest; 5
- (ii) from assets transferred, directly or indirectly, to the spouse by the individual, otherwise than for adequate consideration, or in connection with an agreement to live apart;
- (iii) from assets transferred, directly or indirectly, to the son's wife by the individual, otherwise than for adequate consideration; or 10
- (iv) from assets transferred, directly or indirectly, to any other person by the individual otherwise than for adequate consideration, to the extent to which the income from such assets is for the immediate or deferred benefit of the spouse or son's wife;
- (b) all income which accrues to a minor child (other than a minor child being a person with disability or person with severe disability) of the individual, other than income which accrues to the child on account of any— 15
- (i) manual work done by the child; or
- (ii) activity involving application of the skill, talent or specialised knowledge and experience of the child; 20
- (c) all income derived from any converted property or part thereof;
- (d) all income derived from any converted property which is received by the spouse or minor child upon partition of the Hindu undivided family of which the individual is a member.
- (2) The provisions of sub-clause (i) of clause (a) of sub-section (1) shall not apply in relation to any income accruing to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of the technical or professional knowledge and experience of the spouse. 25
- (3) The income referred to in sub-clause (i) of clause (a) of sub-section (1) shall, notwithstanding anything contained therein, be included in the total income of the spouse whose total income (excluding the income referred to in that sub-clause) is higher. 30
- (4) The Board may prescribe the method for determining the income referred to in sub-clause (ii) and sub-clause (iii) of clause (a) of sub-section (1).
- (5) The income referred to in clause (b) of sub-section (1) shall be included in the total income of— 35
- (a) the parent who is the guardian of the minor child; or
- (b) the parent whose total income (excluding the income referred to in that clause) is higher, if both the parents are guardians of the child.
- (6) Where any income referred to in clause (b) of sub-section (1) is once included in the total income of a parent, any such income arising in the succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer considers it necessary to do so after giving an opportunity of being heard to the other parent. 40
- (7) In this section, "property" includes any interest in property whether movable or immovable, the sale proceeds of such property, in whichever form and where the property, is converted into any other form of property by any method, such other property. 45

10. Subject to the provisions of this Code, the total income of a financial year of a person shall not include the income enumerated in the Sixth Schedule. Income not included in the total income.

11. The persons, entity or funds enumerated in the Seventh Schedule shall not be liable to income-tax under this Code for any financial year, subject to the fulfillment of conditions specified in the said Schedule. Persons, entity or funds not liable to income-tax.

CHAPTER III

COMPOSITION OF TOTAL INCOME

I.— GENERAL

12. (1) The total income of a person shall be computed in accordance with the provisions of this Chapter. Computation of total income.

(2) Unless otherwise provided in this Code, reference to any accrual, receipt, expenditure, withdrawal, asset or liability shall be construed to be in relation to the financial year in respect of which, and the person in respect of whom, the income is computed.

13. For the purposes of computation of total income of any person for any financial year, income from all sources shall be classified as follows: Classification of sources of income.

A.— Income from ordinary sources.

B.— Income from special sources.

14. The income from any source, other than a special source, shall be computed under the class “income from ordinary sources” and such income shall be classified under the following heads of income, namely:— Computation of income from ordinary sources.

A.— Income from employment.

B.— Income from house property.

C.— Income from business.

D.— Capital gains.

E.— Income from residuary sources.

15. (1) Every income listed in column (3) of the Table in Part III of the First Schedule shall be the income from a special source of the person specified in column (2) of the said Table. Computation of income from special sources.

(2) The income from any special source shall be computed under the class “income from special sources” in accordance with the provisions of the Ninth Schedule.

(3) Notwithstanding anything in sub-section (1), the income referred to therein shall not be considered as income from a special source, if such income is attributable to the permanent establishment of a non-resident in India.

16. (1) The income of the husband and wife, governed by the *communiao dos bens*, from ordinary sources under each head of income (other than the head “Income from employment”) and from special sources shall be apportioned equally between the spouses. Apportionment of income between spouses governed by Portuguese Civil Code.

(2) The income so apportioned under sub-section (1) shall be included separately in the total income of the spouses.

(3) The income under the head “Income from employment” shall be included in the total income of the spouse who has actually earned it.

(4) In this section, *communiao dos bens* refers to the system of community of property under the Portuguese Civil Code of 1860 as in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu.

Avoidance of double taxation.

17. Subject to the provisions of this Code,—

(i) any income which is included in the total income of a person for any financial year shall not be so included again in the total income of such person for the same or any other financial year.

(ii) any income which is includible in the total income of any person shall not be included in the total income of any other person, 5

except where for the purposes of protecting the interests of revenue, it is necessary to do so.

Expenditure not to be allowed as deduction.

18. (1) In computing the total income of a person for any financial year, the following shall not be allowed as a deduction, namely:—

(a) any expenditure, attributable to income which is not included in the total income under the Sixth Schedule, determined in accordance with such method as may be prescribed; 10

(b) any expenditure attributable to any income from special sources;

(c) any expenditure which has been allowed as a deduction in any other financial year; 15

(d) any expenditure incurred for an activity which is an offence or which is not permissible by law;

(e) any provision made for any liability, if it remains unascertained by the end of the financial year; and

(f) any unexplained expenditure referred to in clause (g) of sub-section (2) of section 58. 20

(2) Any amount allowed as a deduction under any provision of this Code shall not be allowed as a deduction under any other provision of this Code.

(3) The provisions of this section shall apply notwithstanding anything in any other provisions of this Chapter. 25

Amount not deductible where tax is not deducted at source.

19. (1) Any amount on which tax is deductible at source under Chapter XIII during the financial year shall not be allowed as a deduction in computing the total income if,—

(a) the tax has not been deducted during the financial year; or

(b) the tax, after such deduction, has not been paid on or before the due date specified in sub-section (1) of section 144. 30

(2) A deduction shall be allowed in respect of the amount referred to in sub-section (1) in any subsequent financial year, if—

(a) tax has been deducted during the financial year, but paid in such subsequent year after the due date specified in sub-section (1) of section 144; or

(b) tax has been deducted and paid in such subsequent financial year. 35

II. HEADS OF INCOME

A. - Income from employment

Income from employment.

20. The income of a person from employment shall be computed under the head “Income from employment”.

Computation of income from employment.

21. The income computed under the head “Income from employment” shall be the gross salary as reduced by the aggregate amount of the deductions referred to in section 23. 40

22. The gross salary shall be the amount of salary due, paid, or allowed, whichever is earlier, to a person in the financial year by or on behalf of his employer or former employer. Scope of gross salary.

23. (1) The deductions from the gross salary for computation of income from employment, to the extent included in the gross salary, shall be the following, namely:— Deductions from gross salary.

5 (a) any sum paid by the employee on account of a tax on employment within the meaning of clause (2) of article 276 of the Constitution;

(b) any allowance or benefit granted by an employer for journey by an employee between his residence and office or any other place of work, to such extent as may be prescribed;

10 (c) any allowance or benefit granted by an employer to an employee—

(i) to meet expenses wholly, necessarily and exclusively in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent such expenses are actually incurred for that purpose;

15 (ii) to meet personal expenses, considering the place of posting or nature of duties or place of residence, subject to such conditions and limits as may be prescribed;

(d) any amount of contribution made by an employer, in the financial year, to the account of an employee under an approved pension fund notified by the Central Government, to the extent it does not exceed ten per cent. of the salary of the employee;

20 (e) any amount of contribution made by an employer, in the financial year, to the account of an employee in an approved superannuation fund;

(f) any amount of contribution by an employer, in the financial year, to an account of an employee in an approved provident fund, to the extent it does not exceed twelve per cent. of the salary of the employee;

25 (g) any amount of interest credited, in the financial year, on the balance to the credit of an employee in an approved fund to the extent it does not exceed the amount of interest payable at the rate notified by the Central Government;

30 (h) any allowance provided by an employer to meet the expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the employee, to such extent as may be prescribed.

(2) For the purposes of clauses (d), (f) and (h) of sub-section (1), salary means basic salary and includes dearness allowance, if the terms of employment so provide.

B.—Income from house property

35 24. (1) The income from letting of any house property owned by any person shall be computed under the head “Income from house property”. Income from house property.

(2) The income from any house property shall be computed under this head notwithstanding that the letting, if any, of the property is in the nature of trade, commerce or business.

40 (3) The income from any house property owned by two or more persons having definite and ascertainable shares shall be computed separately for each such person in respect of his share.

(4) In a case where the shares of the owners of the house property referred to in sub-section (3) are not definite and ascertainable, such persons shall be assessed as an association of persons in respect of such property.

45 (5) The provisions of this section shall not apply,-

(a) to the house property, or any portion of the house property, which—

(i) is used by the person as a hospital, hotel, convention centre or cold storage; and

(ii) forms part of Special Economic Zone,

the income from which is computed under the head “income from business”;

(b) to a house property which is not ready for use during the financial year. 5

Computation of income from house property. 25. The income from house property shall be the gross rent as reduced by the aggregate amount of the deductions referred to in section 27.

Scope of gross rent. 26. The gross rent in respect of a house property or any part of the property shall be the amount of rent received or receivable, directly or indirectly, for the financial year or part thereof, for which such property is let out. 10

Deductions from gross rent. 27. (1) The deductions for the purposes of computation of income from house property shall be the following, namely:—

(a) the amount of taxes levied by a local authority in respect of such property, to the extent the amount is actually paid by him during the financial year;

(b) a sum equal to twenty per cent. of the gross rent determined under section 26, towards repair and maintenance of such property; 15

(c) the amount of any interest,—

(i) on loan taken for the purposes of acquisition, construction, repair or renovation of the property; or

(ii) on loan taken for the purpose of repayment of the loan referred to in sub-clause (i); 20

(2) The interest referred to in clause (c) of sub-section (1) which pertains to the period prior to the financial year in which the house property has been acquired or constructed shall be allowed as deduction in five equal instalments beginning from such financial year.

(3) The interest deductible under sub-section (2) shall be reduced by any part thereof which has been allowed as deduction under any other provision of this Code. 25

Provision for advance rent received. 28. The amount of rent received in advance shall be included in the gross rent of the financial year to which the rent relates.

Provision for arrears of rent received. 29. (1) The amount of rent received in arrears shall be deemed to be the income from house property of the financial year in which such rent is received. 30

(2) The arrears of rent referred to in sub-section (1) shall be included in the total income of the person under the head income from house property, whether the person is the owner of the property in that year or not.

(3) A sum equal to twenty per cent. of the arrears of rent referred to in sub-section (1) shall be allowed as deduction towards repair and maintenance of the property. 35

C.—Income from business

Income from business. 30. (1) The income from any business carried on by the assessee at any time during a financial year shall be computed under the head “Income from business”.

(2) The income of distinct and separate business referred to in section 31 shall be computed separately for the purposes of sub-section (1). 40

(3) Any income from a business after its discontinuance shall be deemed to be the income of the recipient in the year of receipt and shall, accordingly, be computed under the head “Income from business”.

31. (1) A business shall be distinct and separate from another business if there is no interlacing or inter-dependence between the businesses. Business when teated distinct and separate.

(2) A business shall be deemed to be distinct and separate from another business, if—

5 (a) the unit of the business is processing, producing, manufacturing or trading the same goods as in the other business and such unit is located physically apart from the other unit;

(b) the unit of the business is processing, producing or manufacturing the same goods as in the other business and utilises raw material or manufacturing process, which is different from the raw material or the manufacturing process of the other unit;

10 (c) separate books of account are maintained or capable of being maintained, for the business; or

(d) it is a business in respect of which profits are determined under sub-section (2) of section 32.

(3) A speculative business shall be deemed to be distinct and separate from any other business including other speculative business.

15 32. (1) The income computed under the head “Income from business” shall be the profits from the business. Computation of income from business.

(2) The profits from the business of the nature specified in column (2) of the Table given below shall be computed in accordance with the provisions contained in the Schedule specified in the corresponding entry in column (3) of the said Table.

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TABLE

Sl. No.	Nature of Business	Schedule
(1)	(2)	(3)
1.	Business of Insurance	Eight Schedule
25 2.	Business of operating a qualifying ship	Tenth Schedule
3.	Business of mineral oil or natural gas	Eleventh Schedule
4.	Business of developing of a Special Economic Zone Business specified in Paragraph 1 of the Twelfth Schedule	Twelfth Schedule
5.	Business specified in Paragraph 1 of the Thirteenth Schedule	Thirteenth Schedule
30 6	Business listed in column (2) of the Table in the Fourteenth Schedule where income is determined on presumptive basis	Fourteenth Schedule

35 (3) The profits from any business not referred to in sub-section (2) shall be the gross earnings from the business as reduced by the amount of business expenditure incurred by the assessee.

33. (1) The gross earnings referred to in sub-section (3) of section 32 shall be the aggregate of the following, namely:— Gross earnings.

(i) the amount of any accrual or receipt from, or in connection with, the business;

40 (ii) the value of any benefit or perquisite, whether convertible into money or not, accrued or received from, or in connection with, the business;

(iii) the value of the inventory of the business, as on the close of the financial year; and

(iv) any amount received from a business after its discontinuance.

(2) The accruals or receipts referred to in sub-section (1) shall, without prejudice to the generality of the provisions of that sub-section, include the following, namely:—

- (i) the amount of any compensation or other payment, accrued or received, for—
 - (a) termination or modification of terms and conditions relating to management of business, any business agreement or any agency; or 5
 - (b) vesting of the management of any property or business in another person or the Government;
- (ii) any consideration, accrued or received under a non-capital agreement;
- (iii) any amount or value of any benefit, whether convertible into money or not, accrued to, or received by a person, being a trade, professional or similar association, in respect of specific services performed for its members; 10
- (iv) any consideration on sale of a licence, not being business capital assets, obtained in connection with the business;
- (v) any consideration on transfer of a right or benefit (by whatever name called) accrued or received under any scheme framed by the Government, local authority or a corporation established under any law for the time being in force; 15
- (vi) the amount of cash assistance, subsidy or grant (by whatever name called), received from any person or the Government for, or in connection with, the business other than to meet any portion of the cost of any business capital asset;
- (vii) the amount of any remission, drawback or refund of any tax, duty or cess (not being a tax under this Code), received or receivable; 20
- (viii) the amount of remuneration (including salary, bonus and commission) or any interest accrued to, or received by, a participant of a unincorporated body from such body;
- (ix) any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy; 25
- (x) the amount of profit on transfer, demolition, destroys or discardment of any business capital asset (other than a business capital asset used for scientific research and development) computed in accordance with the provisions of section 42;
- (xi) any consideration accrued or received on transfer of carbon credits; 30
- (xii) the amount of any benefit accrued to, or received by, the person, or as the case may be, the successor in business, if—
 - (a) it is by way of remission or cessation of any trading liability or statutory liability or it is in respect of any loss or expenditure, including a unilateral act by way of writing off such liability in his accounts; and 35
 - (b) the trading liability or statutory liability or loss or expenditure has been allowed as deduction in any financial year;
- (xiii) the amount of remission or cessation of any liability by way of loan, deposit, advance or credit;
- (xiv) the amount recovered from a trade debtor in respect of a bad debt or part of debt which has been allowed as deduction in any financial year under clause (c) or clause (d) or clause (e) of sub-section (3) of section 35; 40
- (xv) the amount withdrawn from any special reserve created and maintained under any provision of this Code or the Income-tax Act, 1961, as it stood before the commencement of this Code for which deduction has been allowed, if the amount is not utilised for the purpose and within the period specified therein; 43 of 1961. 45

(xvi) the amount accrued to, or received by, the person from his employees as their contribution to any fund for their welfare;

(xvii) the amount accrued or received on sale of any business capital asset used for scientific research and development;

5 (xviii) any consideration accrued or received in respect of transfer of any capital asset self-generated in the course of the business;

(xix) any amount accrued or received on account of the cessation, termination or forfeiture in respect of agreement entered in the course of the business;

10 (xx) any amount accrued or received, whether as an advance, security deposit or otherwise, from the long term leasing, or transfer of—

(a) whole or part of any business asset; or

(b) any interest in a business asset;

(xxi) any amount received as reimbursement of any expenditure incurred;

(xxii) any interest accrued to, or received by, a person being a financial institution.

15 (xxiii) any payment or aggregate of payments made to a person in a day, in respect of an expenditure incurred during the financial year or in respect of a liability incurred and allowed as a deduction in any preceding financial year,—

(a) which has been made otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft;

20 (b) which exceeds—

(i) a sum of thirty five thousand rupees if the payment is made to transporter for carriage of goods by road; or

(ii) a sum of twenty thousand rupees in any other case; and

25 (c) which has not been made in such cases and in such circumstances as may be prescribed.

(xxiv) any amount standing to the credit of the Fund referred to in section 82, if—

(a) income-tax has not been paid on such amount in any financial year preceding the relevant financial year; and

30 (b) the amount is shared during the relevant financial year, either wholly or in part, with a recognised stock exchange or recognised commodity exchange.

(3) The gross earnings from business shall not include the following, namely:—

(a) any dividend;

35 (b) any interest other than interest accrued to, or received by, a person being a financial institution;

(c) any income from letting of house property which is included under the head income from houses property;

(d) any income from the transfer of an investment assets.

40 **34.** (1) The amount of business expenditure referred to in sub-section (3) of section 32 shall be the aggregate of the following amounts, namely:—

Determination of business expenditure.

(a) the operating expenditure referred to in section 35, incurred by the person for the purposes of the business carried on during the financial year;

(b) finance charges referred to in section 36, incurred by the person for the purposes of the business carried on during the financial year;

45 (c) capital allowances referred to in section 37, in respect of the business carried on by the person during the financial year.

(2) The provisions for deduction of capital allowances referred to in sub-section (1) shall apply, whether or not the person has claimed the deduction in computing the total income.

(3) The Assessing Officer may restrict the amount of deduction under this section to such amount as he considers appropriate having regard to the use of a business asset if such asset is not exclusively used for the purposes of the business. 5

Determination
of operating
expenditure.

35. (1) The amount of operating expenditure referred to in clause (a) of sub-section (1) of section 34 shall be the aggregate of—

(a) the amount of expenditure specified in sub-section (2), if—

(i) the expenditure is laid out or expended, wholly and exclusively, for the purposes of the business; and 10

(ii) it fulfills other conditions, if any, specified therein; and

(b) the amount of deductions specified in sub-section (3) subject to the fulfillment of the conditions, if any, specified therein.

(2) The amount of expenditure referred to in clause (a) of sub-section (1) shall be the amount of expenditure on, or on account of,— 15

(i) purchase of raw material, stores, spares and consumables, or stock-in-trade;

(ii) rent paid for any premises if it is occupied and used by the person;

(iii) current repairs to buildings if it is occupied and used by the person;

(iv) land revenue, local rates or municipal taxes in respect of premises occupied and used by the person is actually paid; 20

(v) current repair of machinery, plant or furniture used by the person;

(vi) current maintenance or repairs of computer software or hardware;

(vii) salary or wages of employees;

(viii) remuneration to any working participant which is in accordance with the agreement of the unincorporated body and relates to the period falling after the date of such agreement limited to the extent as may be prescribed; 25

(ix) any premium paid to effect, or to keep in force, an insurance in respect of,—

(a) any premise occupied and used by the person;

(b) any machinery, plant or furniture used by the person; 30

(c) stocks or stores belonging to the person;

(d) the health of any employee of the person; and

(e) any other asset owned and used by the person;

(x) any premium paid by the person, being a federal milk co-operative society, to effect, or to keep in force, an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supplying milk, raised by its members to such federal milk co-operative society. 35

(xi) welfare of workmen and staff;

(xii) power and fuel;

(xiii) freight, clearing and forwarding charge; 40

- (xiv) selling expense in the nature of commission, brokerage, discount, or warranty charge;
- (xv) sales promotion including advertisement and publicity;
- (xvi) training of employees;
- 5 (xvii) conference;
- (xviii) use of hotel or boarding and lodging facilities;
- (xix) conveyance, tour or travel;
- (xx) running or maintenance of motor car or aircraft;
- (xxi) postage and telecommunications;
- 10 (xxii) audit and such other professional fees;
- (xxiii) legal services;
- (xxiv) entertainment and provision of hospitality;
- (xxv) maintenance of guest-house;
- 15 (xxvi) subscription, including entrance fee, to a club or a trade association or the use of their facilities;
- (xxvii) scientific research and development related to the business;
- (xxviii) salary to an employee engaged in, or the purchase of material used in, scientific research and development, within a period of three years immediately preceding the commencement of the business;
- 20 (xxix) contribution by the person, being an employer, to an approved fund subject to such limits and conditions, as may be prescribed and to the extent the amount is actually paid;
- (xxx) contribution to any fund, referred to in clause (xvi) of sub-section (2) of section 33, to the extent,—
- 25 (a) the amount has been received from his employees as their contribution to the fund; and
- (b) it is actually paid;
- (xxxi) any head office expenditure by a non-resident, as is attributable to his business in India, not exceeding an amount equal to one-half per cent. of the total sales, turnover or gross receipts of business in India;
- 30 (xxxii) cost of acquisition of the asset as in the case of the predecessor and cost of any improvement made thereto and expenditure incurred wholly and exclusively in connection with the transfer of the asset, by the predecessor, if —
- (a) the person is the successor in the business reorganisation;
- 35 (b) the asset becomes the property of the person under a scheme of business reorganisation; and
- (c) the asset is sold by the person as a business trading asset;
- (xxxiii) cost of acquisition of the asset as in the case of the transferor or the donor, and cost of any improvement made thereto and expenditure incurred wholly and exclusively in connection with the transfer of the asset (including the payment of gift tax, if any), by the transferor or the donor, if —
- 40 (a) the person is the transferee or the donee;
- (b) the asset becomes the property of the person on the total or partial partition of a Hindu undivided family or under a gift or will or an irrevocable trust; and
- 45 (c) the asset is sold by the person as a business trading asset;

(xxxiv) protecting or safeguarding the goodwill of person, which has necessarily to be preserved for the purpose of his business;

(xxxv) tax (not being a tax under this Code), duty, cess, royalty or fee, by whatever name called, under any law for the time being in force, if the amount is actually paid;

(xxxvi) bonus or commission to employees for services rendered if— 5

(a) the amount would not have been payable to employees as profits or dividends had it not been paid as bonus or commission; and

(b) the amount is actually paid;

(xxxvii) encashment of leave to the credit of employees, to the extent the amount is actually paid; 10

(xxxviii) gratuity to employees on their retirement or on termination of their employment, to the extent the amount is actually paid;

(xxxix) the purposes of a body corporate constituted or established under a Central, State or Provincial Act, if—

(a) such purposes are authorised by the said Act; 15

(b) such body corporate is notified by the Central Government for the purposes of this clause;

(xl) the amount paid by a public financial institution by way of contribution to a credit guarantee fund trust for small industries which is notified by the Central Government for the purposes of this clause; 20

(xli) the actual cost of the licence referred to in clause (iv) of sub-section (2) of section 33, in the year in which the consideration on account of sale forms part of gross earnings;

(xlii) the actual cost of the right or benefit referred to in clause (v) of sub-section (2) of section 33, in the year in which the consideration transfer forms part of gross earnings; 25

(xliii) the repayment of any advance or security deposit in respect of the long-term leasing referred to in clause (xx) of sub-section (2) of section 33, in the year in which such repayment is made;

(xliv) any other operating expenditure not covered under clause (i) to clause (xliii). 30

(3) The amount of deductions referred to in clause (b) of sub-section (1) shall be the following, namely:—

(a) the value of inventory of the business, as at the beginning of the financial year; 35

(b) loss of inventory, or money, on account of theft, robbery, fraud or embezzlement, occurring in the course of the business, if the inventory, or the money, is written off in the books of account;

(c) any amount credited to the provision for bad and doubtful debts account, not exceeding one per cent of the aggregate average advances computed in the prescribed manner if,— 40

(i) the person is a financial institution, or a non-banking finance company as may be notified;

(ii) the amount is charged to the profit and loss account for the financial year in accordance with the prudential norms of the Reserve Bank of India in this regard; and 45

(iii) the amount of trade debt or part thereof written off as irrecoverable in the books of the person is debited to the provision for bad and doubtful debts account;

(d) the debit balance, if any, on the last day of the financial year, in the provision for bad and doubtful debts account made under clause (c), if the balance has been transferred to the profit and loss account of the financial year;

(e) trade debt or part thereof, if,—

5 (i) the person is other than a person referred to in sub-clause (i) of clause (c); and

(ii) the amount is written off as irrecoverable in the books of the person;

10 (f) payment during the financial year in discharge of any remitted or ceased liability which has been included in the gross earnings of any preceding financial year under clause (xii) or clause (xiii) of sub-section (2) of section 33.

(4) Notwithstanding anything in sub-section (2) or sub-section (3) the amount of operating expenditure shall not include the amount of expenditure, being in the nature of, or on account of, —

(a) personal expenses of the person;

15 (b) capital expenditure including expenditure in respect of which capital allowance is allowable under section 37;

(c) finance charges;

(d) any unascertained liability of the person;

(e) remuneration payable to any participant other than a working participant;

20 (f) any expenditure incurred by a person on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party;

(g) any amount of contribution by an employer during the financial year to an approved superannuation fund on account of an employee to the extent it exceeds one lak rupees;

25 (h) any tax, interest or penalty payable under this Code or the Income-tax Act, 1961 or the Wealth Tax Act, 1957 as they stood before the commencement of this Code;

43 of 1961.
27 of 1957.

(i) any amount paid which is eligible for relief of tax under section 207; and

(j) any dividend declared or distributed or paid.

30 (5) Any amount of expenditure or deduction referred to in sub-section (1) or sub-section (2) or under section 36 or under section 37, if it is in excess of the amount or in breach of the condition specified therein, shall not be allowed as deduction under clause (xiv) of sub-section (2) on the ground that it is laid out or expended, wholly and exclusively, for the purposes of business.

35 (6) The deduction in respect of the amount referred to in clauses (iv), (xxx) and clauses (xxv) to (xxviii) of sub-section (2) shall, notwithstanding anything contained in sub-section (1), be allowed in the financial year in which the liability has arisen, if it is paid in the financial year or by the due date of filing return of tax bases of that financial year.

(7) If any deduction is not allowed on account of the provisions of sub-section (6), it shall be allowed in the financial year in which the amount is actually paid.

40 **36.** (1) The amount of finance charges referred to in clause (b) of sub-section (1) of section 34 shall be—

Determination
of finance
charges.

(a) the amount of interest paid on any capital borrowed or debt incurred;

(b) the amount of interest paid to trade creditors;

45 (c) the amount of interest paid to any participant, which is in accordance with the agreement of formation of unincorporated body and relates to the period falling after the date of such agreement, limited to the extent as may be prescribed;

(d) the amount of any incidental financial charges;

(e) the proportionate amount of discount or premium payable on any bond or debenture issued by the person, calculated in the manner as may be prescribed.

(2) The amount of finance charges referred to in sub-section (1) shall not include—

(a) any amount paid in respect of capital borrowed or debt incurred for acquisition of a capital asset (whether capitalised in the books of account or not) for any period— 5

(i) in the case of a new business, prior to the date of commencement of such business; and

(ii) in any other case, prior to the date on which such asset was first put to use;

(b) any amount of incidental financial charges for issue of convertible debentures or bonds or share capital; and 10

(c) any amount of interest referred to in section 23 of Micro, Small and Medium Enterprises Development Act, 2006. 27 of 2006.

(3) The amount of interest on any capital borrowed or debt incurred, which is payable to any financial institution, shall be allowed as a deduction, notwithstanding anything in sub-section (1), in the financial year in which the amount is actually paid or in the financial year in which the liability has accrued, whichever is later. 15

(4) Any interest referred to in sub-section (3) which has been converted into a loan or borrowing shall not be deemed to have been actually paid for the purposes of that sub-section. 20

(5) In this section, “capital borrowed” shall include recurring subscriptions received periodically from shareholders, or subscribers, in a mutual benefit finance company, which fulfils such conditions as may be prescribed.

Determination
of capital
allowances.

37. (1) The amount of capital allowances referred to in clause (c) of sub-section (1) of section 34 shall be the aggregate of the amount in respect of,— 25

(a) depreciation of business capital assets;

(b) initial depreciation of business capital assets;

(c) terminal allowance;

(d) scientific research and development allowance;

(e) deferred revenue expenditure allowance. 30

(f) deduction of an amount in accordance with such deposit scheme in respect of the person carrying on business of growing and manufacturing tea or coffee or rubber in India, as may be prescribed;

(2) The depreciation, initial depreciation or terminal allowance, referred to in sub-section (1), shall be allowed in respect of any business capital asset if the asset is,— 35

(a) owned, wholly or partly, by the person; and

(b) used for the purposes of the business of the person.

(3) The condition referred to in clause (a) of sub-section (2) shall not apply in the case of a business capital asset being a capital expenditure on any building which is held by the person under a lease or other right of occupancy. 40

(4) A business capital asset shall be deemed to be owned by the person if he is a lessee in terms of a financial lease.

(5) The amount of deferred revenue expenditure allowance referred to in clause (e) of sub-section (1) shall be such amount as computed in accordance with the Twenty-second Schedule. 45

Determination
of depreciation.

38. (1) The amount of depreciation of business capital assets referred to in section 37 shall be the aggregate of the following, namely:—

(a) such percentage of the adjusted value of any block of assets as specified in the Fifteenth Schedule, in respect of all the business capital assets forming part of the relevant block of assets specified therein; and 50

(b) “nil”, in respect of any other business capital asset not forming part of any block of assets specified in the Fifteenth Schedule.

(2) The depreciation allowance on assets referred to in section 37 shall, notwithstanding the fact that all business capital assets in any block of assets have ceased to exist by reason of being demolished, destroyed, discarded or transferred, be allowed to the person in respect of the block of assets, if the adjusted value of the block of assets is greater than zero.

(3) The deduction under this section in respect of an asset shall be restricted to fifty per cent. of the sum referred to in sub-section (1) if —

(a) the asset is acquired by the person during the financial year; and

(b) is used for the purposes of business for a period of less than one hundred and eighty days in the relevant financial year.

(4) The depreciation in respect of any business capital asset, notwithstanding anything contained in any other provision of this Code, shall not be allowed if,—

(a) the asset does not form part of any block of assets specified in the Fifteenth Schedule; or

(b) the expenditure incurred for acquiring the asset has been allowed as a deduction under any provision of this Code.

39. (1) A person shall be allowed, in addition to depreciation, an initial depreciation of business capital assets if,—

Determination of initial depreciation.

(a) the person is engaged in the business of manufacture or production of any article or thing;

(b) the asset is a new asset forming part of the class of assets “Machinery and Plant” specified in the Fifteenth Schedule;

(c) the asset was not used either within or outside India by any other person before its installation by the person;

(d) the asset is not installed in any office premises or any residential accommodation, including accommodation in the nature of a guest-house;

(e) the asset is not in the nature of any office appliances; and

(f) the whole of the actual cost of the asset is not allowed as a deduction (whether by way of depreciation or otherwise) in computing the income under the head “Income from business” of any financial year.

(2) The initial depreciation referred to in sub-section (1),—

(a) shall be an amount equal to twenty per cent. of the actual cost of the asset; and

(b) shall be allowed in the financial year in which the asset is used for the first time for the purposes of the business of the person.

(3) The deduction under this section in respect of such asset shall be restricted to fifty per cent. of the sum referred to in sub-section (2), if the asset is used for the purposes of business for a period of less than one hundred and eighty days in the relevant financial year.

40. (1) A person shall be allowed a terminal allowance in respect of a block of assets, if,—

Deduction for terminal allowance.

(a) the block of assets has ceased to exist by reason of being demolished, destroyed, discarded or transferred during the financial year; and

(b) the percentage specified in the Fifteenth Schedule for computing depreciation in respect of the block of assets is zero.

(2) The terminal allowance referred to in sub-section (1) shall be computed in accordance with the formula—

$$A + B - C$$

Where

A = the written down value of the block of asset at the beginning of the financial year; 5

B = the actual cost of any asset falling within that block, acquired during the financial year; and

C = the amount accrued or received in respect of the assets which are demolished, destroyed, discarded or transferred during the financial year together with the value of the carcass or the scrap, if any. 10

(3) The terminal allowance referred to in sub-section (1) shall be treated as “nil”, if the net result of the computation, thereunder, is negative.

Deduction for scientific research and development allowance.

41. (1) A company shall be allowed a deduction equal to two hundred per cent. of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on,— 15

(a) creating and maintaining an in-house facility for scientific research and development; and

(b) carrying out scientific research and development in the in-house facility.

(2) The deduction under sub-section (1) shall be allowed if,— 20

(a) the company creates and maintains an in-house facility for carrying out scientific research and development;

(b) the research facility is approved by the Central Government on the basis of recommendation of the prescribed authority; and

(c) the company enters into an agreement with the prescribed authority for cooperation in the research and development facility and for audit of the accounts maintained for such facility. 25

(3) The approval granted to a predecessor shall be deemed to have been granted to the successor if the approval is transferred to the successor as a result of a business reorganisation. 30

(4) The deduction under this section shall not be allowed to a company in respect of the expenditure referred to in sub-section (1), if the expenditure is incurred in the course of its business in the nature of scientific research and development.

(5) The Board may for the purposes of this section, prescribe the nature of business, conditions and manner as may be considered necessary for grant of approval. 35

Computation of profit on transfer of a business capital asset.

42. (1) The amount of profit, where a business capital asset, which forms part of a block of assets specified in the Fifteenth Schedule, is transferred, discarded, destroyed or destructed shall be computed in accordance with the formula—

$$A - (B + C)$$

Where A = the amount accrued or received in respect of such asset, which is transferred, discarded, destroyed or destructed during the financial year together with the amount of scrap value, if any; 40

B = the amount of written down value of such block of assets at the beginning of the financial year; 45

C= the actual cost of any asset falling within that block of assets, acquired during the financial year;

(2) The profit referred to in sub-section (1) shall be treated as 'nil', if the net result of the computation, thereunder, is negative.

5 (3) The amount of profit, where a business capital asset other than that referred to in sub-section (1) is transferred, discarded, destroyed or destructed, shall be computed in accordance with the formula-

A-B

10 Where A= Amount accrued or received in respect of the asset which is transferred, discarded, destroyed or destructed during the financial year together with the amount of scrap value, if any;

B= The actual cost of the asset.

15 **43.** (1) The deduction for any capital allowance referred to in section 37 shall, in a case where business reorganisation has taken place during the financial year, be allowed in accordance with the provisions of this section.

Special provisions relating to business reorganisation.

(2) The amount of deduction allowable to the predecessor shall be determined in accordance with the formula-

20 $A \times \frac{B}{C}$

Where

A= the amount of deduction allowable as if the business reorganisation had not taken place;

25 B= the number of days comprised in the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation;

C= the total number of days in the financial year in which the business reorganisation has taken place.

30 (3) The amount of deduction to the successor shall be determined in accordance with the formula —

$A \times \frac{B}{C}$

Where

35 A= the amount of deduction allowable as if the business reorganisation had not taken place;

B= the number of days comprised in the period beginning with the date of business reorganisation and ending on the last day of the financial year; and

40 C= the total number of days in the financial year in which the business reorganisation has taken place.

44. (1) The actual cost of a business capital asset to the person shall be computed in accordance with the formula-

Meaning of actual cost.

45 $A - [B + (C \times \frac{A}{D})]$

Where

50 A= cost of the business capital asset to the person including the interest paid on the capital borrowed for acquiring the asset if such interest is relatable to the period before the asset is put to use;

- B= the amount of additional duty leviable under section 3 of the Customs Tariff Act, 1975 or the amount of duty of excise, in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944;
- C= the amount of subsidy, grant or reimbursement (by whatever name called) received by the assessee, directly or indirectly, from the Central Government, a State Government, any authority established under any law for the time being in force or by any other person in respect of, or with reference to, any assets including the relevant asset;
- D= cost of all the assets in respect of or with reference to which the amount 'C' is so received.

(2) The Assessing Officer may, notwithstanding anything contained in sub-section (1), determine, with the prior approval of the Joint Commissioner, the actual cost if -

(a) the assets were business assets at any time before the date of acquisition by the person; and

(b) the Assessing Officer is satisfied that the main purpose of the transfer of the assets, directly or indirectly to the person, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost).

(3) The actual cost of the business capital asset to the person shall be the deemed written down value, if —

(a) the asset is acquired by the person by way of gift or inheritance; or

(b) the asset is converted by the person into a business capital asset in any financial year; or

(c) the person is transferee holding company or a transferee subsidiary company in respect of transfer of the asset by subsidiary company or the holding company respectively.

(4) The actual cost of a business capital asset to the person shall, in a case of sale and buy back transaction of the asset, be the lower of the following, namely:—

(a) the actual price for which the asset is re-acquired by him; or

(b) the deemed written down value.

(5) Where a business capital asset is acquired by the person and subsequently it is transferred back to the transferor by way of lease, hire or otherwise, the actual cost of the asset in the hands of the person shall be the written down value of the asset in the hands of the transferor at the beginning of the financial year in which the acquisition of the asset by the person has taken place.

(6) Where the person is a non-resident and a business capital asset, having been acquired by him outside India, is brought by him to India, the actual cost of the asset for the person shall be the cost of acquisition of the asset by him, as reduced by an amount equal to the amount of depreciation which would have been allowable, had the asset been used in India for the purpose of the business of the person since the date of such acquisition.

(7) The actual cost of an asset shall be treated as "nil", if—

(a) deduction in respect of the cost of the asset has been allowed or is allowable to the person under the Eleventh Schedule or the Twelfth Schedule or the Thirteenth Schedule; or

(b) deduction in respect of the cost of the asset has been allowed or is allowable under any of the aforesaid Schedules to any other person and the person has acquired or received the asset by any of the “special modes of acquisition”.

(8) The Board may, for the purposes of determining the actual cost of a business capital asset, prescribe—

(a) any other cost which may be included in determining the actual cost; and

(b) the method of determining the actual cost in the circumstances which are not provided for in this section.

(9) In this section, deemed written down value of a business asset shall be the actual cost to the person or the previous owner, as the case may be, when he first acquired the asset as reduced by the aggregate amount of depreciation that would have been allowable to the person or the previous owner, as the case may be, for the preceding financial year as if the asset was the only asset in the relevant block of assets.

45. (1) The written down value of any block of assets at the beginning of the financial year shall be the written down value of the block of assets at the close of the immediately preceding financial year.

Meaning of written down value and adjusted value of assets.

(2) The written down value of the block of assets at the close of the immediately preceding financial year shall be the adjusted value of the block of assets in the immediately preceding financial year as reduced by,—

(a) the amount of capital allowance, if any, allowed under section 37 during that year; and

(b) any expenditure incurred for acquiring the asset to the extent allowed as a deduction in the financial year under any provision of this Code.

(3) The adjusted value of any block of assets for any financial year shall be computed in accordance with the formula—

$$(A+B) - (C+D+E)$$

Where

A = the written down value of the block of assets at the beginning of the financial year;

B = actual cost of any asset falling within the block, acquired during the financial year;

C = moneys receivable in respect of any asset falling within the block, which is sold or discarded or destroyed or destructed during the financial year;

D = amount of the scrap value, if any;

E = the aggregate of the deemed written down value of the assets transferred by any of the modes referred to in sub-section (3) of section 44.

(4) The adjusted value of any block of assets under sub-section (3) shall be “nil” if the amount (C+D+E) exceeds the amount (A+B).

(5) The adjusted value of the block of assets, acquired by a successor in a business reorganisation, for the financial year in which the business reorganisation has taken place shall be the amount which would have been taken as the adjusted value of the block of assets as if the business reorganisation had not taken place.

(6) The written down value of the block of assets, acquired by a successor in a business reorganization, on the last day of the financial year in which the business reorganisation has taken place shall be determined in accordance with the formula—

$$A - (B + C)$$

Where

A = the adjusted value determined under sub-section (5);

B = the amount of deduction allowed to the predecessor under sub-section (2) of section 43 in respect of the block of assets;

C = the amount of deduction allowed to the successor under sub-section (3) of section 43 in respect of the block of assets.

(7) Where a block of assets comprises of any asset acquired in any financial year from a country outside India for the purposes of business and there is variation in liability in respect of acquisition of the asset after the date of such acquisition, the adjusted value of the block of assets shall be computed in accordance with the formula—

$$A + (B - C) - D$$

Where

A = the adjusted value of such block of assets determined in accordance with sub-section (3);

B = the amount of liability of the person, expressed in Indian rupees at the time of making actual payment towards—

(a) the whole or a part of the cost of the asset; or

(b) repayment of the whole or a part of the moneys borrowed by him from any person in any foreign currency specifically for the purpose of acquiring the asset;

C = the amount of such liability existing at the time of acquisition of the asset;

D = the whole or any part of the liability met, directly or indirectly, by any other person or authority.

(8) The amount of liability of the person, expressed in Indian rupees at the time of making payment as referred to in sub-section (7), shall, in a case where the person has entered into a forward contract, be computed with reference to the rate of exchange specified in such forward contract.

(9) The Board may prescribe

(a) the method of determining the allocation of the written down value or the adjusted written down value of the assets between the different businesses carried on by the person; and

(b) the method of determining the written down value or the adjusted written down value of the block of assets in the circumstances which are not provided for in this section.

(10) In this section, the deemed written down value shall have the meaning assigned to it in sub-section (10) of section 44.

D. – Capital gains

Capital gains.

46. (1) The income from the transfer of any investment asset shall be computed under the head “Capital gains”.

(2) The income under the head “Capital gains” shall, without prejudice to the generality of the foregoing provisions, include the following, namely:—

5 (a) income from the transfer referred to in clause (d) or clause (e) of sub-section (1) of section 47, if before the expiry of a period of eight years from the date of transfer of the investment asset,—

(i) the parent company, or its nominee, ceases to hold the whole of the share capital of the subsidiary company; or

(ii) the investment asset is converted by the transferee into, or treated by it as, its business trading asset;

10 (b) the income from the transfer referred to in clause (f) of sub-section (1) of section 47, if any of the conditions laid down in clause (16) or clause (74) of section 314, as the case may be, is not complied with;

15 (c) the income from the transfer referred to in clause (j) or clause (n) of sub-section (1) of section 47, as the case may be, if any of the conditions laid down in the said clauses is not complied with;

(d) the amount of withdrawal referred to in sub-section (4) of section 55 to the extent deduction has been allowed under sub-section (2) thereof, if the condition laid down in the said sub-section (4) is not complied with;

20 (e) the amount of deposit referred to in sub-section (5) of section 55 to the extent deduction has been allowed under sub-section (2) thereof, if the condition laid down in the said sub-section (5) is not complied with.

(f) the amount of deduction allowed under sub-section (1) of section 55, if any of the conditions specified in sub-section (6) of the said section is not complied with.

25 **47. (1)** The income from the following transfers shall not be included in the computation of income under the head “Capital gains”, namely:—

Income from certain transfers not to be treated as capital gains.

(a) distribution of any investment asset on the total or partial partition of a Hindu undivided family;

(b) gift, or transfer under an irrevocable trust, of any investment asset, other than sweat equity share;

30 (c) transfer of any investment asset under a will;

(d) transfer of any investment asset by a company to its subsidiary company, if—

(i) the parent company or its nominees hold the whole of the share capital of the subsidiary company,

(ii) the subsidiary company is an Indian company; and

35 (iii) the subsidiary company treats the asset as an investment asset;

(e) transfer of any investment asset by a subsidiary company to the holding company, if—

(i) the whole of the share capital of the subsidiary company is held by the holding company or its nominees,

40 (ii) the holding company is an Indian company, and

(iii) the holding company treats the asset as an investment asset;

(f) transfer of any investment asset by a predecessor to a successor in a scheme under a business reorganisation if the successor is an Indian company;

- (g) transfer of any investment asset, being shares held in an Indian company, by an amalgamating foreign company to the amalgamated foreign company, if—
- (i) the transfer is effected under a scheme of amalgamation;
 - (ii) the shareholders holding not less than three-fourths in value of the shares of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company; and
 - (iii) the transfer does not attract tax on capital gains in the country, in which such amalgamating company is incorporated;
- (h) transfer of any investment asset being shares held in an Indian company, by a demerged foreign company to the resulting foreign company, if—
- (i) the transfer is effected under a scheme of demerger;
 - (ii) the shareholders holding not less than three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company;
 - (iii) the transfer does not attract tax on capital gains in the country, in which such demerged company is incorporated;
- (i) transfer of any investment asset, by a banking company to a banking institution, if the transfer is effected under a scheme of amalgamation, sanctioned and brought into force by the Central Government under sub-section (7) of section 45 of the Banking Regulation Act, 1949;
- (j) transfer of any investment asset by a private company or unlisted public company to a limited liability partnership or any transfer of a share held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008, if—
- (i) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;
 - (ii) all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;
 - (iii) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;
 - (iv) the aggregate of capital contribution by the shareholders of the company in the limited liability partnership shall not be less than fifty per cent. of the total capital of the limited liability partnership at any time during the period of five years from the date of conversion;
 - (v) the total sales, turnover or gross receipts in business of the company in any of the three financial years preceding the financial year in which the conversion takes place do not exceed sixty lakh rupees;
 - (vi) no amount is paid, either directly or indirectly, to any partner out of the accumulated profits of the company on the date of conversion, for a period of three years from the said date;

(k) transfer of shares of an amalgamating company by a shareholder under a scheme of business re-organisation, if—

(i) the transfer is made in consideration of the allotment to the shareholder of shares in the successor amalgamated company; and

5 (ii) the successor is neither a non-resident nor a foreign company;

(l) transfer of shares of a predecessor co-operative bank by a shareholder under a scheme of business reorganisation, if the transfer is made in consideration of the allotment to the shareholder of shares in the successor co-operative bank;

10 (m) transfer of shares by the resulting company, in a scheme of demerger, to the shareholders of the demerged company, if the transfer is made in consideration of demerger of the undertaking;

(n) transfer of any investment asset by a sole proprietary concern to a company, if—

15 (i) the sole proprietary concern is succeeded by the company in the business carried on by it;

(ii) all the assets and liabilities of the said concern relating to the business immediately before the succession become the assets and liabilities of the company;

20 (iii) the shareholding of the sole proprietor in the company is not less than fifty per cent. of the total voting power in the company and continues to remain the same for a period of five years from the date of succession;

(iv) the sole proprietor does not receive any consideration or benefit, directly or indirectly, other than by way of allotment of shares in the company;

25 (o) transfer of any bond or global depository receipt by a non-resident to another non-resident, if the transfer is made outside India;

(p) transfer of any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or any public museum or institution of national importance or of renown throughout any State or States and notified by the Central Government;

30 (q) transfer by way of conversion of any bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company;

(r) transfer by way of conversion of foreign exchange convertible bond of a company into shares or debentures of that company;

35 (s) transfer of any securities, if—

(i) the transfer is effected under a scheme for lending of any securities; and

(ii) the scheme is framed in accordance with the guidelines issued by the Securities and Exchange Board of India or the Reserve Bank of India;

40 (t) transfer of any investment asset, if—

(i) the transferor is a company; and

(ii) the asset of the company is distributed to its shareholders on its liquidation;

45 (u) transfer of an investment asset being land of a sick industrial company made under a scheme sanctioned under section 18 of the Sick Industrial Companies (Special

Provisions) Act, 1985 where such company is being managed by its worker co-operative; 1 of 1986.

(v) transfer of any investment asset in a transaction of reverse mortgage under a scheme notified by the Central Government;

(w) transfer of any beneficial interest in a security by a depository. 5

(2) The reference to the provisions of sections 391 to 394 (both inclusive) of the Companies Act, 1956 in clause (74) of section 314 shall not apply in case of demergers referred to in clause (h) of sub-section (1). 1 of 1956.

(3) The provisions of clause (u) of sub-section (1) shall be applicable in a case where the transfer is made during the period commencing from the financial year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the financial year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses. 10 of 1986.

(4) In clause (i) of sub-section (1), the expressions—“banking company” and “banking institution” shall have the meaning respectively assigned to them in clause (c) of section 5 and sub-section (15) of section 45 of the Banking Regulation Act, 1949; 15 10 of 2009. 10 of 1949.

(5) In clause (j) of sub-section (1), the expressions “private company” and “public unlisted company” shall have the meaning respectively assigned to them in the Limited Liability Partnership Act, 2008. 20 6 of 2009.

(6) In clause (w) of sub-section (1), the expressions “depository” and “security” shall have the meaning respectively assigned to them in clauses (e) and (l) of sub-section (1) of section 2 of the Depositories Act, 1996. 22 of 1986.

Financial year of taxability.

48. (1) The income from the transfer of an investment asset specified in column (2) of the Table given below shall be the income of the transferor in the financial year specified in column (3) of the said Table: 25

TABLE

FINANCIAL YEAR OF TAXABILITY

Serial number	Nature of transfer	Financial year
(1)	(2)	(3)
1.	Transfer referred to in clause (d) or clause (e) of sub-section (1) of section 47	<p>(a) in a case where the investment asset is converted by the transferee into, or is treated by it as, business trading asset, the financial year in which the investment asset is converted or treated as a business trading asset; 35</p> <p>(b) in a case where the the parent company, or its nominees, cease to hold the whole of the share capital of the subsidiary company, the financial year in which the parent company or its nominees so cease to hold the whole of the share capital of the subsidiary company. 40</p>

(1)	(2)	(3)
5	2. Transfer referred to in clause (f) of sub-section (1) of section 47	The financial year in which any of the conditions referred to in clause (16) or clause (74), as the case may be, of section 314 is not complied with.
	3. Transfer referred to in clause (j) or clause (n) of sub-section (1) of section 47	The financial year in which any of the conditions specified in the said clauses is not complied with.
10	4. Transfer— (i) by way of compulsory acquisition under any law for the time being in force, or (ii) the consideration for which was determined or approved by the Central Government or the Reserve Bank of India	The financial year in which the compensation, or consideration, as the case may be, or such compensation or consideration enhanced or further enhanced by any court, tribunal or other authority, is received.
15	5. Transfer by way of conversion of an investment asset into, or its treatment as business trading asset	The financial year in which such asset, so converted or treated, is sold or otherwise transferred.
20	6. Transfer by way of— (i) contribution of the asset, whether by way of capital or otherwise, to an unincorporated body, in which the transferor is, or becomes, a participant; or (ii) the distribution of the asset on account of dissolution of an unincorporated body.	The financial year in which the asset is transferred or distributed.
25		
30	7. Transfer by way of distribution of money or asset to a participant in an unincorporated body on account of his retirement from the body	The financial year in which the money or the asset is distributed.
35	8. Transfer by way of part performance of a contract, referred to in sub-clause (i) of clause (267) of section 314	The financial year in which the possession of the immovable property is allowed to be taken or retained.
40	9. Transfer by way of any transaction enabling the enjoyment of any immovable property referred to in sub-clause (j) of clause (267) of section 314	The financial year in which the enjoyment of the property is enabled.
45	10. Transfer by way of slump sale, referred to in sub-clause (l) of clause (267) of section 314	The financial year in which the transfer took place.
45	11. Transfer by any mode other than the modes referred to in serial numbers 1 to 10.	The financial year in which the transfer took place.

(2) Notwithstanding anything in sub-section (1),—

(a) any money or asset received under an insurance from an insurer on account of damage or destruction of an insured asset referred to in sub-clause (m) of clause (267) of section 314 shall be deemed to be the income of the recipient of the financial year in which the money or asset is received;

5

(b) any money or asset received by the participant on account of his retirement from an unincorporated body referred to in sub-clause (o) of clause (267) of section 314 shall be deemed to be the income of the recipient of the financial year in which the money or asset is received;

(c) any money or asset received by the shareholder on account of liquidation or dissolution of a company referred to in sub-clause (h) of clause (267) of section 314 as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (81) of section 314, shall be deemed to be the income of the recipient of the financial year in which the money or asset is received;

10

(d) any consideration from transfer made by the depository or participant of any beneficial interest in a security shall be deemed to be the income of the beneficial owner of the financial year in which such transfer took place;

15

(e) the amount referred to in clause (d) of sub-section (2) of section 46 shall be the income of the financial year in which such amount is withdrawn;

(f) the amount referred to in clause (e) of sub-section (2) of section 46 shall be the income of the third financial year immediately following the financial year in which the transfer of the original asset is effected.

20

(g) the amount referred to in clause (f) of sub-section (2) of section 46 shall be the income of the financial year in which any condition referred to in sub-section (6) of section 55 is not complied with.

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(3) In clause (d) of sub-section (2), “beneficial owner” shall have the same meaning as assigned to it in clause (a) of sub-section (1) of section 2 of the Depositories Act, 1996 .

22 of 1996.

Computation of income from transfer of any investment asset.

49. (1) The income from the transfer of any investment asset during the financial year shall be the full value of the consideration accrued or received as a result of the transfer, as reduced by the aggregate amount of the deductions referred to in section 51.

30

(2) For the purpose of computation of income from the transfer of an investment asset, being any beneficial interest in respect of securities referred to in clause (d) of sub-section (2) of section 48, the cost of acquisition and the period of holding of such securities shall be determined on the basis of first-in-first-out method.

Full value of consideration.

50. (1) The full value of the consideration shall be the amount received by, or accruing to, the transferor, or a person referred to in sub-section (2) of section 48, as the case may be, directly or indirectly, as a result of the transfer of the investment asset.

35

(2) Notwithstanding anything in sub-section (1), the full value of the consideration, in the following circumstances, shall be—

(a) the amount of compensation awarded in the first instance or the consideration determined or approved in the first instance by the Central Government or the Reserve Bank of India or the amount by which such compensation or consideration is enhanced or further enhanced by any court, tribunal or other authority, as the case may be, if the transfer of the investment asset is by the mode specified in sub-clause (c) of clause (267) of section 314;

40

45

(b) the fair market value of the asset as on the date of the transfer, if the transfer is by the mode specified in sub-clause (d) of clause (267) of section 314;

(c) the amount recorded in the books of account of the company or an

unincorporated body as the value of the investment asset, if the transfer of the investment asset is by the mode specified in sub-clause (f) of clause (267) of section 314;

(d) the fair market value of the asset as on the date of the transfer, if such transfer is by the mode specified in sub-clause (g) of clause (267) of section 314;

(e) the amount of money, or the fair market value of the asset as on the date of distribution of such asset, received by a shareholder from a company under liquidation or dissolution, as reduced by the amount of dividend within the meaning of sub-clause (c) of clause (81) of section 314, if the transfer is by the mode specified in sub-clause (h) of clause (267) of section 314;

(f) the amount of money, or the fair market value of the asset as on the date of distribution of such asset, received by the participant, if the transfer is by the mode specified in sub-clause (o) of clause (267) of section 314;

(g) the amount of money, or the fair market value of the asset as on the date of the receipt of such asset, received under an insurance from an insurer, if the transfer is by the mode specified in sub-clause (m) of clause (267) of section 314;

(h) the stamp duty value of the asset, being land or building.

(3) Where the amount of compensation or consideration referred to in clause (a) of sub-section (2) is subsequently reduced by any court, tribunal or other authority, the compensation or consideration as so reduced shall be taken to be the full value of consideration.

(4) Where the enhanced compensation or consideration referred to in clause (a) of sub-section (2) is received by any person other than the transferor, the said amount shall be deemed to be the income of such other person and the provisions of sections 46 to 55 (both inclusive) shall accordingly apply.

51. (1) The deductions for the purposes of computation of income from the transfer of an investment asset shall be the following, namely:—

Deduction for cost of acquisition etc.

(i) the cost of acquisition, if any, of the asset;

(ii) the cost of improvement, if any, of the asset; and

(iii) the amount of expenditure, if any, incurred wholly and exclusively in connection with the transfer of the asset.

(2) In the case of transfer of an investment asset, being an equity share in a company or a unit of an equity oriented fund and such transfer is chargeable to securities transaction tax under Chapter VII of the Finance (No.2) Act, 2004,—

(a) where the asset is held for a period of more than one year,

(i) if the income computed after giving effect to sub-section (1) is a positive income, a deduction amounting to hundred per cent. of the income so arrived at shall be allowed;

(ii) if the income computed after giving effect to sub-section (1) is a negative income, hundred per cent. of the income so arrived at shall be reduced from such income.

(b) where the asset is held for a period of one year or less,

(i) if the income computed after giving effect to sub-section (1) is a positive income, a deduction amounting to fifty per cent. of the income so arrived at shall be allowed;

(ii) if the income computed after giving effect to sub-section (1) is a negative income, fifty per cent. of the income so arrived at shall be reduced from such income.

(3) If an investment asset, other than that referred to in sub-section (2) of the section or sub-section (5) of section 53, is transferred at any time after one year from the end of the financial year in which the asset is acquired by the person, the deductions for the purposes of computation of income from the transfer of such asset shall be the following, namely:— 5

(i) the indexed cost of acquisition, if any, of the asset;

(ii) the indexed cost of improvement, if any, of the asset;

(iii) the amount of expenditure, if any, incurred wholly and exclusively in connection with the transfer of the asset; and 10

(iv) the amount of relief for rollover of the asset, as determined under section 55.

Indexed cost of acquisition or improvement.

52. (1) The indexed cost of acquisition of an investment asset referred to in clause (i) of sub-section (3) of section 51 shall be the amount determined in accordance with the formula— 15

$$A \times \frac{B}{C}$$

Where

A = the cost of acquisition of the asset;

B = the Cost Inflation Index for the financial year in which the asset is transferred; 20

C = the Cost Inflation Index for the financial year in which the asset was acquired by the person or for the financial year beginning on the 1st day of April 2000, whichever is later.

(2) The indexed cost of improvement of an investment asset referred to in clause (ii) of sub-section (3) of section 51 shall be the amount determined in accordance with the formula— 25

$$A \times \frac{B}{C}$$

Where

A = the cost of improvement of the asset; 30

B = the Cost Inflation Index for the financial year in which the asset is transferred;

C = the Cost Inflation Index for the financial year in which the improvement to the asset took place or for the financial year beginning on the 1st day of April 2000, whichever is later.

Cost of acquisition of an investment asset.

53. (1) Unless otherwise provided, the cost of acquisition of an investment asset, shall be- 35

(a) the purchase price of the asset; or

(b) at the option of the person, the fair market value of the asset on the 1st day of April, 2000, if the asset was acquired by the person before such date.

(2) The cost of acquisition of an investment asset specified in column (2) of the Seventeenth Schedule, acquired by the mode specified in column (3) of the said Schedule, shall be the cost specified in column (4) thereof. 40

(3) The cost of acquisition of an investment asset acquired by a person by any of the special modes of acquisition, shall be—

(a) the cost at which the asset was acquired by the previous owner; or

5 (b) at the option of the person, the fair market value of the asset on the 1st day of April, 2000, if the asset was acquired by the previous owner or the person before such date.

(4) The cost of acquisition of an investment asset referred to in clause (h) or clause (i) or clause (j) of sub-section (2) of section 58 shall be the fair market value or the stamp duty values as the case may be, which has been taken into account for the purposes of the said
10 clauses.

(5) The cost of acquisition of an investment asset being an undertaking or division of a business transferred by way of a slump sale referred to in sub-clause (l) of clause (267) of section 314 shall be the net worth of such undertaking or division.

(6) The cost of acquisition of an investment asset forming part of a bundle of investment
15 assets acquired by any participant, on distribution of the asset to him on account of his retirement from any unincorporated body, shall be the amount determined in accordance with the formula—

$$A - (B + C)$$

where,

20 A= the amount payable to the participant as appearing in the books of account of the unincorporated body on the date of distribution;

B= any amount attributable to the change in the value of the bundle of investment asset on account of revaluation of the bundle, if any, up to the date of distribution; and

25 C= the cost of acquisition of any other asset, forming part of the bundle acquired by the participant, on distribution of the asset to him on account of his retirement from any unincorporated body if the cost of acquisition has been allowed as a deduction under section 51 in any earlier financial year.

(7) The cost of acquisition of an investment asset shall be “nil”, in relation to—

(a) an investment asset which is self-generated;

30 (b) the asset which is acquired by way of compulsory acquisition and the compensation or consideration for such acquisition is enhanced or further enhanced by any court, Tribunal or other authority; or

(c) the asset where the cost of acquisition to the person or the previous owner, if any, cannot be determined or ascertained, for any reason.

35 (8) In sub-section (3), “previous owner” in relation to any investment asset owned by a person means the last previous owner of the investment asset, who acquired it by a mode of acquisition other than those referred to in clause (237) of section 314.

54. (1) The cost of improvement of an investment asset shall be any expenditure of a capital nature incurred in making any additions or alterations to the asset,—

Cost of acquisition of an investment asset.

40 (a) by the person; or

(b) by the previous owner, if the asset is acquired by any special mode of acquisition.

(2) The cost of improvement of the investment asset, notwithstanding anything in sub-section (1), where the asset became the property of the person or the previous owner
45 before the 1st day of April, 2000, shall be any capital expenditure incurred for any addition or alteration to such asset on or after the 1st day of April, 2000.

(3) The cost of improvement of an investment asset shall, notwithstanding anything in sub-section (1), be “nil” in relation to—

(a) an investment asset which is self generated;

(b) an investment asset being an undertaking or division transferred by way of a slump sale referred to in sub-clause (l) of clause (267) of section 314; or

(c) any investment asset if the cost of improvement cannot be determined or ascertained, for any reason.

(4) Any expenditure deductible in computing the income under any other head of income shall not be taken into account while computing the cost of improvement.

Relief for
rollover of
investment
asset.

55. (1) An individual or a Hindu undivided family shall be allowed a deduction, in respect of rollover of any original investment asset referred to in sub-section (3) of section 51, from the capital gain arising from the transfer of the asset in accordance with the provisions of this section.

(2) The deduction referred to in sub-section (1) shall be computed in accordance with the formula—

$$A \times \frac{(B+C+D)}{E}$$

Where

A = the amount of capital gains arising from the transfer of the original investment asset;

B = the amount invested for purchase or construction of the new asset referred to in sub-section (6) within a period of one year before the date of transfer of original investment asset;

C = the amount invested for purchase or construction of the new asset referred to in sub-section (6) by the end of the financial year in which the transfer of the original investment asset is effected or six months from the date of transfer, whichever is later;

D = the amount deposited in an account in any bank by the end of the financial year in which the transfer of original investment asset is effected for six months from the date of transfer, whichever is later in accordance with the Capital Gains Deposit Scheme framed by the Central Government in this behalf;

E = the net consideration received as a result of the transfer of the original investment asset.

(3) The deduction computed under sub-section (2) shall not exceed the amount of capital gains arising from the transfer of the investment assets.

(4) Any amount withdrawn from an account under the Capital Gains Deposit Scheme shall be utilised within a period of one month from the end of the month in which the amount is withdrawn, for the purposes of purchase or construction of the new asset.

(5) The amount deposited in the account under the Capital Gains Deposit Scheme shall be utilised for the purposes of purchase or construction of the new asset within a period of three years from the end of the financial year in which the transfer of the original asset is effected.

(6) The deduction under this section in respect of capital gain arising from the transfer of an investment asset, specified in column (2) of the Table given below, shall be allowed with reference to the corresponding new investment asset referred to in column (3) of the said Table, subject to the fulfilment of conditions specified in column (4) thereof:

TABLE
ROLLOVER RELIEF

Serial number	Description of the original investment asset	Description of the new investment asset	Conditions
(1)	(2)	(3)	(4)
5	1.	Agricultural land	One or more pieces of agricultural land.
10			(1) The original investment asset was— (i) an agricultural land during two years immediately preceding the financial year in which the asset is transferred; and
15			(ii) acquired at least one year before the beginning of the financial year in which the transfer of the asset took place.
20	2.	Any investment asset	residential house
25			(2) The new asset shall not be transferred within one year from the end of the financial year in which the new asset is acquired. (i) the assessee does not own more than one residential house, other than the new investment asset, on the date of transfer of the original investment asset; and
30			(ii) the original investment asset was acquired at least one year before the beginning of the financial year in which the transfer of the asset took place.
35			(iii) the new asset shall not be transferred within one year from the end of the financial year in which the new asset is acquired or constructed.
40			
45			(7) In this section, “net consideration” means the full value of consideration received or accruing as a result of the transfer of an investment asset as reduced by any expenditure incurred wholly or exclusively in connection with such transfer.

E. — *Income from residuary sources*

56. The income of every kind falling under the class ‘Income from ordinary sources’, shall be computed under the head “Income from residuary sources”, if it is required to be

Income from
residuary
sources.

included in computing the income includible under any of the heads of income specified in items A to D of section 14.

Computation
of income
from residuary
sources.

57. The income computed under the head “Income from residuary sources” shall be the gross residuary income as reduced by the amount of deductions referred to in section 59.

5

Gross residuary
income.

58. (1) The gross residuary income shall include all accruals, or receipts, in the nature of income, which do not form part of —

(a) income from special sources; and

(b) income under any of the heads of income specified in items A to D of section 14.

10

(2) The gross residuary income shall, in particular and without prejudice to the generality of the provisions of sub-section (1), include the following, namely:—

(a) dividends, other than dividends in respect of which dividend distribution tax has been paid under section 109;

(b) interest, other than interest accrued to, or received by, financial institutions;

15

(c) interest received on compensation or on enhanced compensation;

(d) income from the activity of owning and maintaining horses for the purpose of horse race;

(e) any amount received from employees as contributions to any fund set up for their welfare, if the income is not included under the head “Income from business”;

20

(f) income from machinery, plant or furniture belonging to the person and let on hire, if the income is not included under the head “Income from business”;

(g) any amount received under a keyman insurance policy including the sum allocated by way of bonus on such policy, if such income is not included under the heads “Income from employment” or “Income from business”;

25

(h) the aggregate of any moneys and the value of any specified property, not being an immovable property, received for inadequate consideration or without consideration, by an individual or a Hindu undivided family;

(i) the value of any specified property, being an immovable property received without consideration by an individual or a Hindu undivided family;

30

(j) the value of any property being shares of a closely-held company received for inadequate consideration or without consideration, by a firm or a company;

(k) the amount of voluntary contribution received by a person, other than an individual or a Hindu undivided family or a non-profit organisation, from any other person;

35

(l) any amount received, or retained, on account of settlement or breach of any contract, if not included under the head “Income from business”;

(m) any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if—

40

(i) the payment or aggregate of payments is in respect of any expenditure referred to in clause (a) of sub-section (1) of section 59;

(ii) the expenditure has been allowed as a deduction in any earlier financial year on the basis of the liability incurred thereon;

(iii) the payment or aggregate of payments exceeds a sum of twenty thousand rupees; and

(iv) it has not been incurred in such cases and under such circumstances, as may be prescribed;

5 (n) any amount found credited in the books of the person maintained for the financial year, if —

(i) the person offers no explanation about the nature and source thereof;

(ii) the person offers an explanation but fails to substantiate the explanation; or

10 (iii) the explanation offered by him is, in the opinion of the Assessing Officer, not satisfactory;

(o) the value of any investment made by the person in the financial year to the extent for which —

15 (i) the person offers no explanation about the nature and source of the investments;

(ii) the person offers an explanation but fails to substantiate the explanation; or

(iii) the explanation offered by him is, in the opinion of the Assessing Officer, not satisfactory;

20 (p) the value of any money, bullion, jewellery or other valuable article owned by the person to the extent for which —

(i) the person offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article;

25 (ii) the person offers an explanation but fails to substantiate the explanation; or

(iii) the explanation offered by him is, in the opinion of the Assessing Officer, not satisfactory;

(q) the amount of any expenditure incurred by the person in the financial year, if —

30 (i) the person offers no explanation about the source of such expenditure or part thereof;

(ii) the person offers an explanation but fails to substantiate the explanation; or

35 (iii) the explanation, if any, offered by him is, in the opinion of the Assessing Officer, not satisfactory;

(r) any amount deemed to be the income under sub-section (5) of section 78;

40 (s) any consideration accrued, or received, in respect of transfer of any business asset, which is self-generated, if the consideration is not included under the head “income from business”;

(t) any amount accrued, or received, on account of the cessation, termination or forfeiture in respect of any agreement entered into by the person, if the amount is not included under the head ‘income from business’;

(u) any amount of attributable income of a controlled foreign company to a resident in accordance with the Twentieth Schedule

(v) any amount received, as advance, security deposit or otherwise, from the long term leasing, or transfer of whole or part of, or any interest in, any investment asset;

5

(w) amount of any benefit accrued to, or received by, the person, if the amount is not included under the head “Income from business” and if—

(i) it is by way of remission or cessation of any liability including statutory liability or in respect of any loss or expenditure; and

10

(ii) such liability or loss or expenditure has been allowed as a deduction in any financial year;

(x) any sum received as family pension;

(y) any amount including bonus, if any, received or receivable under a life insurance policy from as insurer on maturity or otherwise.

15

(3) The amount referred to in clause (h) or clause (i) of sub-section (2) shall not include any amount received—

(a) from any relative;

(b) on the occasion of the marriage of the individual;

(c) under a will or by way of inheritance;

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(d) in contemplation of death of the payer;

(e) from any local authority; or

(f) from any non-profit organisation.

(4) In this section,—

(a) “relative” shall not include any person referred to in sub-clause (g) of clause (214) of section 314;

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(b) “specified property” means—

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

30

(iv) bullion;

(v) archaeological collections;

(vi) drawings;

(vii) paintings;

(viii) sculptures; or

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(ix) any work of art;

(c) value of any property referred to in clause (h) or clause (i) or clause (j) of sub-section (2), as the case may be, shall be—

(i) the stamp duty value in the case of an immovable property as reduced by the amount of consideration, if any, paid by the person; and

(ii) the fair market value in the case of any other property as reduced by the amount of consideration, if any, paid by the person.

5 (5) The provisions of clause (j) of sub-section (2) shall not apply to any property received by way of a transaction not regarded as a transfer under clause (f) or clause (g) or clause (h) or clause (l) or clause (m) of sub-section (1) of section 47.

59. (1) The deductions for the purposes of computation of income from residuary sources shall be the aggregate of—

Deductions from gross residuary income.

10 (a) the amount of expenditure specified in sub-section (2), if—

(i) the expenditure (not being in the nature of capital expenditure) is laid out or expended, wholly and exclusively, for the purposes of making or earning the gross residuary income; and

(ii) it fulfills all other conditions, if any, specified therein; and

15 (b) the amount of deductions specified in sub-section (3) subject to the fulfilment of the conditions, if any, specified therein; and

20 (c) any amount received during the financial year as dividend from a controlled foreign company as referred to in clause (u) of sub-section (2) of section 58, to the extent such amount has been included in the total income of the assessee in any preceding financial year in accordance with the provisions of the said clause.

(2) The amount of expenditure referred to in clause (a) of sub-section (1) shall be the following, namely:—

(a) any reasonable sum paid by way of remuneration or commission for the purpose of realising the income referred to in clause (a) or clause (b) of sub-section (2) of section 58;

25 (b) the amount determined, so far as may be, in accordance with the provisions of clause (v) of sub-section (2) of section 35 in respect of the income of the nature referred to in clause (f) of sub-section (2) of section 58 ;

30 (c) the amount determined, so far as may be, in accordance with the provisions of clause (xxx) of sub-section (2) of section 35 in respect of income of the nature referred to in clause (e) of sub-section (2) of section 58;

(d) the amount determined, so far as may be, in accordance with the provisions of section 37 and subject to the provisions of sub-section (3) of section 34 in respect of income of the nature referred to in clause (f) of sub-section (2) of section 58.

35 (3) The amount of deduction referred to in clause (b) of sub-section (1) shall be the following, namely:—

(a) the amount equal to thirty-three and one-third per cent. of income or fifteen thousand rupees, whichever is less, in respect of family pension;

40 (b) the aggregate amount referred to in clause (h) or clause (i) or clause (j) of sub-section (2) of section 58 to the extent the aggregate does not exceed fifty thousand rupees; and

(c) the repayment of advance or security deposit from long-term leasing in the financial year in which such advance or security deposit is re-paid.

(d) the amount included in income under clause (y) of sub-section (2) of section 58 in respect of an insurance policy where—

(i) the premium paid or payable for any of the years during the term of the policy does not exceed five per cent. of the capital sum assured; and

(ii) the amount is received only upon completion of original period of contract of the insurance;

(e) the amount included in income under clause (y) of sub-section (2) of section 58, if tax on distributed income in respect of the insurance policy has been paid by the insurer under section 110;

(f) The amount of premium paid upto the date of receipts or accruals referred to in clause (y) of sub-section (2) of section 58 in respect of an insurance policy, other than a policy referred to in clause (d) and clause (e) of this sub-section, as reduced by the amount of premium which has already been allowed as a deduction under this clause in any previous financial year, to the extent such amount has been included as receipts or accruals under clause (y) of sub-section (2) of section 56.

(4) In the case of the income referred to in clause (c) of sub-section (2) of section 58, the amount of deduction shall be a sum equal to fifty per cent. of such income and no deduction shall be allowed under any other clause of this section.

(5) The following amounts shall not be allowed as a deduction, namely:—

(a) any amount relating to personal expenses of the person;

(b) any amount of tax, interest or penalty paid under this Code or the Income-tax Act, 1961 or the Wealth Tax Act, 1957 as they stood before the commencement of this code; or

(c) any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if—

(i) the payment or aggregate of payments is in respect of any expenditure referred to in clause (a) of sub-section (1) of section 59;

(ii) the payment or aggregate of payments exceeds a sum of twenty thousand rupees; and

(iii) it has not been incurred in such cases and under such circumstances, as may be prescribed;

(6) In this chapter “capital sum assured” in relation to a life insurance policy means the minimum amount assured under the policy on happening of the insured event at any time during the term of the policy not taking into account—

(i) the value of any premium agreed to be returned; or

(ii) any benefit, by way of bonus or otherwise, over and above the sum assured, which is to be received or may be received by any person under the policy.

Deductions from gross residuary income.

III. —AGGREGATION OF INCOME

Aggregation of income under a head of income.

60. (1) Subject to other provisions of this section, the income from each source falling under a head of income for a financial year shall be aggregated and the income so aggregated shall be the income from that head for the financial year.

(2) The income from the transfer of each investment asset during the financial year, as computed under section 49, shall be aggregated and the net result of such aggregation shall be the income from the capital gains, for the financial year.

(3) The income from capital gains shall be aggregated with the unabsorbed preceding

year capital loss, if any, and the net result of such aggregation shall be the current income under the head “Capital gains”.

(4) The income under the head “Capital gains” shall be treated as “*nil*” if the net result of aggregation under sub-section (3) is negative and the absolute value of the net result shall be the amount of “unabsorbed current capital loss”, for the financial year.

(5) The income from each business other than speculative business referred to in sub-section (3) of section 31 shall be aggregated and the income so aggregated shall be the income from the non-speculative business.

(6) The income from each speculative business shall be aggregated and the income so aggregated shall be the gross income from the speculative business.

(7) The gross income from the speculative business shall be aggregated with unabsorbed preceding year speculative loss, if any, and the net result of such aggregation shall be the income from the speculative business.

(8) The aggregate of from the speculative business shall be treated as nil, if the “*nil*” result of aggregation in sub-section (7) is negative and the absolute value of the net result of aggregation shall be the amount of unabsorbed current speculative loss for the financial year.

(9) The aggregate of income from the speculative business and income from the non-speculative business shall be the income under the head “income from business”.

(10) The income from the activity of owning and maintaining horses for the purpose of horse race shall be aggregated with unabsorbed preceding year horse race loss, and the net result of such aggregation shall be the income from activity of owning and maintaining horse race and it shall be taken to be “*nil*”, if the net result of such aggregation is negative and the absolute value of net result shall be the amount of unabsorbed current horse race loss for the financial year.

(11) The income of every kind referred to in section 58, other than income from the activity of owning and maintaining horses for the purpose of horse race, shall be aggregated with income from the activity of owning and maintaining horse race and the income so aggregated shall be the income under the head “income from residuary sources”.

61. (1) The current income from ordinary sources shall be the aggregate of—

(a) income under the head “income from employment”;

(b) income under the head “income from house property”;

(c) income under the head “income from bussiness”;

(d) income under the head “capital gains”, and;

(e) income under the head “income from residuary sources”.

Aggregation
of income
from
ordinary
sources.

(2) The current income from ordinary sources shall be aggregated with the unabsorbed preceding year loss from the ordinary sources, if any; and the net result of the aggregation shall be the gross total income from ordinary sources, for the financial year.

(3) The gross total income from ordinary sources, for the financial year, shall be treated as “*nil*” if the net result of the aggregation under sub-section (2) is negative; and the absolute value of the net result shall be the amount of unabsorbed current loss from ordinary sources, for the financial year.

Aggregation of income from special sources.

62. (1) The income from a special source referred to in Part III of the First Schedule shall be the current income from the special source for the financial year.

(2) The current income from the special source referred to in sub-section (1) shall be aggregated with the unabsorbed preceding year loss from the special source, if any; and the income so aggregated shall be the gross total income from the special source, for the financial year. 5

(3) Where the gross total income from the special source referred to in sub-section (2) is negative, such income shall be treated as “nil” and the absolute value of the net result shall be the amount of unabsorbed current loss from the special source for the financial year.

(4) The gross total income from special source in respect of each special source computed under sub-sections (2) and (3) shall be aggregated and the net result of the aggregation shall be the total income from special sources for the financial year. 10
Aggregation of income from Special Sources.

Determination of total income.

63. The total income of a person for any financial year shall be computed in accordance with the formula— 15

$$(A - B) + C$$

Where

A = the gross total income from ordinary sources for the financial year;

B = the aggregate amount of deductions allowed under sub-chapter IV; and

C = the total income from special sources for the financial year. 20

Special provisions relating to business reorganisation or conversion of a company into a Limited liability partnership.

64. (1) In a business reorganisation, or on conversion of a company into a limited liability partnership as referred to in clause (j) of sub-section (1) of section 47—

(a) the unabsorbed current loss from ordinary sources of the predecessor in respect of the financial year in which business reorganisation or such conversion has taken place shall be deemed to be the unabsorbed preceding year loss from ordinary sources of the successor in respect of the financial year and the provisions of section 61 shall apply accordingly; and 25

(b) the unabsorbed current loss from special source of the predecessor in respect of the financial year in which business reorganisation or such conversion has taken place, shall be deemed to be the unabsorbed preceding year loss from that special source of the successor in respect of the financial year, and the provisions of section 62 shall apply accordingly. 30

(2) The provisions of sub-section (1) shall not apply in case of a business reorganisation if the successor in a business reorganisation does not satisfy the test of continuity of business, and— 35

(a) Where the predecessor is a sole proprietary concern or unincorporated body, and

(b) the shareholding of the sole proprietor or the participant, as the case may be, ceases to be less than fifty per cent. of the total value of the shares of the successor company at any time during the period of five years immediately succeeding the financial year in which the business reorganisation takes place. 40

(3) In case of the conversion, the provisions of sub-section (1) shall not apply if any of the conditions, specified in clause (j) of sub-section (1) of section 47 are not fulfilled.

(4) The total income of the financial year in which, the business reorganisation or the

conversion referred to in sub-section (1) took place, and of all the subsequent financial years shall, notwithstanding anything in this Code, be rectified as if the provisions of this section had never been given effect to in those financial years, if conditions specified in sub-section (2) of this section or clause (j) of sub-section (1) of section 47 are not fulfilled at any time during five financial years immediately succeeding the financial year in which re-organisation or conversion took place.

65. (1) The amount of unabsorbed current loss from ordinary sources calculated under sub-section (3) of section 61, for the financial year ending on the date of the retirement, or death, of a participant, shall be reduced by the amount in proportion of the share of the retired, or deceased, participant.

Aggregation of losses in case of change in constitution of unincorporated body.

(2) The amount so reduced under sub-section (1) shall be the unabsorbed preceding year loss from ordinary sources, for the financial year beginning on the date immediately following the date of retirement, or death, of a participant for the purposes of sub-section (2) of section 61.

(3) The amount of unabsorbed current loss from the special source calculated under sub-section (3) of section 62, for the financial year ending on the date of the retirement, or death, of a participant, shall be reduced by the amount in proportion of the share of the retired, or deceased, participant.

(4) The amount so reduced under sub-section (3) shall be the “unabsorbed preceding year loss from the special source”, for the financial year beginning on the date immediately following the date of retirement, or death, of a participant for the purposes of sub-section (2) of section 62.

(5) The provisions of this section shall apply notwithstanding anything in any other provision of this Code.

(6) In this Code, any reference to the unabsorbed preceding year loss from ordinary sources and unabsorbed preceding year loss from the special source in respect of an unincorporated body where a change has occurred in its constitution due to death, or retirement, of its participant, shall be construed as a reference to the amount so reduced under sub-section (1) and sub-section (3) respectively.

66. (1) Notwithstanding anything in this Chapter a closely-held company shall not be allowed to aggregate any unabsorbed preceding year loss from ordinary sources or unabsorbed preceding year loss from the special source with the income of the financial year unless it satisfies the test of continuity of ownership.

Aggregation of losses in the case of certain companies.

(2) The closely held company shall satisfy the test of continuity of ownership referred to in sub-section (1), if the shares of the company beneficially held by persons, carrying not less than fifty-one per cent. of the voting power on the last day of the financial year immediately preceding the relevant financial year, are held by the same persons on the last day of the relevant financial year.

(3) For the purposes of calculating the percentage of voting power under sub-section (2),—

(a) any change in the voting power in the relevant financial year due to the death of a shareholder or on account of transfer of shares by way of gift to any relative of the donor shareholder shall be ignored;

(b) any change in the shareholding of an Indian company, which is a subsidiary of a

foreign company, as a result of amalgamation or demerger of a foreign company, shall be ignored, if fifty-one per cent. shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

Aggregation of loss not to be allowed in the case of filing of return after due date.

67. Notwithstanding anything in this Code, if the return of tax bases for a financial year is not furnished by the due date and if the amount of unabsorbed current loss from ordinary sources, unabsorbed current capital loss, unabsorbed current speculative loss, unabsorbed current horse race loss and unabsorbed current loss from special source of the said financial year exceeds the corresponding amount of the immediately preceding financial year then, such respective excess in that year shall not be taken into account for any of the purposes of this Code for any subsequent financial years.

IV - TAX INCENTIVES

Deductions from gross total income from ordinary sources.

68. (1) A person shall be allowed the deductions specified in this Sub-chapter from his "gross total income from ordinary sources", for the financial year.

(2) The aggregate amount of the deductions under this Sub-chapter shall not exceed the 'gross total income from ordinary sources', for the financial year.

(3) Any sum, which qualifies for a deduction under this Sub-chapter in any financial year, shall not qualify for deduction—

(a) under any other provision of this Code for the same or any other financial year; or

(b) in the case of any other person.

(4) The provisions of sub-section (3) shall apply whether full deduction of the sum referred to therein has been allowed or not.

Deduction for savings.

69. (1) A person, being an individual, shall be allowed a deduction for savings in respect of the aggregate of the sum referred to in sub-section (2) to the extent of one lakh rupees.

(2) The sum referred to in sub-section (1) shall be the amount paid or deposited by the person in a financial year as his contribution of any approved fund to an account of the individual, spouse or any child of such individual.—

Deduction from life insurance.

70. (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid or deposited to effect or keep in force an insurance on the life of persons specified in sub-section (3).

(2) The insurance referred to in sub-section (1) shall be an insurance where the premium payable for any of the years during the term of the policy shall not exceed five per cent. of the capital sum assured.

(3) The person referred to in sub-section (1) shall be—

(a) the individual, spouse or any child of such individual; and

(b) in case of a Hindu undivided family, any member of such family.

Deduction for health insurance.

71. (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid during the financial year to effect,

or to keep in force, an insurance on the health of persons specified in sub-section (2) and in addition, in the case of an individual, any contribution made to the Central Government Health Scheme.

(2) The person referred to in sub-section (1) shall be—

5 (a) the individual, spouse, or any dependant child or parents of such individual; and

(b) in case of a Hindu undivided family, any member of such family.

(3) The insurance under this section refers to a health insurance scheme framed by any insurer which is approved by the Insurance Regulatory and Development Authority.

10 **72.** (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid during the financial year, if the sum is paid—

Deductions for education of children.

(a) as tuition fee to any school, college, university or other educational institution situated within India; and

15 (b) for the purpose of full time education of any two children of such individual or Hindu undivided family.

(2) In this section—

(a) tuition fee shall not include any payment towards any development fee or donation or any payment of similar nature;

(b) full time education shall include education in play school or pre-school.

20 **73.** The aggregate amount of deductions under sections 70, 71 and 72 shall not exceed fifty thousand rupees.

Limit on deductions under sections 70, 71 and 72.

25 **74.** (1) A person, being an individual or a Hindu undivided family, shall be allowed a deduction, in respect of any amount paid or payable by way of interest on loan taken for the purpose of acquisition, construction, repair or renovation of a house property in the financial year in which such property is acquired or constructed or any subsequent financial year, subject to the conditions specified in sub-section (2).

Deduction of interest on loan taken for house property.

(2) The deduction referred to in sub-section (1) shall be allowed if—

(a) the house property is owned by the person and not let out during the financial year;

30 (b) the acquisition or construction of the house property is completed within a period of three years from the end of the financial year in which the loan was taken; and

(c) the person obtains a certificate from the financial institution to whom the interest is paid or payable on the loan.

35 (3) The interest referred to in sub-section (1) which pertains to the period prior to the financial year in which the house property has been acquired or constructed shall be allowed as deduction in five equal instalments beginning from such financial year.

(4) The interest referred to in sub-section (3) shall be reduced by any part thereof which has been allowed as deduction under any other provision of this Code.

40 (5) The amount of deduction under this section shall not exceed one lakh and fifty thousand rupees.

Deduction of interest on loan taken for higher education.

75. (1) A person, being an individual, shall be allowed a deduction in respect of any amount paid by him in the financial year by way of interest on loan taken by him from any financial institution for the purpose of—

- (a) pursuing his higher education; or
- (b) higher education of his relatives.

5

(2) The deduction specified in sub-section (1) shall be allowed in the initial financial year and seven financial years immediately succeeding the initial financial year or until the interest referred to in sub-section (1) is paid by the person in full, whichever is earlier.

(3) In this section—

(a) “financial institution” means a banking company or any other financial institution which the Central Government may, by notification, specify in this behalf; 10

(b) “higher education” means any course of study pursued after passing the senior secondary examination, or its equivalent, conducted by any board, or university, recognised by the Central or State Government or any authority authorised by the Government so to do; 15

(c) “initial financial year” means the financial year in which the person begins to pay the interest on the loan;

(d) “relative” means—

- (i) spouse of the individual;
- (ii) child of the individual; 20
- (iii) a student for whom the individual is the legal guardian.

Deduction for Medical treatment, etc.

76. (1) A person, being resident individual or Hindu undivided family, shall be allowed a deduction in respect of any amount paid during the financial year for medical treatment of the prescribed disease or ailment of any specified person.

(2) The amount of deduction under sub-section (1) shall not exceed— 25

(a) sixty thousand rupees, if the amount is paid in respect of any specified person, who is a senior citizen; and

(b) forty thousand rupees, in any other case.

(3) The deduction under this section shall be reduced by the amount received, if any, under an insurance from an insurer, or reimbursed by an employer, for the medical treatment of the specified person. 30

(4) The deduction under this section shall not be allowed unless the person obtains a certificate in such form as may be prescribed from a specialist working in a Government hospital.

(5) In this section,— 35

(a) “specified person” means—

- (i) the individual;
- (ii) spouse of the individual;
- (iii) any dependant child of the individual;
- (iv) dependant parents of the individual; and 40
- (v) any member of the Hindu undivided family;

(b) “Government hospital” includes—

(i) a dispensary established and run by a department of the Government for the medical treatment of government employees and members of their family;

(ii) a hospital maintained by a local authority; and

5 (iii) any other hospital with which an agreement has been entered into by the Government for the treatment of its employees.

77. (1) A person, being resident individual, shall be allowed a deduction of an amount specified in sub-section (2), subject to the conditions specified in sub-section (3). Deduction to a person with disability.

(2) The amount of deduction under sub-section (1) shall not exceed—

10 (a) one lakh rupees, if he is a person with severe disability;

(b) fifty thousand rupees, if he is a person with disability.

(3) The deduction under sub-section (1) shall be allowed if the person obtains a certificate from a medical authority in such form and manner as may be prescribed and the certificate remains valid during the relevant financial year or part thereof.

15 **78.** (1) A person, being resident individual or Hindu undivided family, shall be allowed a deduction in respect of — Deduction for medical treatment and maintenance of a dependant person with disability.

(a) any expenditure incurred during the financial year for the medical treatment, nursing or training and rehabilitation of a dependant person with disability; or

20 (b) any amount paid or deposited during the financial year under a scheme framed by any insurer and approved by the Board in this behalf, for the maintenance of a dependant person with disability.

(2) The amount of deduction under sub-section (1) shall not exceed-

(a) one lakh rupees, if the dependant is a person with severe disability; or

(b) fifty thousand rupees, if the dependant is a person with disability.

25 (3) The deduction in respect of the amount referred to in clause (b) of sub-section (1) shall be allowed, if the scheme referred to therein provides for payment of annuity or lump sum amount for the benefit of a dependant person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made.

30 (4) The deduction under this section shall be allowed if the person, claiming a deduction under this section, obtains a certificate from a medical authority in such form and manner as may be prescribed and the certificate remains valid during the relevant financial year or part thereof.

35 (5) The amount received by the person under the scheme referred to in clause (b) of sub-section (1), upon the dependant person with disability, predeceasing him, shall be deemed to be the income of the person for the financial year in which the amount is received by him.

(6) In this section, “dependant” means spouse, any child or parents of the individual, or any member of the Hindu undivided family, if—

40 (i) he is mainly dependant on such individual, or Hindu undivided family, for his support and maintenance; and

(ii) his income in the financial year is less than twenty-four thousand rupees.

Deduction of contribution or donations to certain funds or non-profit organisations.

79. (1) A person shall be allowed a deduction of—

(a) one hundred and seventy-five per cent. of the amount of money paid by him in the financial year as contribution or donation to any person specified in Part I of the Sixteenth Schedule;

(b) one hundred and twenty-five per cent. of the amount of money paid by him in the financial year as contribution or donation to any person specified in Part II of the Sixteenth Schedule;

(c) one hundred per cent. of the amount of money paid by him in the financial year as donation to any person specified in Part III of the Sixteenth Schedule;

(d) fifty per cent. of the aggregate of the amount of money actually paid by him in the financial year as donation to any person specified in Part IV of the Sixteenth Schedule.

(2) The aggregate of the amount of money referred to in clause (d) of sub-section (1) shall be limited to ten per cent. of the gross total income from ordinary sources, if the aggregate exceeds ten per cent. of the gross total income from ordinary sources.

(3) The deduction under this section shall not be allowed in respect of any amount of money paid to any person referred to in sub-section (1), if—

(a) the amount is laid out or expended during the financial year for any religious activity; or

(b) any activity of the donee is intended for, or actually benefits, any particular caste, not being the Scheduled Castes or the Scheduled Tribes.

(4) The donation to any person specified in Part IV of the Sixteenth Schedule shall be eligible for deduction under sub-section (1), if the donee obtains the approval of the prescribed authority in accordance with the procedure and subject to such conditions, as may be prescribed.

(5) The deduction under sub-section (1) shall not be denied to a donor merely on the consideration that, subsequent to the donation, the donee, being a non-profit organisation, has ceased to be so.

Deduction for rent paid.

80. (1) A person, being an individual and not in receipt of any house rent allowance, shall be allowed a deduction of any expenditure incurred by him in excess of ten per cent. of his gross total income from ordinary sources towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for his own residence.

(2) The deduction referred to in sub-section (1) shall be allowed up to a maximum of two thousand rupees per month and shall be subject to such other conditions as may be prescribed having regard to the area or place in which the accommodation is situated.

(3) The provisions of this section shall not apply to a person if any residential accommodation is owned by him or by his spouse or minor child in the place where he ordinarily resides or performs duties of his office or employment or carries on his business.

Deduction for political contributions.

81. (1) A person shall be allowed a deduction in respect of any contribution made by him in the financial year to a political party or electoral trust.

(2) The deduction under sub-section (1) shall not exceed five per cent. of—

(a) the average of the net profit determined in accordance with the provisions of section 349 and section 350 of the Companies Act, 1956 during the three immediately

preceding financial years, in the case of a company; and

(b) the “gross total income from ordinary sources”, in any other case.

1 of 1956 (3) In this section, the word “contribution”, with its grammatical variation, shall have the same meaning as assigned to it under section 293A of the Companies Act, 1956.

5 **82.** (1) A person shall be allowed in the financial year a deduction of the amount specified in sub-section (2), if such amount is included in the gross total income from ordinary sources.

Deduction of income of Investor Protection Fund.

(2) The amount referred to in sub-section (1) shall be the contribution received from any recognised stock exchange, or recognised commodity exchange, and the members thereof.

10 (3) The deduction under sub-section (1) shall be allowed if—

(a) the person is an Investor Protection Fund set up, either jointly or separately, by recognised stock exchanges or recognised commodity exchanges; and

(b) such Investor Protection Fund is notified by the Central Government.

15 **83.** (1) A person, being resident individual, shall be allowed a deduction of an amount specified in sub-section (4) in respect of any income referred to in sub-section (3), if such income is included in his gross total income from ordinary sources.

Deduction of royalty income of authors.

(2) The deduction under sub-section (1) shall be allowed to a person, if he is an author of any book which is a work of literary, artistic or scientific nature.

20 (3) The income referred to in sub-section (1) shall be any income derived by the author by way of—

(a) lumpsum consideration for the assignment or grant of any of his interest in the copyright of the book referred to in sub-section (2); or

(b) royalty or copyright fees (whether receivable in lumpsum or otherwise) in respect of the book referred to in sub-section (2).

25 (4) The amount of deduction under sub-section (1) shall be the amount of income referred to in sub-section (3) to the extent it does not exceed three lakh rupees.

(5) In this section, “books” shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, tracts and other publications of similar nature by whatever name called.

30 **84.** (1) A person, being resident individual and a patentee, shall be allowed a deduction of an amount specified in sub-section (3) in respect of any income referred to in sub-section (2), if such income is included in his ‘gross total income from ordinary sources’.

Deduction of royalty on patents.

39 of 1970. 35 (2) The income referred to in sub-section (1) shall be any income received by the person by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the Patents Act, 1970.

39 of 1970. (3) The amount of deduction under sub-section (1) shall be the amount of income referred to in sub-section (2) to the extent it does not exceed the amount of royalty allowable under the terms and conditions of a licence settled by the Controller under the Patents Act, 1970, if a compulsory licence is granted in respect of any patent under that Act or three 40 lakh rupees, whichever is lower.

(4) In of this section,—

(a) "patent" means a patent (including a patent of addition) granted under the Patents Act, 1970; 39 of 1970.

(b) "patentee" means the person, being the true and first inventor of the invention, whose name is entered on the patent register as the patentee, in accordance with the Patents Act, 1970, and includes every such person, being the true and first inventor of the invention, where more than one person is registered as patentee under that Act in respect of that patent; 5 39 of 1970.

(c) "patent of addition" shall have the same meaning as assigned to it in clause (q) of sub-section (1) of section 2 of the Patents Act, 1970; 39 of 1970.

(d) "patented article" and "patented process" shall have the meanings respectively assigned to them in clause (o) of sub-section (1) of section 2 of the Patents Act, 1970; 10 39 of 1970.

(e) "royalty", in respect of a patent, means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head "Capital gains" or consideration for sale of product manufactured with the use of patented process or of the patented article for commercial use) for— 15

(i) the transfer of all or any rights (including the granting of a licence) in respect of a patent; or

(ii) the imparting of any information concerning the working of, or the use of, a patent; or 20

(iii) the use of any patent;

(f) "true and first inventor" shall have the same meaning as assigned to it in clause (v) of sub-section (1) of section 2 of the Patents Act, 1970. Deduction of royalty on patents. 25 39 of 1970.

Deduction of income of co-operative society from banking activities.

85. (1) A person, being a primary co-operative society, shall be allowed a deduction to the extent of profits derived from the business of providing banking, or credit, facility to its members.

(2) In this section "primary co-operative society" means—

(a) a "primary agricultural credit society" within the meaning of Part V of the Banking Regulation Act, 1949; or 30 10 of 1949.

(b) a "primary co-operative agricultural and rural development bank", which—

(i) has its area of operation confined to a taluk; and

(ii) is mainly engaged in providing long-term credit for agricultural and rural development activities. 35

Deduction of income of primary Co-operative societies.

86. (1) A person, being a primary co-operative society, shall be allowed a deduction in respect of the aggregate of the amounts referred to in sub-section (2).

(2) The amount referred to in sub-section (1) shall be—

(a) the amount of profits derived from agriculture or agriculture-related activities; and 40

(b) the amount of income derived from any other activity, to the extent it does not exceed one lakh rupees.

(3) In this section,—

(a) "agriculture-related activities" means the following activities, namely:—

(i) purchase of agricultural implements, seeds, livestock or other articles 45

intended for agriculture for the purpose of supplying them to its members;

(ii) the collective disposal of—

(A) agricultural produce grown by its members; or

(B) dairy or poultry produce produced by its members; and

5 (iii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of material and equipment in connection therewith for the purpose of supplying them to its members;

10 (b) “primary co-operative society” means a co-operative society whose rules and bye-laws restrict the voting rights to individuals engaged in agriculture or agriculture-related activities.

V. - MAINTENANCE OF ACCOUNTS AND OTHER RELATED MATTERS

15 **87.** (1) Every person shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of this Code. Maintenance of accounts.

(2) Every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.

(3) The person referred to in sub-section (1) shall be the following, namely:—

20 (a) any person carrying on legal, medical, engineering, architectural profession or profession of accountancy, technical consultancy, interior decoration or any other profession as is notified by the Board;

(b) any other person carrying on business, if—

(i) his income from the business exceeds two lakh rupees;

25 (ii) his total turnover or gross receipts, as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or

30 (iii) the business is newly set-up in any financial year, his income from the business is likely to exceed two lakh rupees or his total turnover or gross receipts, as the case may be, in the business is likely to exceed ten lakh rupees, during such financial year.

(4) The books of account referred to in sub-section (1) shall be the following, namely:—

(a) a cash book;

(b) a journal, if the accounts are maintained according to the mercantile system of accounting;

35 (c) a ledger;

(d) register of daily inventory of business trading asset;

(e) copies of serially numbered bills issued by the person, if the value of the bill exceeds two hundred rupees;

40 (f) copies or counterfoils of serially numbered receipts issued by the person, if the value of the bill exceeds two hundred rupees;

(g) original bills or receipts issued to the person in respect of expenditure incurred by him, if the amount of the expenditure exceeds two hundred rupees;

(h) payment vouchers prepared and signed by the person in respect of expendi-

ture not exceeding two hundred rupees, if there are no bills or receipts for such expenditure.

(5) The bills or receipts issued to any person shall contain the name, address and such other particulars as may be prescribed.

(6) The Board may, having regard to the nature of the business carried on by any class of persons, prescribe—

(a) any other books of account and documents to be kept and maintained;

(b) the particulars to be contained in the books of account and documents; and

(c) the form and the manner in, and the place at, which the books of account and other documents shall be kept and maintained. 10

(7) The Board may prescribe the period for which the books of account and other documents required to be kept and maintained under this section shall be retained. Maintenance of account.

(8) The expression "international transaction" referred to in sub-section (2) shall have the meaning assigned to it in clause (17) of section 124. 15

Audit of accounts and reporting of international transaction. **88.** (1) Every person, who is required to keep and maintain books of account under section 87 shall get his accounts for the financial year audited—

(a) where the person is carrying on any profession, the gross receipts of the profession exceed twenty-five lakh rupees in the financial year;

(b) where the person is carrying on any business, the total turnover or gross receipts, as the case may be, of the business exceed one crore rupees in the financial year. 20

(2) The audit of the accounts referred to in sub-section (1) shall be carried out by an accountant and the report of audit obtained before the due date.

(3) The report of audit referred to in sub-section (2) shall be obtained in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. 25

(4) The provisions of sub-section (1) shall not apply to the business where the income therefrom is determined under paragraph 1 of the Fourteenth Schedule.

(5) A person shall be deemed to have complied with the provisions of sub-section (1), if the person— 30

(a) gets the accounts of his business audited as required by, or under, any other law for the time being in force, before the due date; and

(b) obtains by the due date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under sub-section (3). 35

(6) A person referred to in sub-section (2) of section 87 shall furnish a report of the international transaction entered into during the financial year to the Transfer Pricing Officer on or before the due date specified in sub-clause (c) of clause (86) of section 314.

(7) The report referred in sub-section (6) shall be obtained from an accountant in such form, duly signed and verified in such manner as may be prescribed. 40

Method of accounting. **89.** (1) The income chargeable under the head "Income from business" or "Income from residuary sources" shall, except as otherwise provided in this section, be computed in accordance with either cash or mercantile system of accounting regularly employed by the person.

(2) The Central Government may from time to time notify accounting standards to be followed by any class of persons or in respect of any class of income. 45

(3) The valuation of purchase of goods and inventory for the purposes of determining the income chargeable under the head “Income from business” shall be—

(a) in accordance with the method of accounting regularly employed by the person; and

5 (b) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the person to bring the goods to the place of its location and condition as on the date of its valuation.

(4) The value of sale of goods for the purposes of determining the income chargeable under the head “Income from business” shall be determined—

10 (a) in accordance with the method of accounting regularly employed by the person; and

(b) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) leviable on the sale of the goods.

15 (5) The interest on bad or doubtful debts of any financial institution shall be included in the total income of the financial year in which the interest is credited to the profit and loss account of, or is actually received by, the financial institution, whichever is earlier.

(6) The interest received by a person on compensation or an enhanced compensation shall be included in the total income of the financial year in which it is received.

(7) In this section,—

20 (a) any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment;

25 (b) “bad or doubtful debts” shall be such debts as may be prescribed, having regard to the guidelines issued by the Reserve Bank of India or the National Housing Bank, as the case may be, in relation to such debts.

CHAPTER IV

SPECIAL PROVISIONS RELATING TO THE COMPUTATION OF TOTAL INCOME OF NON-PROFIT ORGANISATIONS

30 **90.** (1) The provisions of this Chapter shall be applicable to a non-profit organisation, other than any organisation of public importance, specified in the Seventh Schedule.

Applicability of this Chapter.

(2) The Central Government may, subject to such conditions as may be considered necessary, notify a person as a non-profit organisation of public importance for the purpose of the Seventh Schedule.

35 (3) The provision of this Chapter other than section 95, section 97, section 98, section 99, section 101, section 102 and section 103, shall not apply to a non-profit organization, being a public religious trust or institution.

91. The total income of a non-profit organisation shall be computed in accordance with the provisions of this Chapter.

Total income of a non-profit organisation.

40 **92.** (1) Subject to the provisions of section 8, the total income of any non-profit organisation in relation to any charitable activity, during the financial year, shall be the gross receipts as reduced by the amount of outgoings, computed in accordance with the cash system of accounting.

Computation of total income of a non-profit organisation.

(2) Notwithstanding anything in sub-section (1), the total income of a non-profit

organisation, being a company registered under section 25 of the Companies Act, 1956 in relation to any charitable activity, during the financial year, shall be the gross receipts as reduced by the amount of outgoings, computed in accordance with the mercantile system of accounting.

Gross receipts of a non-profit organisation.

93. (1) The gross receipts from any charitable activity shall be the aggregate of the following, namely:—

- (a) the amount of voluntary contributions received;
- (b) any rent received in respect of a property held by the non-profit organisation consisting of any buildings or lands appurtenant thereto;
- (c) the amount of income derived from any business carried on by the non-profit organisation, if the business is incidental to any charitable activity so carried on;
- (d) income from transfer of any capital asset computed in accordance with the provisions of sections 46 to 54 (both inclusive) where the asset is not used for the purposes of any charitable activity or any business incidental to such charitable activity;
- (e) full value of consideration on transfer of any capital asset other than the asset referred to in clause (d);
- (f) the amount of income received from investment of its funds or assets;
- (g) the amount of any incoming, realisation, proceeds, or subscription received from any source; and
- (h) any amount, which was received in the last month of the immediately preceding financial year and was deposited in a specified deposit account as referred to in clause (e) of section 94.

(2) The gross receipts referred to in sub-section (1) shall not include—

- (a) any loan taken during the financial year; and
- (b) voluntary contributions received with a specific direction that they shall form part of the corpus of the non-profit organisation.

Outgoings of a non-profit organisation.

94. The amount of outgoings during the financial year for the purpose of computation of the total income shall be the aggregate of—

- (a) the amount paid for any expenditure, not being capital expenditure, incurred wholly and exclusively for earning or obtaining any receipts referred to in section 93;
- (b) the amount paid for any expenditure, incurred for the purposes of carrying out any charitable activity;
- (c) the amount paid for any capital expenditure for the purposes of any business, if the business is incidental to any charitable activity carried on by the non-profit organisation;
- (d) any amount applied outside India, if—
 - (i) the amount is applied for an activity which tends to promote international welfare in which India is interested; and
 - (ii) the non-profit organisation is notified by the Central Government in this behalf;
- (e) any amount which is received during the last month of the financial year and has been deposited on or before the last day of the financial year in a specified deposit account under such deposit account scheme as may be prescribed; and

(f) any amount accumulated or set apart for carrying on any charitable activity—

(i) to the extent of fifteen per cent. of the total income (before giving effect to the provisions of this clause) or ten per cent. of the gross receipts, whichever is higher; and

5 (ii) invested or deposited in the modes specified in section 95, for a period not exceeding three years from the end of the financial year.

95. (1) The modes of investing or depositing the money referred to in clause (f) of section 94 shall be the following, namely:— Modes of investment.

(i) deposit in any account with the Post Office Savings Bank;

10 (ii) deposit in any account with a scheduled bank;

(iii) investment in any security issued by the Central Government or a State Government;

(iv) investment in debentures issued by any company or corporation, guaranteed by the Central Government or by a State Government;

15 (v) investment or deposit in any public sector company;

(vi) investment in immovable property; or

(vii) any other mode of investment or deposit as may be prescribed.

(2) The funds or the assets of the non-profit organisation (other than any assets forming part of its corpus as on the 1st day of June, 1973) shall be invested or held, at any time during the financial year, in any of the modes referred to in sub-section (1).

96. (1) Any amount referred to in clause (f) of section 94 shall be deemed to be the income of the non-profit organisation, if the amount— Deemed income of a non-profit organisation.

(a) is not utilised for the purpose for which it was accumulated or set apart during the period specified therein; or

25 (b) ceases to remain invested or deposited in any of the modes specified in section 95.

(2) In this section, the amount shall be deemed to be the income of the financial year—

(a) immediately following the expiry of the specified period in a case falling under clause (a) of sub-section (1); or

30 (b) in which the amount ceases to remain so invested or deposited in a case falling under clause (b) of sub-section (1).

97. (1) The funds or the assets of the non-profit organisation shall not be used or applied, directly or indirectly, for the benefit of an interested person. Use or application of funds or assets for the benefit of interested person.

(2) Without prejudice to sub-section (1), the funds or the assets of the non-profit organisation shall be deemed to have been used or applied for the benefit of an interested person, if—

(a) the funds or the assets of the non-profit organisation are, or continue to be, lent to any interested person, for any period during the financial year, without either adequate security or adequate interest or both;

40 (b) the land, building or other asset of the non-profit organisation is, or continues to be, made available for the use of any interested person, for any period during the financial year, without charging adequate rent or other compensation;

(c) any amount is paid by way of salary, allowance or otherwise during the

financial year to any interested person, out of the resources of the non-profit organisation for services rendered by that person to such organisation and the amount so paid is in excess of what may be reasonably paid for such services;

(d) the services of the non-profit organisation are made available to any interested person, during the financial year, without adequate remuneration or other compensation; 5

(e) any share, security or other property is purchased by or on behalf of the non-profit organisation from any interested person, during the financial year, for consideration which is more than adequate;

(f) any share, security or other property is sold by or on behalf of the non-profit organisation to any interested person, during the financial year, for consideration which is less than adequate; 10

(g) any fund or asset of the non-profit organisation is diverted during the financial year in favour of any interested person where the fund or the value of the asset, as the case may be, or the aggregate of the funds and the value of the assets so diverted exceeds one thousand rupees; or 15

(h) any funds of the non-profit organisation are, or continue to remain, invested for any period during the financial year (not being a period before the 1st day of January, 1971), in any concern in which any interested person has a substantial interest and such investment exceeds five per cent. of the capital of that concern.

Registration
of a non-
profit
organisation.

98 .(1) A non-profit organisation shall make an application for its registration in the prescribed form and manner to the Commissioner. 20

(2) The provisions of sub-section (1) shall not apply to any non-profit organization which has been granted approval or registration under the Income tax Act, 1961, as it stood before the commencement of this Code, if the organisation fulfils such conditions as may be prescribed. 43 of 1961.

(3) The Commissioner, on receipt of the application for registration of a non-profit organisation made under sub-section (1), shall call for such documents or information as he considers necessary in order to satisfy himself about the objects and genuineness of its activities and may make such further inquiries as may be required. 25

(4) The Commissioner shall, within a period of six months from the end of the month in which the application under sub-section (1) was received, pass an order in writing— 30

(a) registering the non-profit organisation if he is satisfied about its objects and the genuineness of its activities; or

(b) refusing to register the non-profit organisation if he is not so satisfied, after giving the organisation an opportunity of being heard.

(5) The registration granted under sub-section (4) shall be valid from the financial year in which the application under sub-section (1) was made. 35

(6) Where the Commissioner is satisfied that the activities of the non-profit organisation are—

(i) not genuine; or

(ii) not being carried out in accordance with its objects; or 40

(iii) not being carried out in accordance with any other law which is applicable to it or under which it is registered or approved,

he shall pass an order in writing cancelling the registration or withdrawing the approval, as the case may be, granted under this section or the Income tax Act, 1961, as it stood 43 of 1961.

before the commencement of this Code, after giving the organisation an opportunity of being heard.

99. (1) The non-profit organisation shall keep and maintain such books of accounts, in the manner as may be prescribed. Maintenance of accounts and tax audit.

5 (2) The non-profit organisation shall maintain separate books of account in respect of business incidental to charitable activity.

(3) The non-profit organisation shall obtain a report of audit in such form as may be prescribed, from an accountant before the due date of filing of the return of tax bases, if the gross receipts referred to in section 93 in any financial year exceed five lakh rupees.

10 **100.** (1) Where the total income of a non-profit organisation includes any anonymous donation, the income-tax payable shall be the aggregate of— Anonymous donations.

(a) the amount of income-tax calculated at the rate of thirty per cent. on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

15 (i) five per cent. of the total donations received by the non-profit organisation; or

(ii) one lakh rupees; and

(b) the amount of income-tax with which the non-profit organisation would have been chargeable had its total income been reduced by the amount of anonymous donations referred to in clause (a). 20

(2) The provisions of sub-section (1) shall apply notwithstanding that the anonymous donation has been made with a specific direction that it shall form part of the corpus of the non-profit organisation.

(3) No outgoings shall be allowed in respect of any anonymous donation received.

25 (4) In this section, “anonymous donation” means any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

30 **101.** (1) A non-profit organisation shall be liable to income-tax at the rate of thirty per cent. in respect of its net worth if— Consequences of conversion of a non-profit organisation.

(a) it converts into any form of organisation which does not qualify as a non-profit organisation;

(b) it merges with any form of organisation which does not qualify as a non-profit organisation;

35 (c) it fails to transfer upon dissolution all its assets to any other non-profit organisation, within a period of three months from the end of the month in which the dissolution takes place.

(2) In this section—

(a) net worth of the non-profit organisation shall be computed as on—

40 (i) the date of conversion or merger, as the case may be, in a case falling under clause (a) or clause (b) of sub-section (1); and

(ii) the date of dissolution in a case falling under clause (c) of sub-section (1);

(b) “net worth” of the non-profit organisation means the aggregate value of the total assets of the non-profit organisation as reduced by the liabilities of such organisation computed in accordance with such rules of valuation as may be prescribed.

Provisions of this Chapter not to apply in certain cases.

102. (1) The provisions of this Chapter shall not apply to any person who— 5

(a) holds any business under trust, notwithstanding any specific direction that—

(i) the business shall form part of the corpus of such person; or

(ii) the income from the business shall be applied only for charitable activity;

(b) fails to comply with the conditions specified in section 97; 10

(c) ceases to be a non-profit organisation at any time during the financial year, irrespective of registration granted under sub-section (4) of section 98;

(d) carries on any business if it is not a business incidental to charitable activity.

(2) Without prejudice to sub-section (1), the non-profit organisation which ceases to be so due to conversion, merger or dissolution as referred to in sub-section (1) of section 101 shall be liable to income-tax in respect of its net worth in accordance with that section. 15

(3) The total income of any person falling under clauses (a), (b), (c) or clause (d) of sub-section (1) shall be computed in accordance with the other provisions of this Code.

Interpretations in this Chapter.

103. In this Chapter, unless the context otherwise requires,—

(a) “business incidental to charitable activity” means a business carried on in the course of the actual carrying out of any charitable activity; 20

(b) “charitable activity” means the following activities carried out in India, namely:—

(i) relief of the poor;

(ii) advancement of education; 25

(iii) medical relief;

(iv) preservation of environment (including watersheds, forests and wild-life);

(v) preservation of monuments or places or objects of artistic or historic interest; or 30

(vi) advancement of any other object of general public utility, not involving the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation thereto, for a cess, fee or any other consideration (irrespective of nature of use, application or retention of the income from such activity) and where the gross receipts during the financial year from such activity exceed ten lakh rupees; 35

(c) “general public” means the body of people at large sufficiently defined by some common quality of public or impersonal nature;

(d) “interested person” in relation to a non-profit organisation means—

(i) the founder of the organisation or the settlor of the trust; 40

(ii) any person whose total contribution to the organisation during the financial year exceeds fifty thousand rupees;

(iii) a member of the Hindu undivided family if the settlor or founder or person is a Hindu undivided family;

(iv) any manager, by whatever name called, of the organisation or trustee of the trust;

(v) any relative of the settlor, founder, member, trustee or manager; or

5 (vi) any concern in which any of the persons referred to in clauses (i) to (v) has a substantial interest;

(e) "trust" includes legal obligation.

CHAPTER V

COMPUTATION OF BOOK PROFIT

10 **104.** (1) Notwithstanding anything in this Code, where the normal income-tax payable for a financial year by a company is less than the tax on book profit, the book profit shall be deemed to be the total income of the company for such financial year and it shall be liable to income-tax on such total income at the rate specified in Paragraph A of the Second Schedule. Computation of book profit.

(2) Subject to the provisions of this Chapter, the book profit referred to in sub-section (1) shall be computed in accordance with the formula—

15 $A+B-(C+D)$
Where

A= the net profit, as shown in the profit and loss account for the financial year prepared in accordance with the provisions of section 105;

20 B = the aggregate of the following amounts, if debited to the profit and loss account:

(a) the amount of any tax paid or payable under this Code, and the provision therefor;

(b) the amount carried to any reserves, by whatever name called;

25 (c) the amount set aside as provision for meeting unascertained liabilities;

(d) the amount by way of provision for losses of subsidiary companies;

(e) the amount of dividends paid or proposed;

(f) the amount of depreciation;

(g) the amount of deferred tax and the provision therefor;

30 (h) the amount set aside as provision for diminution in the value of any asset;

(i) the amount of any expenditure referred to in clause (a) of sub-section (1) of section 18;

C = the aggregate of the following amounts:

35 (a) the amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets);

(b) the amount withdrawn from the revaluation reserve and credited to the profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (a);

40 (c) the amount withdrawn from any reserve or provision if any such amount is credited to the profit and loss account and such amount has been taken into account for computation of the book profit of any preceding financial year;

45 (d) the amount of profits of a sick industrial company for any financial year comprised in the period commencing from the financial year in which the said company has become a sick industrial company under sub-section (1) of section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending

with the financial year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses;

(e) the amount of any income referred to in section 10 read with the Sixth Schedule, if credited to the profit and loss account;

(f) the amount of deferred tax, if any such amount is credited to the profit and loss account;

D = the amount of loss brought forward.

(3) In sub-section (2), the loss brought forward shall be—

(i) nil, if such loss brought forward (excluding depreciation) or unabsorbed depreciation as per books of account, as the case may be is nil; or 10

(ii) the amount of loss brought forward (excluding depreciation) or unabsorbed depreciation as per books of account, whichever is less, in any other case.

(4) In sub-section (2), the amount of tax shall include—

(a) any interest charged or chargeable under this Code;

(b) any tax on distributed profits under section 109 ; 15

(c) any tax on distributed income under section 110;

(d) any tax paid on branch profits under section 111; and

(e) any tax on wealth under section 112.

(5) Every company to which this section applies shall obtain a report in such form as may be prescribed from an accountant certifying that the book profit has been computed in 20 accordance with the provisions of this section.

(6) In this Chapter—

(a) “normal income-tax” means the income-tax payable for a financial year by a company on its total income in accordance with the provisions other than the provisions of this Chapter; 25

(b) “tax on book profit” means the amount of tax computed on book profit at a rate specified in Paragraph A of the Second Schedule.

Preparation of profit and loss account for computing book profit.

105. (1) Every company shall, for the purposes of section 104, prepare its profit and loss account for the relevant financial year in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956. 30 1 of 1956.

(2) In this section, the accounting policies, the accounting standards adopted for preparing such accounts including profit and loss account and the method and rates adopted for calculating the depreciation shall, in the case of a company, be the same as have been adopted for the purpose of preparing such accounts including profit and loss account laid by the company at its annual general meeting in accordance with the provisions of section 35 210 of the Companies Act, 1956. 1 of 1956.

(3) Where the company has adopted or adopts the financial year under the Companies Act, 1956, which is different from the financial year under this Code— 1 of 1956.

(i) the accounting policies;

(ii) the accounting standards adopted for preparing such accounts including 40 profit and loss account;

(iii) the method and rates adopted for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the

method and rates for calculating the depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of such financial year falling within the relevant financial year.

5 **106.** (1) The credit for tax paid by a company under section 104 shall be allowed to it in accordance with the provisions of this section.

Tax credit for tax paid on book profit.

(2) The tax credit of a financial year to be allowed under sub-section (1) shall be the excess of tax on book profit over the normal income-tax.

(3) No interest shall be payable on tax credit allowed under sub-section (1).

10 (4) The amount of tax credit determined under sub-section (2) shall be carried forward and allowed in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the fifteenth financial year immediately succeeding the financial year for which tax credit becomes allowable under sub-section (1).

15 (5) The tax credit shall be allowed for a financial year in which the normal income-tax exceeds the tax on book profit and the credit shall be allowed to the extent of the excess of the normal income-tax over the tax on book profit, balance of the tax credit, if any, shall be carried forward.

(6) If the amount of normal income-tax or the tax on book profit is reduced or increased as a result of any order passed under this Code, the amount of tax credit allowed under this section shall also be varied accordingly.

20 6 of 2009. (7) In the case of conversion of a private company or unlisted public company into a limited liability partnership under the Limited Liability Partnership Act, 2008, the provisions of this section shall not apply to the successor limited liability partnership.

6 of 2009. 25 (8) In this section, the expressions "private company" and "unlisted public company" shall have the meaning respectively assigned to them in the Limited Liability Partnership Act, 2008.

107. Save as otherwise provided in this Chapter, all other provisions of this Code shall apply to a company referred to in this Chapter.

Application of other provisions of this Code.

CHAPTER VI

PROVISIONS RELATING TO TAX ON INCOME RECEIVED FROM VENTURE CAPITAL COMPANY AND VENTURE CAPITAL FUND

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108. (1) Notwithstanding anything in this Code, any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking.

Tax on income received from venture capital company and venture capital fund.

35 (2) The venture capital company, the venture capital fund or the person responsible for making payment of the income on behalf of such company or fund shall furnish, within such time as may be prescribed, to the person receiving such income and to the prescribed income-tax authority, a statement in the prescribed form and manner, giving details of the nature of the income paid during the financial year and such other relevant details as may be prescribed.

40 (3) The income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by, or had accrued to, the venture capital company or the venture capital fund, as the case may be, during the financial year.

45 (4) The provisions of Part B or Part C of this Code shall not apply to the income paid by a venture capital company or venture capital fund under this section.

PART B

DIVIDEND DISTRIBUTION TAX

CHAPTER VII

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED PROFITS OF DOMESTIC COMPANIES

Tax on distributed profits of domestic companies.

109. (1) Every domestic company shall be liable to pay tax on any amount of dividend declared, distributed or paid (whether interim or otherwise) to its shareholders, whether out of current or accumulated profits. 5

(2) The tax on the dividend shall be charged at the rate specified in Paragraph B of the Second Schedule, on the amount referred to in sub-section (1).

(3) The amount referred to in sub-section (1) shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year, if – 10

(i) such dividend is received from its subsidiary; and

(ii) the subsidiary has paid tax under this section on such dividend.

(4) The domestic company or the principal officer of such company responsible for making payment of the dividend, as the case may be, shall be liable to pay the tax on dividend to the credit of the Central Government within a period of fourteen days from the date of declaration, distribution or payment of such dividend, whichever is earliest. 15

(5) No deduction under any other provision of this Code shall be allowed to the domestic company or a shareholder in respect of the dividend charged to tax or the tax thereon. 20

(6) The tax on dividend so paid by the domestic company shall be treated as the final payment of tax in respect of the dividend declared, distributed or paid and no further credit shall be claimed by the domestic company or by any other person in respect of the tax so paid.

(7) If the domestic company or, as the case may be, the principal officer of such company responsible for making payment of the dividend does not pay the tax in accordance with the provisions of this section, then, it or he shall be deemed to be an assessee in default in respect of the tax payable by it or him and the provisions of this Code relating to the collection and recovery of tax shall apply. 25

(8) If the domestic company or, as the case may be, the principal officer of such company fails to pay the whole or any part of the tax on dividend referred to in sub-section (2), within the time allowed under sub-section (4), then, it or he shall be liable to pay simple interest at the rate of one per cent. for every month on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid. 30 35

(9) Notwithstanding that no income-tax is payable by a domestic company on its total income computed in accordance with the provisions of Part A of this Code, the tax on dividend declared, distributed or paid under sub-section (1) shall be payable by such company.

(10) In this section, — 40

(a) a company shall be a subsidiary of another company if such other company holds more than fifty per cent. of nominal value of the equity share capital of the company;

(b) "dividend" shall not include any payment referred to in item (e) of sub-clause (I) of clause (81) of section 314. 45

PART C

TAX ON DISTRIBUTED INCOME

CHAPTER VIII

SPECIAL PROVISIONS RELATING TO TAX ON DISTRIBUTED INCOME

- 5 **110.** (1) Every mutual fund shall be liable to pay tax on any amount of income distributed or paid to the unit holders of equity oriented fund. Tax on income distributed by mutual fund or life insurer.
- (2) Every life insurer shall be liable to pay tax on any amount of income, computed in the manner prescribed, distributed or paid to the policy holders of an approved equity oriented life insurance scheme.
- 10 (3) The tax on the distributed income shall be charged at the rate specified in Paragraph C of the Second Schedule, on the amount referred to in sub-sections (1) and (2).
- (4) The mutual fund or the life insurer or the person responsible for making payment of the distributed income on its behalf, as the case may be, shall be liable to pay tax to the credit of the Central Government within a period of fourteen days from the date of distribution or payment of such income, whichever is earlier.
- 15 (5) No deduction under any other provision of this Code shall be allowed to the mutual fund or, as the case may be, the life insurer in respect of the distributed income charged to tax or the tax thereon.
- (6) The tax on distributed income so paid by the mutual fund or, as the case may be, the life insurer shall be treated as the final payment of tax in respect of income distributed or paid and no further credit shall be claimed by the mutual fund or the life insurer or by any other person in respect of the tax so paid.
- 20 (7) If the mutual fund or the life insurer or the person responsible for making payment of the distributed income on its behalf, as the case may be, does not pay the tax in accordance with the provisions of this section, then, it or he shall be deemed to be an assessee in default in respect of the tax payable by it or him and the provisions of this Code relating to the collection and recovery of tax shall apply.
- 25 (8) If the mutual fund or the life insurer or the person responsible for making payment of distributed income on its behalf, as the case may be, fails to pay the whole or any part of the tax on distributed income referred to in sub-section (3), within the time allowed under sub-section (4), then it or he shall be liable to pay simple interest at the rate of one per cent. for every month on the amount of such tax for the period beginning on the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.
- 30 (9) In this section,—
- 35 (a) “equity oriented fund” means a fund where more than sixty-five per cent. of total proceeds of such fund are invested by way of equity shares in domestic companies;
- (b) “approved equity oriented life insurance scheme” means—
- 40 (i) a life insurance scheme where more than sixty-five per cent. of the total *premia* received under such scheme are invested by way of equity shares in domestic companies; and
- (ii) such scheme is approved by the Board in accordance with such guidelines as may be prescribed;
- 45 (c) the percentage of equity share holding of the mutual fund or the life insurance scheme, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

PART D

BRANCH PROFITS TAX

CHAPTER IX

CHARGE OF BRANCH PROFITS TAX

Tax on branch profits.

111. (1) Subject to the provisions of this Code, every foreign company shall, in addition to income-tax payable, be liable to branch profits tax in respect of branch profits of a financial year. 5

(2) The branch profits tax shall be charged in respect of the branch profits of a financial year of every foreign company at the rate specified in Paragraph D of the Second Schedule.

(3) The branch profits referred to in sub-section (1) shall be the income attributable, directly or indirectly, to the permanent establishment or an immovable property situated in India, included in the total income of the foreign company for the financial year, as reduced by the amount of income-tax payable on such attributable income. 10

(4) The liability to branch profits tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code as if the branch profits tax was income-tax. 15

(5) The branch profits tax charged under this section shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code.

PART E

WEALTH-TAX

CHAPTER X

CHARGE OF WEALTH-TAX

Tax on net wealth.

112. (1) Subject to the provisions of this Code, every person, other than a non-profit organisation, shall be liable to pay wealth-tax on the net wealth on the valuation date of a financial year. 20

(2) The wealth-tax shall be charged in respect of the net wealth referred to in sub-section (1), on the valuation date of a financial year at the rate specified in Paragraph E of the Second Schedule in the manner provided therein. 25

(3) The liability to wealth-tax shall be discharged by payment of pre-paid taxes in accordance with the provisions of this Code.

(4) The wealth-tax charged under this section shall be collected after allowing credit for pre-paid taxes, if any, in accordance with the provisions of this Code. 30

Computation of net wealth.

113. (1) The net wealth of a person referred to in sub-sections (1) and (2) of section 112 shall be the amount computed in accordance with the formula—

A-B

Where

A = the aggregate of the value on the valuation date, of all the specified assets, wherever located, belonging to the person referred to in this section, computed in accordance with the provisions of sub-section (5);

B = the aggregate of the value on the valuation date, of all the debts, owed by the person, which have been incurred in relation to the specified assets. 40

(2) The specified assets referred to in sub-section (1) shall be the following, namely:—

(a) any building or land appurtenant thereto (hereinafter referred to as “house”), used for any purpose;

(b) any farm house situated within twenty-five kilometers from local limits of any municipality or municipal corporation (by whatever name called) or a Cantonment Board; 45

(c) any urban land;

(d) motor car, yacht, boat, helicopter and aircraft other than those used by the assessee in the business of running them on hire or as stock-in-trade;

5 (e) jewellery, bullion, furniture, utensils or any other article made wholly or partly of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, other than those used by the assessee as stock-in-trade;

(f) archaeological collections, drawings, paintings, sculptures or any other work of art;

(g) watch having value in excess of fifty thousand rupees;

10 (h) cash in hand, in excess of two lakh rupees, of individuals and Hindu undivided families;

(i) deposit in a bank located outside India, in case of individuals and Hindu undivided families, and in the case of other persons any such deposit not recorded in the books of account;

15 (j) any interest in a foreign trust or any other body located outside India (whether incorporated or not) other than a foreign company; and

(k) any equity or preference shares held by a resident in a controlled foreign company, as referred to in the Twentieth Schedule.

20 (3) The specified assets referred to in sub-section (2) shall not include the following, namely:—

(a) any one building in the occupation of a Ruler, being a building which immediately before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, was his official residence by virtue of a declaration by the Central Government under paragraph 13 of the Merged States (Taxation Concessions) Order, 1949, or paragraph 15 of the Part B States (Taxation Concessions) Order, 1950;

(b) jewellery in the possession of any Ruler, not being his personal property, which has been recognised as his heirloom—

27 of 1957. (i) by the Central Government before the commencement of the Wealth-tax Act, 1957, as it stood before the commencement of this Code; or

30 27 of 1957. (ii) by the Board at the time of his first assessment to wealth-tax under the Wealth-tax Act, 1957, as it stood before the commencement of this Code;

(c) the value of the assets located outside India, if the person is a non resident; and

35 (d) any one house or part of a house or one vacant plot of land not exceeding five hundred square metres of area belonging to an individual or a Hindu undivided family.

(4) The house referred to in clause (a) of sub-section (2) shall not include the following, namely:—

40 (a) a house meant exclusively for residential purposes allotted by a company to an employee;

(b) any house for residential or commercial purposes which forms part of stock-in-trade;

(c) any house which the assessee may occupy for the purposes of business carried on by him;

45 (d) any house that has been let-out for a minimum period of three hundred days in the financial year;

(e) any house in the nature of commercial establishments or complexes.

(5) The value of any specified asset, other than cash, referred to in sub-section (2), shall be determined in such manner as may be prescribed.

(6) In this Chapter, “valuation date” means the 31st day of March in the financial year.

Net wealth to include certain assets.

114. (1) The specified assets referred to in sub-section (2) of section 113 shall be deemed to be belonging to the person, being an individual, and included in computing his net wealth if such assets, as on the valuation date, are held (whether in the form they were transferred or otherwise),—

(a) by the spouse of such individual to whom such asset has been transferred by him, directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart;

(b) by a minor child, not being a person with disability or person with severe disability, of such individual;

(c) by a person to whom such asset has been transferred by the individual, directly or indirectly, otherwise than for adequate consideration for the immediate or deferred benefit of the individual or his spouse;

(d) by a trust to whom such asset has been transferred by the individual, if the transfer is revocable during the life time of the beneficiary of the trust;

(e) by a person, not being a trust, to whom such asset has been transferred by the individual, if the transfer is revocable during the life time of the person; and

(f) by a Hindu undivided family by way of any converted property.

(2) The provisions of sub-section (1) shall not apply in respect of such specified asset as has been acquired by the minor child out of his income referred to in clause (b) of sub-section (1) of section 9 and which are held by him on the valuation date.

(3) In this section,—

(a) the asset referred to in clause (b) of sub-section (1) shall be included in the net wealth of—

(i) the parent who is the guardian of the minor child; or

(ii) the parent whose net wealth (excluding the assets referred to in that clause) is higher, if both the parents are guardians of the child;

(b) a transfer shall be deemed to be revocable if—

(i) it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or asset to the transferor; or

(ii) it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or asset;

(c) the person shall, notwithstanding anything in this Code or in any other law for the time being in force, be deemed to be the owner of a building or part thereof, if he is a member of a co-operative society, company or other association of persons and the building or part thereof is allotted or leased to him under a house building scheme of the society, company or association, as the case may be;

(d) the holder of an impartible estate shall be deemed to be the individual owner of all the properties comprised in the estate; and

(e) the value of any assets transferred under an irrevocable transfer shall be liable to be included in computing the net wealth of the transferor in the year in which the power to revoke vests in him.

PART F

PREVENTION OF ABUSE OF THE CODE

CHAPTER XI

SPECIAL PROVISIONS RELATING TO AVOIDANCE OF TAX

- 5 **115.** (1) A person shall not be allowed a deduction under this Code in respect of so much of the expenditure, whether capital or revenue in nature, as is considered by the Assessing Officer to be excessive or unreasonable if—
- Disallowance of expenditure having regard to fair market value.
- (a) the payment in respect of the expenditure has been, or is to be, made to any associated person; and
- 10 (b) the expenditure is excessive, or unreasonable, having regard to—
- (i) the fair market value of the goods, services or facilities for which the payment is made;
- (ii) the legitimate needs of the business of the person; or
- (iii) the benefit derived by, or accruing to, the person therefrom.
- 15 **116.** (1) The amount of any income, or expense, arising from an international transaction shall be determined having regard to the arm's length price.
- Determination of income from international transaction having regard to arm's length price.
- (2) The allocation or apportionment of, or any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any associated enterprise shall be determined having regard to the arm's length price of such benefit, service or facility, as the case may be, if—
- 20 (a) two or more associated enterprises have entered into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, such cost or expense; and
- (b) the benefit, service or facility provided to any one or more associated enterprises involves an international transaction.
- 25 (3) The provisions of this section shall not apply in a case, if the determination under sub-section (1), or sub-section (2), has the effect of reducing the income chargeable to tax, or increasing the loss computed, on the basis of entries made in the books of account in respect of the financial year in which the international transaction was entered.
- 30 **117.** (1) The arm's length price in relation to an international transaction shall be determined in accordance with any of the methods as may be prescribed, being the most appropriate method.
- Determination of arm's length price.
- (2) The most appropriate method referred to in sub-section (1) shall be determined having regard to the nature of transaction, class of transaction, class of associated enterprise or functions performed by such enterprises or such other relevant factors as may be prescribed.
- 35 (3) The most appropriate method determined under sub-section (2) shall be applied for determination of arm's length price in such manner as may be prescribed .
- (4) The arm's length price shall be—
- 40 (a) the price determined by the most appropriate method, if only one price is determined by the method; or
- (b) the arithmetical mean of the prices determined by the most appropriate method, if more than one price is determined by the method.
- 45 (5) The price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price if the variation between the arm's length price

determined under sub-section (4) and the price at which the international transaction has actually been undertaken does not exceed five per cent. of the latter.

(6) The income of an associated enterprise shall not be recomputed by reason of determination of arm's length price in the case of the other associated enterprise.

(7) No deduction under Sub-chapter-IV of Chapter III shall be allowed in respect of the amount of income by which the total income of the assessee is enhanced after computation of income under this section. 5

(8) The determination of arm's length price shall be subject to safe harbour rules, as may be prescribed in this behalf.

Advance
pricing
agreement.

118.(1) The Board, with the approval of the Central Government, may enter into an advance pricing agreement with any person, specifying the manner in which arm's length price is to be determined in relation to an international transaction, to be entered into by that person. 10

(2) The manner of determination of arm's length price referred to in sub-section (1) may be any method including one of the prescribed methods, as referred to in sub-section (1) of section 117, with such adjustments or variations, as may be necessary or expedient so to do. 15

(3) The arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, notwithstanding anything in this Chapter, shall be determined in accordance with the advance pricing agreement so entered. 20

(4) The agreement referred to in sub-section (1) shall be valid for such financial years as specified in the agreement which in no case shall exceed five consecutive financial years.

(5) The advance pricing agreement entered into shall be binding—

(a) only on the person in whose case the agreement has been entered into;

(b) only in respect of the transaction in relation to which the agreement has been entered into; and 25

(c) on the Commissioner, and the income-tax authorities subordinate to him, only in respect of the said person and the said transaction.

(6) The agreement referred to in sub-section (1) shall not be binding, if there is any amendment to the Code having bearing on the agreement so entered. 30

(7) The Board may, by order, declare an agreement to be void *ab initio*, if it finds that the agreement has been obtained by the person by fraud or misrepresentation of facts.

(8) Upon declaring the agreement void *ab initio*, the provisions of this Code shall, after excluding the period beginning with the date of such agreement and ending with the date of order under sub-section (7), apply to the person as if such agreement had never been entered into. 35

(9) For the purposes of this section, the Board may, by notification, frame a Scheme for advance pricing agreement in respect of an international transaction.

Avoidance of
income-tax
by
transactions
resulting in
transfer of
income to
non-residents.

119.(1) The total income of a person shall include all income accruing to any non-resident, if— 40

(a) the income accrues by virtue of a transfer of any asset by the person, either alone or in conjunction with associated operations, directly or indirectly, to the non-resident;

(b) the person —

(i) acquires any rights by virtue of which he has power to enjoy, whether forthwith or in the future, such income; or 45

(ii) is entitled to receive, or has received, any capital sum, the payment whereof is in any way connected with the transfer or any associated operations; and

5 (c) the income would have been included in the total income of the person, had the transfer not taken place.

(2) A person shall be deemed to have the power to enjoy the income of a non-resident, if—

10 (a) the income is in fact so dealt with by the person so as to be calculated at some point of time and, whether in the form of income or not, to enure for the benefit of the person;

(b) the accrual or receipt of the income operates to increase the value to the person of any assets held by him or for his benefit;

15 (c) the person receives, or is entitled to receive, at any time any benefit provided, or to be provided, out of that income, or out of moneys, which are or shall be available for the purpose by reason of the effect, or successive effects, of the associated operations on that income and assets which represent that income;

(d) such person has power by means of the exercise of any power of appointment or power of revocation or otherwise to obtain for himself, whether with or without the consent of any other person, the beneficial enjoyment of the income; or

20 (e) the person is able, in any manner whatsoever and whether directly or indirectly, to control the application of the income.

(3) For determining whether a person has power to enjoy the income, regard shall be had to—

25 (a) the substantial result and effect of the transfer and any associated operations; and

(b) all benefits which may at any time accrue to such person as a result of the transfer and any associated operations, irrespective of the nature or form of the benefits.

30 (4) The provisions of this section shall not apply if the person referred to in subsection (1) shows to the satisfaction of the Assessing Officer that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding liability to taxation.

35 **120.** The total income of any person shall include any interest accruing from any security owned by any other person if—

Avoidance of tax by sale and buy-back transaction in security.

(a) the person undertakes a transaction relating to sale and buy-back of the security;

(b) the interest accrues to the other person as a result of such transaction; and

40 (c) the income would have been included in the total income of the person, had the transfer not taken place.

121. (1) The transaction relating to buy and sale back of security under section 120 shall, in the case of the other person referred to therein, be ignored and no account shall be taken of the transaction in computing the income if the interest accruing to the other person is not included in his total income by virtue of the provisions of that section.

Avoidance of tax by buy and sale back transaction in security.

45 (2) The loss, if any, arising to a person on account of any buy and sale back transaction in any security undertaken by him, shall be ignored for the purposes of computing his total income, if any other income accruing to the person on such security is not included in his total income.

(3) The loss, referred to in sub-section (2), shall be ignored to the extent such loss does not exceed the amount of any other income referred to therein.

Broken-period
income
accruing from
a debt
instrument.

122. The income accruing from a debt instrument, transferred by a person at any time during the financial year, shall not be less than the amount of broken-period income from the instrument.

5

General anti-
avoidance
rule.

123. (1) Any arrangement entered into by a person may be declared as an impermissible avoidance arrangement and the consequences, under this Code, of the arrangement may be determined by—

(a) disregarding, combining or recharacterising any step in, or a part or whole of, the impermissible avoidance arrangement;

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(b) treating the impermissible avoidance arrangement—

(i) as if it had not been entered into or carried out; or

(ii) in such other manner as in the circumstances of the case, the Commissioner deems appropriate for the prevention or diminution of the relevant tax benefit;

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(c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;

(d) deeming persons who are connected persons in relation to each other to be one and the same person;

(e) reallocating, amongst the parties to the arrangement—

20

(i) any accrual, or receipt, of a capital or revenue nature; or

(ii) any expenditure, deduction, relief or rebate; or

(f) recharacterising—

(i) any equity into debt or *vice versa*;

(ii) any accrual, or receipt, of a capital or revenue nature; or

25

(iii) any expenditure, deduction, relief or rebate .

(2) The provisions of sub-section (1) may be applied in the alternative for, or in addition to, any other basis for determination of tax liability in accordance with such guidelines as may be prescribed.

(3) The provisions of this section shall apply subject to such conditions and in the manner as may be prescribed.

30

Interpretations
in this
Chapter.

124. In this Chapter,—

(1) “accommodating party” means a party to an arrangement who, as a direct or indirect result of his participation, derives any amount in connection with the arrangement, which shall—

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(a) be included in his total income which would have otherwise been included in the total income of another party;

(b) not be included in his total income which would have otherwise been included in the total income of another party;

(c) be treated as a deductible expenditure, or allowable loss, by the party which would have otherwise constituted a non-deductible expenditure, or non-allowable loss, in the hands of another party; or

40

(d) result in pre-payment by any other party;

(2) “arm’s length price” means a price which is applied, or proposed to be applied, in a transaction between persons, enterprises or undertakings, other than associated enterprises, in uncontrolled, unrelated or independent conditions;

5 (3) “arrangement” means any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, and includes any of the above involving the alienation of property;

(4) “asset” includes property, or right, of any kind;

(5) “associated enterprise” in relation to another enterprise, means an enterprise—

General anti-avoidance rule.

10 (a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

15 (b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise,

and for the purposes of sub-clauses (a) and (b) above, two enterprises, shall be deemed to be associated enterprises at any time during the financial year, if they are associated with each other by virtue of—

20 (i) one enterprise holding, directly or indirectly, shares carrying twenty-six per cent. or more of the voting power in the other enterprise;

(ii) any person or enterprise holding, directly or indirectly, shares carrying twenty-six per cent. or more of the voting power in each of such enterprises;

25 (iii) a loan advanced by one enterprise to the other enterprise and the loan constitutes fifty-one per cent. or more of the book value of the total assets of the other enterprise;

(iv) one enterprise guarantees ten per cent. or more of the total borrowings of the other enterprise;

30 (v) more than one-half of the board of directors, or members, of the governing board, or one or more executive directors, or executive members, of the governing board of one enterprise, being appointed by the other enterprise;

(vi) more than one-half of the directors, or members, of the governing board, or one or more of the executive directors, or executive members, of the governing board, of each of the two enterprises, being appointed by the same person or persons;

35 (vii) the manufacture, or processing, of any goods or articles of, or carrying on the business by, one enterprise being wholly dependent on the use of know-how, patents, copyrights, trade marks, brands, licences, franchises, or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights;

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(viii) ninety per cent. or more of the raw materials and consumables required for the manufacture, or processing, of goods or articles carried out by one enterprise, being supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise;

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50 (ix) the goods or articles manufactured, or processed, by one enterprise, being sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise;

(x) the services provided, directly or indirectly, by one enterprise to another enterprise or to persons specified by the other enterprise, and the amount payable and the other conditions relating thereto are influenced by such other enterprise;

(xi) one enterprise being controlled by an individual, and the other enterprise being also controlled by such individual or his relative, or jointly by such individual and his relative; 5

(xii) one enterprise being controlled by a Hindu undivided family, and the other enterprise being also controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; 10

(xiii) one enterprise holding ten per cent., or more, interest in another enterprise being an unincorporated body;

(xiv) any specific or distinct location of either of the enterprises as may be prescribed; or 15

(xv) any other relationship of mutual interest, existing between the two enterprises, as may be prescribed;

(6) “associated operation” in relation to any transfer means an operation of any kind effected by the transferor in relation to—

(a) any asset transferred; 20

(b) any asset representing, directly or indirectly, any asset so transferred;

(c) the income accruing from any asset so transferred; or

(d) any asset representing, directly or indirectly, the accumulation of income accruing from any asset so transferred;

(7) “associated person” in relation to a person, means— 25

(a) any relative of the person, if the person is an individual;

(b) any director of the company or any relative of such director, if the person is a company;

(c) any participant in an unincorporated body or any relative of such participant, if the person is an unincorporated body; 30

(d) any member of the Hindu undivided family or any relative of such member, if the person is a Hindu undivided family;

(e) any individual who has a substantial interest in the business of the person or any relative of such individual;

(f) a company, unincorporated body or Hindu undivided family having a substantial interest in the business of the person or any director, participant, or member of the company, body or family, or any relative of such director, participant or member; 35

(g) a company, unincorporated body or Hindu undivided family, whose director, participant, or member have a substantial interest in the business of the person; or family or any relative of such director, participant or member; 40

(h) any other person who carries on a business, if—

(i) the person being an individual, or any relative of such person, has a substantial interest in the business of that other person; or

(ii) the person being a company, unincorporated body or Hindu undivided family, or any director, participant or member of such company, body or family, or any relative of such director, participant or member, has a substantial interest in the business of that other person; 45

(8) “benefit” includes a payment of any kind;

(9) “broken period income” shall be calculated as if the income from such securities had accrued from day to day and been apportioned accordingly for the broken period; 50

(10) “*bona fide* purpose” shall not include any purpose which—

(a) has created rights or obligations that would not normally be created between persons dealing at arm’s length; or

(b) would result, directly or indirectly, in the misuse, or abuse, of the provisions of this Code;

(11) “capital sum” means—

(a) any sum paid by way of a loan or repayment of a loan; or

(b) any other sum paid otherwise than as income, being a sum which is not paid for full consideration in money or money’s worth;

(12) “connected persons” includes associated persons;

(13) “enterprise” in relation to an international transaction includes—

(a) a person who is, or has been, or is likely to be, engaged in any business, industrial, commercial, financial, construction, mining, research, investment or any other similar activity, whether such activity is carried on directly or through one, or more, of its units, divisions or subsidiaries, wherever located; and

(b) the permanent establishment of the person referred to in sub-clause (a);

(14) “funds” includes—

(a) any cash;

(b) cash equivalents; and

(c) any right, or obligation, to receive, or pay, the cash or cash equivalent;

(15) “impermissible avoidance arrangement” means a step in, or a part or whole of, an arrangement, whose main purpose is to obtain a tax benefit and it—

(a) creates rights, or obligations, which would not normally be created between persons dealing at arm’s length;

(b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Code;

(c) lacks commercial substance, in whole or in part; or

(d) is entered into, or carried out, by means, or in a manner, which would not normally be employed for *bona fide* purposes;

(16) “intangible property” includes know-how, patents, goodwill, copyrights, trade-marks, brand name, licences, franchises, any business or commercial rights, leasehold interest, exploration and exploitation rights, easement rights, air rights, water rights, or any other thing that derives its value from its intellectual content instead of its physical attributes;

(17) “international transaction” means—

(a) a transaction between two or more associated enterprises, either or all of whom is a non-resident, in the nature of—

(i) purchase, sale or lease, of tangible or intangible property;

(ii) supply of service;

(iii) lending, or borrowing, money;

(iv) any other transaction, which has a bearing on the income, loss or asset of any one or more of the enterprises; or

(v) a mutual agreement or arrangement between two or more associated enterprises for the allocation or apportionment of, or any contribution to, any cost or expense incurred, or to be incurred, in connection with a benefit, service or facility provided, or to be provided, to any one or more of the enterprises;

(b) a transaction entered into by two or more persons, not being associated enterprises, if—

- (i) the transaction is of the nature referred to in sub-clause (a);
- (ii) there exists a prior agreement in relation to the relevant transaction between such other person and the associated enterprise or the terms of the relevant transaction are determined in substance between such other person and the associated enterprise; and 5
- (iii) either, or both, of the associated enterprises is a non-resident;
- (18) "interest" includes dividend;
- (19) "lacks commercial substance"-a step in, or a part or whole of, an arrangement shall be deemed to be lacking commercial substance, if—
- (a) it does not have a significant effect upon the business risks, or net cash flows, of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained but for the provisions of section 123; 10
- (b) the legal substance, or effect, of the arrangement as a whole is inconsistent with, or differs significantly from, the legal form of its individual steps; or
- (c) it includes, or involves— 15
- (i) round trip financing without regard to,—
- (A) whether or not the round tripped amounts can be traced to funds transferred to, or received by, any party in connection with the arrangement;
- (B) the time, or sequence, in which round tripped amounts are transferred or received; or 20
- (C) the means by, or manner in, which round tripped amounts are transferred or received;
- (ii) an accommodating or tax indifferent party;
- (iii) any element that have the effect of offsetting or cancelling each other; or 25
- (iv) a transaction which is conducted through one or more persons and disguises the nature, location, source, ownership, or control, of the fund;
- (20) "party" means party to the arrangement;
- (21) "round trip financing" includes financing in which— 30
- (a) funds are transferred among the parties to the arrangement; and
- (b) the transfer of the funds would—
- (i) result, directly or indirectly, in a tax benefit but for the provisions of section 123; or
- (ii) significantly reduce, offset or eliminate any business risk incurred by any party to the arrangement; 35
- (22) "safe harbour", in relation to computation of arm's length price, means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee;
- (23) "similar security" means security which entitles its holder to the same rights against the same person as to capital and interest and the same remedies for the enforcement of those rights, irrespective of any difference in the— 40
- (a) total nominal amounts of the respective security;
- (b) form in which it is held; or
- (c) manner in which it can be transferred; 45
- (24) "substantial interest in the business" a person shall be deemed to have a substantial interest in the business, if—
- (a) in case where the business is carried on by a company, such person is, at any time during the financial year, the beneficial owner of equity shares carrying twenty per cent. or more, of the voting power; or 50

(b) in any other case, such person is, at any time during the financial year, beneficially entitled to twenty per cent. or more, of the profits of such business.

(25) “tax benefit” means—

5 (a) a reduction, avoidance or deferral of tax or other amount payable under this Code;

(b) an increase in a refund of tax or other amount under this Code;

(c) a reduction, avoidance or deferral of tax or other amount that would be payable under this Code but for a tax treaty;

10 (d) an increase in a refund of tax or other amount under this Code as a result of a tax treaty; or

(e) a reduction in tax bases including increase in loss, in the relevant financial year or any other financial year.

(26) “transaction” in relation to an international transaction shall include an arrangement, understanding or action in concert—

15 (a) whether or not such arrangement, understanding or action is formal or in writing; or

(b) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding;

20 (27) “transaction relating to buy and sale back of security” means a transaction where a person buys a security, and sells or transfers the same, or similar, security;

(28) “transaction relating to sale and buy back of security” means a transaction where a person, being the owner of any security, sells or transfers the security, and buys back or re-acquires the same, or similar, security;

(29) “transfer” in relation to any right includes the creation of a right.

25 **125.** (1) An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit unless the person obtaining the tax benefit proves that obtaining the tax benefit was not the main purpose of the arrangement.

Presumption of purpose.

30 (2) An arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit, if the main purpose of a step in, or part of, the arrangement is to obtain a tax benefit, notwithstanding the fact that the main purpose of the whole arrangement is not to obtain a tax benefit.

PART G

TAX MANAGEMENT

CHAPTER XII

35 TAX ADMINISTRATION AND PROCEDURE

A. - Tax administration

126. There shall be the following classes of income-tax authorities for the purposes of this Code, namely:—

Income-tax authorities.

54 of 1963. 40 (a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963,

(b) Chief Commissioners of Income-tax or Director-Generals of Income-tax,

(c) Commissioners of Income-tax or Directors of Income-tax or Commissioners of Income-tax (Appeals),

45 (d) Additional Commissioners of Income-tax or Additional Directors of Income-tax,

(e) Joint Commissioners of Income-tax or Joint Directors of Income-tax,

(f) Deputy Commissioners of Income-tax or Deputy Directors of Income-tax,

(g) Assistant Commissioners of Income-tax or Assistant Directors of Income-tax,

(h) Income-tax Officers,

(i) Tax Recovery Officers,

50 (j) Inspectors of Income-tax.

Appointment and control of income-tax authorities.

127. (1) The Central Government may appoint such persons as it thinks fit to be income-tax authorities.

(2) Without prejudice to the provisions of sub-section (1), and subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may authorise the Board, or a Director-General, a Chief Commissioner or a Director or a Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner. 5

(3) Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, an income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions. 10

(4) The Board may, by notification, direct that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in such notification.

Power of higher authorities.

128. Any income-tax authority, above the rank of Assessing Officer, shall have all the powers that an Assessing Officer has under this Code in relation to the making of inquiries 15

Powers of the Board to issue instructions.

129. (1) The Board may, from time to time, issue such orders, instructions, directions or circulars to other income-tax authorities as it may consider expedient or necessary for the proper administration of this Code.

(2) The Board shall not exercise its powers under sub-section (1) so as to— 20

(a) require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner;

(b) require the Commissioner of Income-tax (Appeals) to dispose off any matter before it in a particular manner.

(3) The Board may, without prejudice to the generality of the provisions of sub-section (1), if it considers expedient or necessary so to do, issue general or special orders in respect of— 25

(a) any class of tax bases or class of cases, explaining the principles, specifying the guidelines or procedures, whether by way of relaxation of any provision of this Code or otherwise, to be followed by other income-tax authorities in the work relating to assessment or collection of revenue including charging of interest or the initiation of proceedings for the imposition of penalties; 30

(b) any case or class of cases, for avoiding genuine hardship, authorising any income-tax authority [other than Commissioner of Income-tax (Appeals)] to admit any application or claim for any exemption, deduction, refund or any other relief under this Code after the expiry of the period specified by or under this Code for making the application or claim and deal with the same on merits in accordance with law; 35

(c) any case or class of cases, relaxing any requirement or conditions contained in this Code in relation to grant of any relief, on fulfilment of the following conditions, namely:— 40

(i) such relaxation is for avoiding genuine hardship;

(ii) the reasons for exercise of power have been specified in the order;

(iii) the default in complying with such requirement or condition was due to circumstances beyond the control of the assessee;

(iv) the assessee has complied with such requirement or condition before 45

the completion of assessment of the financial year for which the relief is claimed;
and

(v) every order issued under this clause is laid before each House of Parliament.

(4) The orders, instructions, directions and circulars issued by the Board under this
5 section shall be binding on all other income-tax authorities and other persons employed in
the execution of this Code.

130. (1) The income-tax authorities shall exercise all or any of the powers and perform
all or any of the functions conferred on, or, as the case may be, assigned to such authorities
by or under this Code in accordance with such directions as the Board may issue for the
10 exercise of the powers and performance of the functions by all or any of those authorities.

Jurisdiction
of income-
tax authori-
ties.

(2) The directions of the Board under sub-section (1) may authorise any other income-
tax authority to issue orders in writing for the exercise of the powers and performance of the
functions by all or any of the other income-tax authorities who are subordinate to it.

(3) In issuing the directions or orders referred to in sub-sections (1) and (2), the Board
15 or other income-tax authority authorised by it may have regard to any one or more of the
following criteria, namely :—

(a) territorial area;

(b) persons or classes of persons;

(c) incomes or classes of income; and

20

(d) cases or classes of cases.

(4) Any income-tax authority, being an authority higher in rank, may, if so directed by
the Board, exercise the powers and perform the functions of the income-tax authority lower
in rank and any such direction issued by the Board shall be deemed to be a direction issued
under sub-section (1).

(5) The Board may, by order, authorise any Director General or Director to perform
25 such functions of any other income-tax authority as may be assigned to him by the Board.

(6) The Chief Commissioner, if authorised by the Board, may direct two or more
Assessing Officers (whether of same rank or not) to exercise and perform the powers and
functions conferred on or assigned to them concurrently and the Assessing Officer lower in
30 rank shall follow the directions of the Assessing Officer who is higher in rank.

131. (1) The Assessing Officer who has been vested with jurisdiction over any area,
by virtue of any direction or order issued under section 130, shall, within the limits of such
area, have jurisdiction in respect of —

Jurisdiction of
Assessing
Officers.

(a) any person carrying on a business,—

35

(i) in a case where the business is carried on in more places than one, the
principal place of his business is situate within the area; or

(ii) in any other case, the place at which he carries on his business is
situate within the area; and

(b) any other person residing within the area.

40

(2) Any dispute relating to jurisdiction of an Assessing Officer shall be decided by
the Chief Commissioner under whom the Assessing Officer is functioning.

(3) Any dispute relating to jurisdiction of the Assessing Officer where it relates to areas within the jurisdiction of different Chief Commissioners shall be decided by consensus between the Chief Commissioners and if they are not in agreement, by the Board, or by such Chief Commissioner as the Board may direct.

(4) No person shall be entitled to question the jurisdiction of an Assessing Officer— 5

(a) after the expiry of one month from the date on which he was served with the notice under sub-section (2) of section 150, if the person has furnished a return under sub-section (1) of section 144 or after the completion of assessment, whichever is earlier;

(b) after the expiry of the time allowed by the notice under sub-section (1) of section 146 or under sub-section (2) of section 159, if no return has been filed. 10

(5) Subject to the provisions of sub-section (4), where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub-section (2) before the assessment is made. 15

(6) Every Assessing Officer shall have all the powers conferred by, or under, this Code on an Assessing Officer in respect of the tax bases accruing or received within the area over which he has been vested with jurisdiction under section 129, notwithstanding anything in this section or in any direction or order issued under section 129.

Power to transfer cases.

132. (1) The Chief Commissioner or, as the case may be, the Commissioner may by an order transfer a case from any Assessing Officer to any other Assessing Officer who are subordinate to him. 20

(2) The Chief Commissioner may by an order transfer a case from any Assessing Officer subordinate to him to any Assessing Officer subordinate to any other Chief Commissioner, if both the Chief Commissioners are in agreement with such transfer. 25

(3) The Board, or the Chief Commissioner as may be authorised by the Board, may by an order transfer a case from any Assessing Officer subordinate to a Chief Commissioner to any Assessing Officer subordinate to any other Chief Commissioner, if the Chief Commissioners are not in agreement with such transfer.

(4) Any order under this section shall be passed after giving the person, whose case is being transferred, as far as possible an opportunity of being heard in the matter and after recording the reasons for such transfer. 30

(5) The provisions of sub-section (4) shall not apply if the case is being transferred from an Assessing Officer to another Assessing Officer located in the same city.

(6) The transfer of a case under this section may be made at any stage of the proceedings, and it shall not be necessary to reissue any notice already issued by the transferor Assessing Officer. 35

(7) In this Chapter, the expression “case” in relation to any person whose name is specified in any order or direction issued under relevant provisions, means all proceedings under this Code in respect of any year which – 40

(i) may be pending on the date of such order or direction;

(ii) may have been completed on or before such date; or

(iii) may be commenced after such date.

Change of incumbent.

133. (1) The income-tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, shall continue the proceeding from the stage at which it was left by his predecessor. 45

(2) The assessee in such a case may be given, an opportunity of being heard if so requested, before passing any order in his case.

5 of 1908. 5 **134.** (1) The prescribed income-tax authorities and the Dispute Resolution Panel shall, for the purposes of this Code, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

Powers regarding discovery and production of evidence.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

10 (d) issuing commissions.

(2) For the purposes of making any inquiry or investigation, the prescribed income-tax authority shall be vested with the powers referred to in sub-section (1), whether or not any proceedings is pending before it.

15 (3) Any income-tax authority prescribed for the purposes of sub-section (1) or sub-section (2) may, subject to the rules made in this behalf, impound any books of account or other documents produced before it and retain them in its custody for such period as it thinks fit.

(4) Any income-tax authority below the rank of Joint Commissioner shall not,—

20 (a) impound any books of account or other documents without recording his reasons for so doing; or

(b) retain in his custody any such books or documents for a period exceeding thirty days without obtaining the approval of the Chief Commissioner or the Commissioner.

30 **135.** (1) The Competent Investigating Authority may authorise any Authorised Officer to carry out search and seizure, if he has, in consequence of information in his possession, reason to believe that —

Search and seizure.

43 of 1961. 27 of 1957. 35 (a) any person to whom a summons or a notice under sub-section (1) of section 131 or sub-section (1) of section 14 of the Income-tax Act, 1961 or under section 37 or sub-section (4) of section 16 of the Wealth-tax Act, 1957, as they stood before the commencement of this Code, or under sub-section (1) of section 134 or section 146 or section 150 of this Code, was issued, has omitted or failed to furnish the material as required by such summon or notice;

43 of 1961. 40 27 of 1957. (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any material which will be useful for, or relevant to, any proceeding under the Income-tax Act, 1961 or the Wealth-tax Act, 1957, as they stood before the commencement of this Code, or under this Code; or

43 of 1961. 45 (c) any person is in possession of any material which represents either wholly or partly the tax bases or property which has not been, or would not be, disclosed for the purposes of the Income-tax Act, 1961, as they stood before the commencement of this

or the Wealth-tax Act, 1957, as they stood before the commencement of this Code, or this Code (hereinafter in this section referred to as the undisclosed tax bases or property). 27 of 1957.

(2) The Authorised Officer shall, in pursuance to an authorisation issued under sub-section (1), carry out the search and seizure and, for this purpose, have all the powers to— 5

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that any material, referred to in sub-section (1), are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available; 10

(c) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the Authorised Officer has reason to suspect that such person has concealed on his person any material;

(d) require any person who is found to be in possession or control of any type of material, being books of account or other document, maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000, to afford the Authorised Officer the necessary facility to inspect such material; 15 21 of 2000.

(e) seize any such material, not being stock-in-trade, found as a result of such search; 20

(f) place marks of identification on any material, being books of account or other documents, or make or cause to be made extracts or copies therefrom;

(g) make a note or an inventory of any such material including stock-in-trade.

(3) A Competent Investigating Authority may exercise the powers of search and seizure conferred under sub-section (1), if he exercises jurisdiction over the person referred to in sub-section (1). 25

(4) The Competent Investigating Authority may also exercise the powers of search and seizure conferred under sub-section (1), if —

(a) the building, place, vessel, vehicle or aircraft, referred to in sub-section (2), is located within the area of his jurisdiction irrespective of the fact that he does not have jurisdiction over the person referred to in sub-section (1); and 30

(b) he has reason to believe that any delay in getting the authorisation from the Competent Investigating Authority having jurisdiction over such person may be prejudicial to the interests of the revenue.

(5) The Competent Investigating Authority may issue a consequential authorisation to any Authorised Officer to exercise the powers under sub-section (2) in respect of any building, place, vessel, vehicle or aircraft, if he, in consequence of information in his possession, has reason to suspect that any material in respect of which an authorisation under sub-section (1) has been issued by the same or any other Competent Investigating Authority are, or is, kept in any such building, place, vessel, vehicle or aircraft. 35 40

(6) The Authorised Officer may requisition the services of any police officer or of any officer of the Central Government, or of both, to assist him for all or any of the purposes specified in sub-section (2) and it shall be the duty of every such officer to comply with such requisition.

(7) The Authorised Officer may serve an order on the owner or the person, who is in immediate possession or control of any material, that he shall not remove, part with or otherwise deal with it except with his prior permission, where in the opinion of the Authorised Officer—

5 (a) it is not possible or practicable to take physical possession of such material, not being stock-in-trade, to a safe place due to its volume, weight or other physical characteristics (including its dangerous nature) and such action of the Authorised Officer shall be deemed to be seizure under clause (e) of sub-section (2); or

10 (b) it is not practicable to seize such material [for reasons other than those mentioned in clause (a)] and such action of the Authorised Officer shall not be deemed to be seizure under clause (e) of sub-section (2).

15 (8) The order under clause (b) of sub-section (7) shall remain in force for a period not exceeding two months from the end of the month in which the order was served and the Authorised Officer may take such steps as may be necessary for ensuring compliance with the order.

43 of 1961. (9) The Authorised Officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any material and any statement made by such person during such examination may thereafter be used in evidence 27 of 1957²⁰ before the commencement of this Code, or under this Code.

2 of 1974. (10) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, so far as may be, to search and seizure under this section.

(11) For the purposes of this section the Board may prescribe—

(a) the procedure to be followed by the Authorised Officer—

25 (i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available; and

(ii) for ensuring safe custody of any material seized; and

(b) any other matter in relation to search and seizure under this section.

30 **136.** (1) The Competent Investigating Authority may authorise any income-tax authority (hereinafter referred to as the “Requisitioning Officer”) to require any officer or authority to deliver the material, which have been taken into custody by such officer or authority under any other law for the time being in force, to the Requisitioning Officer.

Power to requisition material taken into custody.

35 (2) The authorisation for requisition under sub-section (1) shall be issued by the Competent Investigating Authority if he has, in consequence of information in his possession, reasons to believe that —

43 of 1961. (a) any person to whom a summons or a notice under sub-section (1) of section 131 or sub-section (1) of section 142 of the Income-tax Act, 1961 or under section 37 or 27 of 1957. sub-section (4) of section 16 of the Wealth-tax Act, 1957, as they stood before the commencement of this Code, or under sub-section (1) of section 134 or section 146 or 40 section 150 of this Code was issued, has omitted or failed to produce, or cause to be produced, such material; or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such material which

will be useful for, or relevant to, any proceeding under the Income-tax Act, 1961 or the Wealth-tax Act, 1957, as they stood before the commencement of this Code, or under this Code; or 43 of 1961.
27 of 1957.

(c) such material represents either wholly or partly tax base or property which has not been, or would not be, disclosed for the purposes of the Income-tax Act, 1961, or the Wealth-tax Act, 1957, as they stood before the commencement of this Code, or under this Code. 43 of 1961.
27 of 1957.

(3) The officer or authority referred to in sub-section (1) shall deliver the material to the Requisitioning Officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody. 10

(4) The provisions of sub-sections (1) to (11) of section 135 shall apply to this section.

Retention and release of books of account or documents seized or requisitioned.

137. (1) The Authorised Officer shall hand over the books of account or documents seized under section 135, within a period of sixty days from the date on which the last of the authorisations for search was executed, to the Assessing Officer, if the Authorised Officer has no jurisdiction over the person from whom the books of account or documents were seized. 15

(2) The Requisitioning Officer shall hand over the books of account or documents delivered under section 136, within a period of sixty days from the date on which books of account or documents were received, to the Assessing Officer, if the Requisitioning Officer has no jurisdiction over the person from whom the books of account or documents were taken into custody under any other law for the time being in force. 20

(3) The officers, referred to in sub-sections (1) and (2), shall, on an application made by the assessee, allow him to make copies of, or take extracts from, the books of account or documents seized or requisitioned.

(4) The Assessing Officers may retain the books of account or documents, seized or requisitioned, up to a period of thirty days from the date of limitation for completion of assessment, specified in section 163. 25

(5) The Assessing Officer may retain the books of account or documents seized beyond the period specified in sub-section (4) after obtaining the approval of the Chief Commissioner or the Commissioner. 30

(6) The Chief Commissioner, or the Commissioner, shall not allow the retention of the books of account or documents seized, beyond a period of thirty days from the date on which the proceedings under this Code, for which such books of account or documents are relevant, are completed.

(7) The officers, referred to in sub-sections (1) and (2), may, with the approval of the Chief Commissioner or the Commissioner, return any books of account or documents before completion of assessment or any other relevant proceedings, after retaining a copy or extract of such books of account or documents, if he is satisfied that the return of such books of account or documents shall not adversely affect the interest of revenue. 35

Delivery of material belonging to other persons.

138. The Assessing Officer, having jurisdiction over the person in whose case search and seizure was carried out under section 135, or requisition was made under section 136, shall hand over any material to the Assessing Officer having jurisdiction over another person, if he is satisfied that the material seized, or requisitioned, belongs to the other person. 40

Retention and application of seized or requisitioned assets.

139. (1) The Assessing Officer may recover the amount of any liability, referred to in sub-section (2),— 45

(a) out of the material, other than books of account or documents, (hereinafter

referred to as “assets”) seized under section 135 or requisitioned under section 136; or

(b) by any other mode laid down under this Code.

(2) The amount of any liability shall be the aggregate of —

43 of 1961. 5
27 of 1957.
18 of 1958.
45 of 1974.
35 of 1987. 10

(a) the amount of any liability existing under this Code, the Income-tax Act, 1961, or the Wealth-tax Act, 1957, as they stood before the commencement of this Code, the Gift-tax Act, 1958, the Interest-tax Act, 1974 and the Expenditure-tax Act, 1987, till the date of search under section 135 or requisition under section 136;

(b) the amount of any liability under this Code, or under any of the Acts referred to in clause (a), determined after the date of the search, or requisition, and till the date of completion of the assessment in consequence to the search or the requisition;

(c) the amount of any liability determined on completion of the assessment in consequence to the search or the requisition; and

15
(d) the amount of any liability under this Code, or under any of the Acts referred to in clause (a), determined after the completion of the assessment in consequence to the search, or the requisition, and till the date of release of the assets.

20
(3) The Assessing Officer may recover the existing liability referred to in clause (a) of sub-section (2) and release the remaining portion of the asset, if any, within a period of one hundred and twenty days from the date on which the last of the authorisations for search under section 135 was executed, to the person from whose custody the assets were seized, if —

(a) an application is made by the person within a period of thirty days from the end of the month in which the assets were seized;

(b) the nature and source of the assets is explained by the person to the satisfaction of the Assessing Officer; and

25
(c) the prior approval of the Chief Commissioner or the Commissioner is obtained.

(4) The assets, other than money, shall be deemed to be under distraint as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer and the recovery of any liability out of such assets shall be effected in the manner laid down in the Fifth Schedule.

30
(5) The Assessing Officer shall release, within the time and subject to such conditions, as may be prescribed, to the person from whose custody the assets were seized, any asset or proceeds thereof, which remains after the liabilities referred to in sub-section (2) are discharged.

35
(6) The Assessing Officer may with the prior approval of the Commissioner release any seized or requisitioned asset (other than cash) before making assessment in consequence of search or requisition, if the concerned person deposits with the Assessing Officer an amount of money equal to the value of such asset on the date of the release and the amount so deposited shall be deemed to be cash seized or requisitioned for the purposes of this Code.

40
(7) If the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in sub-section (2) and the assessee shall be discharged of such liability to the extent of the money so applied.

45
140. (1) For the purposes of this Code, the Board may, notwithstanding anything in any other law for the time being in force, require—

(a) any prescribed person to furnish such information within such time and in such form and manner as may be prescribed; and

Power to call for information.

(b) any prescribed income-tax authority to call for such information in such form and manner as may be prescribed.

(2) Any income-tax authority, not below the rank of an Income-tax Officer, may require any person to furnish any information as may be useful for, or relevant to any inquiry or proceeding, pending before him under this Code, in such form, manner and within such time as may be specified by him. 5

(3) In this section, the expression “person” shall include a banking company or any officer thereof.

Power of Survey.

141. (1) The prescribed income-tax authority may enter, or authorise any other income-tax authority to enter, any place at which a business is carried out by a person, if — 10

(a) he has reason to suspect that the person has not complied with the provisions of this Code; and

(b) the place is—

(i) within the limits of the area assigned to him; or

(ii) occupied by any person in respect of whom he exercises jurisdiction. 15

(2) The income-tax authority, referred to in sub-section (1), shall enter any place of business referred to therein only after sunrise and before sunset, or during the hours at which such place is open for the conduct of business.

(3) On entering the place, the income-tax authority may require any person, who may be attending in any manner to the business at the place, to — 20

(a) afford him to inspect the books of account or documents available at the place;

(b) afford him to check or verify the cash, stock or other valuable article or thing found there; and

(c) furnish any information relevant, or useful, for the proceedings under this Code, in respect of the person or any other person. 25

(4) For the purposes of this section, any place at which a business is carried out includes a place—

(a) which is not the principal place of such business;

(b) where any business or activity is being carried out and the tax bases relating to such business or activity is not to be included in the total tax bases under any provision of this Code; 30

(c) where any of the books of account, documents, cash, stock-in-trade or valuables, relating to the business of the person or the business or activity referred to in clause (b), are kept; or 35

(d) where any of the books of account, documents or other record containing the particulars regarding deduction of tax at source, or collection of tax at source, made, or required to be made, under this Code, are kept.

(5) On entering the place, the income-tax authority may —

(a) place marks of identification on the books of account, documents or record inspected by him and take extracts, or copies, therefrom; 40

(b) impound any books of account, documents or record inspected by him, after recording the reasons for doing so;

(c) make an inventory of cash, stock or valuables; or

(d) examine on oath any person if his statement would be useful for, or relevant to, any proceeding under this Code.

(6) The prescribed income-tax authority, for the purpose of verifying the expenditure made by the person in connection with any function, ceremony or event, after such function,
5 ceremony or event, may—

(a) require the person by whom such expenditure has been incurred or any other person who is likely to possess the information regarding such expenditure, to furnish such information which may be useful for, or relevant to, any proceeding under this Code; and

10 (b) record the statements of any other person in this behalf.

(7) The statement made by any person under clause (d) of sub-section (5) and clause (b) of sub-section (6) may be used in evidence in any proceeding under this Code.

(8) The income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered any cash, stock or other valuable
15 article or thing.

(9) The income-tax authority shall not retain any books of account, documents or records impounded by him under this section beyond a period of one month without the approval of the Commissioner.

(10) The income-tax authority, other than an Inspector, shall have all the powers under
20 sub-section (1) of section 134 for enforcing compliance, if a person refuses, or evades, to—

(a) afford the facility to the income-tax authority to inspect books of account or other documents;

(b) allow such authority to check or verify any cash, stock or other valuable article or thing;

25 (c) furnish any information; or

(d) have his statement recorded.

(11) In this section, the expression “proceeding”, as on the date on which powers under this section are exercised, shall mean all proceedings under this Code in respect of any year which –

30 (i) may have been completed on or before such date;

(ii) may be pending as on such date; or

(iii) may be commenced after such date.

142. (1) No information in respect of any assessee, except as provided in sub-section (2), shall be provided to any person by,—

35 (a) the Board;

(b) any income-tax authority or officer or ministerial staff; or

(c) any person, agency or authority engaged in any manner in the administration of this Code.

(2) The Board, or any person specified by it by an order in this behalf, may furnish, or
40 cause to be furnished, any information in respect of an assessee to any other person performing any functions under—

(a) any law relating to the imposition of any tax, duty or cess, or to dealings in foreign currency; or

(b) any other law as the Central Government may, if in its opinion it is necessary

Power to disclose information in respect of assessee.

so to do in the public interest, specify by notification in this behalf.

(3) The information referred to in sub-section (2) shall be only such information which fulfils the following conditions, namely:—

(a) the information is received or obtained by the Board, or any person specified by it by an order under that sub-section, in the performance of its or his functions under this Code; and 5

(b) the information is, in the opinion of the person furnishing the information, necessary for the purpose of enabling the other person receiving the information to perform the functions under the laws referred to in that sub-section.

(4) The Chief Commissioner or the Commissioner may furnish, or cause to be furnished, to any person any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Code, if— 10

(a) the person makes an application to the Chief Commissioner or the Commissioner in the prescribed form; and

(b) the Chief Commissioner or the Commissioner is satisfied that it is in the public interest so to do. 15

(5) The decision of the Chief Commissioner or the Commissioner under sub-section (4) shall not be called in question in any court of law.

(6) The Central Government may, notwithstanding anything in this section or under any other law for the time being in force, direct, by a notified order, that no information shall be furnished under sub-section (2) or sub-section (4) in respect of such matters relating to such class of assessee, or to such authorities, as may be specified in the order. 20

Proceedings before income-tax authorities to be judicial proceedings.

143. (1) Any proceeding under this Code before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 and for the purposes of section 196 of the Indian Penal Code. 25 45 of 1860.

(2) Every income-tax authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973. 2 of 1974.

B. — ASSESSMENT PROCEDURE

Self-reporting of tax bases

144. (1) Every person shall furnish a return of tax bases on or before the due date to the Assessing Officer or such other authority or agency as may be prescribed. 30

(2) The person referred to in sub-section (1) shall—

(a) in relation to income, be the following, namely:—

(i) an individual or Hindu undivided family or an artificial juridical person, if the gross total income from ordinary sources exceeds the threshold limit; 35

(ii) a company;

(iii) an unincorporated body;

(iv) a non-profit organisation;

(v) a co-operative society;

(vi) a society other than a co-operative society;

(vii) a local authority;

(viii) a political party;

5 (ix) any person who intends to carry forward the loss or any part thereof in accordance with the provisions of this Code;

(x) any person who derives any income from special sources and such income is chargeable to tax;

(xi) any other person liable to pay tax under this Code, and

(xii) any class or classes of persons as may be prescribed;

10 (b) in relation to dividend or income distributed, be the following, namely:—

(i) a company resident in India which distributes the dividend;

(ii) a mutual fund which distributes the income to the unit holders of equity oriented fund;

15 (iii) a life insurer who distributes the income to the policy holders of an approved equity oriented life insurance scheme;

(c) in relation to net wealth, be any person, other than a non-profit organisation, if the net wealth exceeds the maximum amount which is not chargeable to wealth-tax.

20 (3) The return of tax bases referred to in sub-section (1) shall be a return in respect of the tax bases of the person referred to in sub-section (2) or the tax bases of any other person in respect of which such person is assessable for the relevant financial year.

(4) The return of tax bases shall be furnished in such form, verified in such manner and setting forth such other particulars, as may be prescribed.

25 (5) A person may, if he discovers any omission or any wrong statement in the return of tax bases furnished by him under sub-section (1) or under section 146, revise such return at any time before the expiry of one year from the end of the financial year in which the return was due or before the completion of the assessment, whichever is earlier.

(6) A person may furnish the return for any financial year at any time before the expiry of one year from the end of the financial year in which the return was due or before the completion of the assessment, whichever is earlier, if—

30 (a) such person has not furnished a return by the due date; and

(b) no notice under sub-section (1) of section 146 has been served on him.

35 (7) The Assessing Officer may, if he finds that the return has not been furnished by any person in the prescribed form and manner or does not contain the particulars as required under sub-section (4), intimate to such person the deficiency and allow him an opportunity to remove the deficiency within a period of thirty days from the service of the intimation.

(8) The Assessing Officer shall treat the return filed by a person as invalid, if the deficiency referred to in sub-section (7) is not removed within the time allowed and the provisions of the Code shall apply as if the person had failed to furnish the return.

40 (9) The return of tax bases of a person specified in column (2) of the Table given below shall be signed and verified by a person specified in column (3) of the said Table:

TABLE

Serial number	Person furnishing the return or tax bases	Person required to sign and verify the return of tax bases	
(1)	(2)	(3)	
1.	Individual being mentally incapacitated from attending to his affairs	(a) guardian of the individual; or (b) any other person duly competent to act on his behalf.	5
2.	Any other individual	(a) individual himself; or (b) any person duly authorised by a valid power of attorney by the individual in this regard, if the individual is not in India or for some other reason it is not possible for him to sign the return.	10
3.	Hindu undivided family	(a) Karta of the family; or (b) any other adult member of the family if the Karta is not in India or is mentally incapacitated from attending to his affairs.	15
4.	Company not being resident in India	Any person who holds a valid power of attorney from the company to do so.	
5.	(a) Company which is being wound up by court or otherwise; or (b) Company where any person has been appointed as the receiver of any assets of the company	Liquidator referred to in clause (g) of sub-section (1) of section 164.	20
6.	Company whose management has been taken over by the Central Government or any State Government under any law	Principal officer of the company.	25
7.	Any other company	(a) Managing director of the company; or (b) any director of the company if there is no managing director or the managing director, for any unavoidable reason, is not able to sign and verify the return.	30
8.	Firm	(a) managing partner of the firm; or (b) any partner (not being a minor) of the firm if there is no managing partner or the managing partner, for any unavoidable reason, is not able to sign and verify the return.	35
9.	Limited liability partnership	(a) designated partner of the limited liability partnership; or (b) any partner (not being a minor) of the limited liability partnership if there is no	40

		designated partner or the designated partner, for any unavoidable reason, is not able to sign and verify the return.
10.	Local authority	Principal officer of the local authority
5 11.	Political party	Chief executive officer (whether such Chief executive officer is known as secretary or by any other designation) of the party.
12.	Any other association of persons	Any member or the principal officer of the association.
10 13.	Any other person	(a) person himself; or (b) any person competent to act on his behalf.

15 (10) Any person who is otherwise not required to furnish a return of tax bases under sub-section (1) may furnish such return before the expiry of one year from the end of the financial year to which it pertains and all the provisions of this Code shall, as far as may be, apply as if it is a return furnished under that sub-section.

20 **145.**(1) The Board may, without prejudice to the provisions of section 144, frame a tax return preparer Scheme so as to allow a tax return preparer to prepare and furnish the return of tax bases of any specified class of persons, in accordance with the Scheme. Tax return preparer.

(2) Every tax return preparer shall affix his signature on the return so prepared by him.

(3) The Scheme framed by the Board under this section may provide for the following, namely:—

- 25 (a) the eligibility criteria for a person to qualify as a tax return preparer;
- (b) the code of conduct for the tax return preparer;
- (c) the duties and obligations of the tax return preparer;
- (d) the period for which the tax return preparer shall be authorised;
- (e) the circumstances under which the authorisation given to a tax return preparer may be withdrawn; and
- 30 (f) any other matter which may be specified by the scheme for the purposes of this section.

(4) In this section—

- (a) “tax return preparer” means any individual who has been authorised to act as a Tax Return Preparer under the Scheme framed under this section;
- 35 (b) “tax return preparer scheme” means a scheme framed and notified by the Board and providing for preparing and furnishing of the return of tax bases through a Tax Return Preparer; and
- (c) “specified class of persons” means a class of persons who are required to furnish a return of tax bases under this Code, other than a company or a person whose accounts are required to be audited under section 88.
- 40

146. (1) The Assessing Officer may serve on a person in whose case the time allowed under sub-section (1) of section 144 has expired, a notice, within a period of twenty-one months from the end of the financial year in which the return was due, requiring such person to furnish a return of tax bases for the relevant financial year. Issue of notice to furnish return.

(2) The person in receipt of notice issued under sub-section (1) shall furnish the return within a period of fourteen days from the date of receipt of the notice and the return shall be furnished in such form, verified in the manner and setting forth such other particulars, as may be prescribed.

Self-assessment tax.

147. (1) The assessee shall be liable to pay before furnishing the return of tax bases, the aggregate of the following amounts as self-assessment tax, namely:— 5

(a) the amount of tax payable on the basis of the return required to be furnished under this Code for any financial year as reduced by—

(i) the amount of tax, if any, already paid under this Code;

(ii) any tax deducted or collected at source; 10

(iii) any relief of tax claimed under section 207; and

(iv) any tax credit under section 106; and

(b) the amount of interest payable under any provision of this Code for such financial year.

(2) The amount paid as self-assessment tax for any financial year shall first be adjusted towards the interest payable under any provision of this Code and the balance, if any, shall be adjusted towards the tax payable, if the amount of the self-assessment tax paid falls short of the self-assessment tax payable under sub-section (1). 15

(3) After an assessment under section 155 or section 156 has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such assessment. 20

(4) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences that he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid and all the provisions of this Code shall apply accordingly.

Acknowledgment of return.

148. On receipt of any return of tax bases for any financial year, the Assessing Officer, or any other person authorised by the Board in this behalf, shall issue an acknowledgement for receipt of the return. 25

Processing of return.

149. (1) The Assessing Officer, or any other person authorised by the Board in this behalf (hereinafter referred to as the processing authority) shall process the return received under section 144 or section 146 in the following manner, namely:— 30

(a) the tax bases shall be computed after making the following adjustments, namely:—

(i) any arithmetical error in the return; or

(ii) an incorrect claim, if such incorrect claim is apparent from the existence of any information in the return; 35

(b) the tax and interest, if any, shall be computed on the basis of the tax base computed under clause (a); and

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax and interest, if any, computed under clause (b) by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 207, any self-assessment tax paid and any other amount paid otherwise than by way of tax or interest. 40

(2) The processing authority shall send an intimation to the assessee specifying the sum determined to be payable by, or refundable to, him and such other particulars as may be prescribed.

5 (3) The processing authority shall also send an intimation to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax or interest is payable by, or refundable to, him.

10 (4) The processing authority shall not send any intimation in respect of any sum payable on account of any adjustment made under sub-section (1), if the return is processed after the expiry of a period of twelve months from the end of the financial year in which the return is furnished.

(5) The acknowledgement of the return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to, the assessee under clause (c) of sub-section (1), and where no adjustment has been made under clause (a) of sub-section (1).

15 (6) The Board may, for the purposes of sub-section (1), make a scheme for centralised processing of returns for expeditious determination of the tax payable by, or the refund due to, the assessee.

(7) For the purposes of this section, “an incorrect claim apparent from the existence of any information in the return” shall mean a claim, on the basis of an entry, in the return—

20 (i) of an item, which is inconsistent with another entry of the same, or some other item, in such return;

(ii) in respect of which information required to be supplied to substantiate such entry has not been so furnished; or

25 (iii) in respect of a deduction, where such deduction exceeds the specified statutory limit which may have been expressed as monetary amount, percentage, ratio or fraction.

150. (1) An Assessing Officer may make an assessment on receipt of return under section 144 or section 146, if he considers it necessary or expedient to ensure that the assessee has not understated his tax bases or computed excessive loss or allowance or underpaid the tax in any manner.

Notice for inquiry before assessment.

30 (2) For the purposes of making an assessment, the Assessing Officer shall serve on any assessee a notice requiring him, on a date to be specified therein—

(a) to attend his office or to produce, or cause to be produced, evidence, if any, on which the assessee may rely in support of the return;

35 (b) to produce, or cause to be produced, such accounts or documents (not relating to a period more than six years prior to the relevant financial year) as the Assessing Officer may require; or

(c) to furnish in writing, and verified in the prescribed manner, information in such form and on such matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require.

40 (3) The Assessing Officer shall obtain the prior approval of the Joint Commissioner before requiring the assessee to furnish the statement of all his assets and liabilities not included in the accounts for the relevant financial year.

45 (4) The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of tax bases of any person for the relevant financial year.

(5) No notice under sub-section (2) shall be served on the assessee after the expiry of a period of six months from the end of the financial year in which the return is furnished.

Special audit .

151. (1) The Assessing Officer may direct the assessee to get his accounts audited by an accountant, if, at any stage of the proceeding, he is of the opinion that, having regard to the nature and complexity of the accounts of the assessee and the interests of revenue, it is necessary to do so.

(2) The Assessing Officer shall not issue any direction under sub-section (1) unless the assessee has been given an opportunity of being heard and prior approval of the Chief Commissioner or Commissioner has been obtained. 5

(3) The provisions of sub-section (1) shall have effect irrespective of the fact that the accounts of the assessee have been audited under any other law for the time being in force or otherwise. 10

(4) The accountant shall, for the purposes of sub-section (1), be nominated by the Chief Commissioner or the Commissioner.

(5) The accountant shall furnish a report of the audit referred to in sub-section (1) in such form, duly signed and verified by him, and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require. 15

(6) The accountant shall furnish the report referred to in sub-section (5) within the time allowed by the Assessing Officer.

(7) The Assessing Officer may extend the time allowed under sub-section (6) by such further period or periods as he thinks fit, for reasons to be recorded in writing.

(8) The aggregate of the period allowed under sub-section (6) and the further period or periods allowed under sub-section (7) shall not exceed one hundred and eighty days from the date on which the direction under sub-section (1) is received by the assessee. 20

(9) The accountant shall furnish the report referred to in sub-section (5) to the Assessing Officer and a copy of the same to the assessee.

(10) The remuneration of the accountant and other expenses of any audit under sub-section (1) shall be determined and paid by the Chief Commissioner or the Commissioner in accordance with such rules as may be prescribed. 25

Determination of value of assets.

152. (1) The Assessing Officer may, for the purposes of assessment, require a Valuation Officer to make and report to him an estimate of the value, including fair market value, of any asset, property, investment or expenditure. 30

(2) On a reference made under sub-section (1), the valuation officer shall, for the purpose of estimating the value of the asset, property, investment or expenditure, and subject to the rules in this behalf, have all the powers to—

(a) enter any land, building or other place belonging to, or occupied by, the person in connection with whose assessment the reference has been made; 35

(b) require any person in charge of, or in occupation or possession of, the land, building or other place to afford him the necessary facility to survey or inspect the land, building or other place;

(c) inspect any asset or property in respect of which the reference has been made; 40

(d) inspect any books of account, documents or record which may be relevant for the purpose of making the estimate of the value of the asset, property, investment or expenditure, in respect of which the reference has been made;

(e) gather any other information relating to the asset, property, investment or expenditure, which may be relevant for the purposes of estimating the value. 45

(3) The valuation officer shall, by order in writing, estimate the value of the asset, property, investment or expenditure after taking into account—

(a) such evidence as the assessee may produce; and

5 (b) the material in his possession gathered after giving an opportunity of being heard to the assessee.

(4) The valuation officer may estimate the value of the asset, property, investment or expenditure to the best of his judgment, if the assessee does not co-operate or comply with his direction.

10 (5) The valuation officer shall furnish a copy of his estimate under sub-section (3) or sub-section (4), as the case may be, to the Assessing Officer and the assessee within a period of six months from the end of the month in which a reference is made under sub-section (1).

15 (6) The Assessing Officer may, on receipt of the report of the valuation officer, proceed to compute the tax bases of the assessee after taking into account the value estimated by the valuation officer.

153. (1) The Assessing Officer may, with the prior approval of the Commissioner, refer to the Transfer Pricing Officer, the computation of arm's length price under section 117 in relation to any international transaction entered into by the assessee in any financial year, if he considers it necessary or expedient to do so.

Determination of arm's length price.

20 (2) The Transfer Pricing Officer may, upon reference made to him under sub-section (1), serve on the assessee a notice requiring him, on a date to be specified therein—

(a) to attend his office or to produce, or cause to be produced, evidence, if any, on which the assessee may rely in support of the computation made by him of the arm's length price in relation to the international transaction; or

25 (b) to produce, or cause to be produced, such accounts or documents as the Transfer Pricing Officer may require.

(3) The Transfer Pricing Officer shall determine the arm's length price in relation to the international transaction in accordance with the provisions of section 117 after taking into account—

(a) such evidence as the assessee may produce; and

30 (b) the material in his possession gathered after giving an opportunity of being heard to the assessee.

(4) The Transfer Pricing Officer may determine the arm's length price in relation to the international transaction to the best of his judgment, if the assessee does not co-operate or comply with his direction.

35 (5) The Transfer Pricing Officer shall send a report of his determination under sub-section (3) or sub-section (4), as the case may be, to the Assessing Officer and the assessee.

(6) No determination under sub-section (3) or sub-section (4) shall be made, or report of such determination sent as required by sub-section (5), after a period of forty-two months from the end of the financial year in which the international transaction is entered into.

40 (7) The Transfer Pricing Officer may, for the purposes of determining the arm's length price under this section, exercise all, or any, of the powers specified in section 134 or section 140.

Determination
of an
impermissible
avoidance
agreement
and
consequences
thereof.

154. (1) The Commissioner shall, for the purposes of section 123, serve on the assessee a notice requiring him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars on which the assessee may rely in support of his claim that the provisions of section 123 are not applicable to him.

(2) After hearing the evidence and after taking into account such particulars as the assessee may produce, the Commissioner shall pass an order declaring an arrangement as being an impermissible avoidance agreement or otherwise for the purposes of section 123. 5

(3) Upon declaring an arrangement as an impermissible avoidance agreement, the Commissioner shall—

(a) issue directions to the Assessing Officer to make such adjustment to the total income, or the tax liability, of the assessee; and 10

(b) forward or cause to be forwarded a copy of such order—

(i) to the assessee; and

(ii) to the jurisdictional Commissioner of the other party to the arrangement, who shall then proceed under this section against such other party and the provisions of this section shall apply accordingly. 15

(4) No order under sub-section (2) shall be issued after a period of twelve months from the end of the month in which the notice under sub-section (1) is issued.

Assessment .

155. (1) The Assessing Officer shall, consequent to a notice issued under sub-section (2) of section 150, by an order in writing, make an assessment of the tax bases of the assessee after taking into account— 20

(a) the evidence furnished by the assessee;

(b) the report of audit under section 151, if any;

(c) the report of the valuation officer, if any;

(d) the order of the Transfer Pricing Officer, if any; 25

(e) the direction of the Commissioner under section 154, if any;

(f) the direction of the Joint Commissioner under section 157, if any; and

(g) the material in his possession, in respect of which an opportunity of being heard has been provided to the assessee.

(2) The Assessing Officer shall, on the basis of the assessment, determine the sum payable by, or refundable to, the assessee after adjusting the sum paid by, or refunded to, the assessee in pursuance to the intimation issued under sub-section (2) of section 149. 30

(3) Where an assessment has been made under this section—

(a) any tax or interest paid by the assessee under sub-section (1) of section 149 shall be deemed to have been paid towards such assessment; 35

(b) if no refund is due on assessment or the amount refundable under sub-section (1) of section 149 exceeds the amount refundable on assessment, the whole of the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Code shall apply accordingly.

(4) The Assessing Officer shall, notwithstanding anything in this Code, in the first instance, forward a draft of the proposed order of assessment (hereinafter in this section referred to as the draft order) to the eligible assessee if he proposes to make any variation in the income or loss returned which is prejudicial to the interests of such assessee. 40

(5) On receipt of the draft order, the eligible assessee may, within a period of thirty days of the receipt by him of the draft order,—

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variations to—

5 (i) the Dispute Resolution Panel; and

(ii) the Assessing Officer.

(6) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

10 (a) the eligible assessee intimates to the Assessing Officer the acceptance of the variations; or

(b) no objections are received within the period specified in sub-section (5).

(7) The Assessing Officer shall, notwithstanding anything in section 163, pass the assessment order within a period of one month from the end of the month in which-

(a) the acceptance is received; or

15 (b) the period of filing of objections under sub-section (5) expires.

(8) Upon receipt of the directions issued under sub-section (2) of section 158, the Assessing Officer shall, in conformity with the directions, complete the assessment within a period of one month from the end of the month in which the direction is received notwithstanding anything in section 163, without providing any further hearing in the matter.

20

(9) In this section, “eligible assessee” means—

(a) any person in whose case the variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) or sub-section (4) of section 153;

25 (b) any foreign company;

(c) any person in whose case the variation arises as a consequence of the directions of the Commissioner under sub-section (3) of section 154; or

(d) any class or classes of persons as may be prescribed.

30 **156.** (1) The Assessing Officer shall make the assessment of the tax basis to the best of his judgment, if—

Best
judgment
assessment.

(a) the assessee fails to—

(i) furnish the return required under sub-section (1) of section 144 or section 146 or has not furnished a return or under sub-section (6) of section 144;

35 (ii) comply with all the terms of a notice issued under sub-section (2) of section 150;

(iii) comply with a direction issued under section 151; or

(iv) furnish the return in response to notice under section 159; or

40 (b) the assessee fails to regularly follow the method of accounting provided in sub-section (1) of section 89, or the accounting standards notified under sub-section (2) of the that section; or

(c) he is not satisfied about the correctness or completeness of the accounts of the assessee.

(2) The Assessing Officer shall, in making the assessment under sub-section (1), take into account all relevant material which he has gathered or is available on record.

(3) The Assessing Officer shall, before making the assessment under sub-section (1), provide the assessee an opportunity of being heard by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, as to why the assessment should not be completed to the best of his judgment.

(4) It shall not be necessary to give an opportunity under sub-section (3) before the making of an assessment under this section, in a case where a notice under section 146 has been issued. 5

Directions by
Joint
Commissioner
for
assessment.

157. (1) A Joint Commissioner may, on a reference being made to him by the Assessing Officer or on an application of an assessee or on his own motion, call for and examine the record of any proceeding in which an assessment is pending and if he considers it necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer so as to enable him to complete the assessment. 10

(2) The Joint Commissioner shall not issue any direction which is prejudicial to the assessee unless an opportunity of being heard is given to him.

(3) Any direction issued under this section shall be binding on the Assessing Officer. 15

(4) For the purposes of this section, any direction as to the lines on which an investigation connected with the assessment should be made, shall not be considered as a direction prejudicial to the assessee.

Direction by
Dispute
Resolution
Panel for
assessment.

158. (1) The Dispute Resolution Panel may, in a case where any objection is received under sub-section (5) of section 155— 20

(a) call for and examine the record of any proceeding relating to the draft order;

(b) make such further inquiry, as it thinks fit; or

(c) cause any further inquiry to be made by any income-tax authority and report the result of the same to it.

(2) The Dispute Resolution Panel shall, in the case referred to in sub-section (1), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment. 25

(3) The Dispute Resolution Panel shall issue the direction referred to in sub-section (2), after considering—

(a) the draft order; 30

(b) the objections filed by the eligible assessee;

(c) the evidence furnished by the eligible assessee;

(d) the report, if any, of the Assessing Officer, valuation officer or Transfer Pricing Officer or any other authority;

(e) the records relating to the draft order; 35

(f) the evidence collected by, or caused to be collected by, it; and

(g) the result of any inquiry made by, or caused to be made by, it.

(4) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order.

(5) The Dispute Resolution Panel shall not set aside any proposed variation or issue any direction under sub-section (2) for further inquiry before passing of the assessment order. 40

(6) If the members of the Dispute Resolution Panel differ in opinion on any issue, then it shall be decided according to the opinion of the majority.

(7) The direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(8) No direction under sub-section (2) shall be issued unless an opportunity of being heard is given to the eligible assessee or the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the revenue, as the case may be. 5

(9) No direction under sub-section (2) shall be issued after a period of nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(10) The Board may make rules for the efficient functioning of the Dispute Resolution Panel and for the expeditious disposal of the objections filed under clause (b) of sub-section (5) of section 155 by the assessee. 10

(11) In this section, "eligible assessee" shall have the meaning as assigned to it in section 155.

Re-opening
of
assessment.

159. (1) The Assessing Officer shall, for reasons to be recorded in writing, reopen a case for reassessment, if he has reason to believe that any tax base chargeable to tax has escaped assessment for the relevant financial year. 15 43 of 1961.

(2) The Assessing Officer shall, for reopening a case, serve on the assessee a notice requiring him to furnish, within a period of thirty days, a return of tax bases for any financial year, in such form, verified in the manner and setting forth such other particulars as may be prescribed. 20

(3) The tax bases chargeable to tax shall be deemed to have escaped assessment in the following cases, namely:—

(a) where the tax base for the relevant financial year exceeds the maximum amount not liable to tax but- 25

(i) the return of tax bases has not been furnished;

(ii) no notice has been issued under section 146; and

(iii) the time limitation for issuing such notice has expired;

(b) where a return of tax bases has been furnished by the assessee, but-

(i) no assessment has been made; and 30

(ii) the assessee has understated the tax bases, or has claimed excessive loss, deduction, allowance or relief in the return;

(c) where an assessment has been made under section 155 or section 156, but—

(i) the tax bases liable to tax has been under-assessed;

(ii) the tax bases have been assessed at too low a rate; 35

(iii) the tax bases have been made the subject of relief to which the assessee is not entitled to under this Code;

(iv) excessive loss or capital allowance or any other allowance under this Code has been computed;

(v) the computation or assessment has not been made in accordance with any order, direction, instruction or circular issued by the Board; 40

(vi) the computation or assessment has not been made by the Assessing Officer in accordance with any order, direction, instruction or circular issued,

before making of the assessment, by an authority to whom the Assessing Officer is subordinate; or

5 (vii) any objection has been raised by the Comptroller and Auditor General of India to the effect that the assessment has not been made in accordance with the provisions of the Income-tax Act, 1961 or the Wealth-tax Act, 1957 as they stood before the commencement of this Code or this Code and such objection forms part of the report of the Comptroller and Auditor General of India laid before each House of Parliament; 43 of 1961.
27 of 1957.

10 (d) where search and seizure has been carried out under section 135, or material has been obtained in pursuance of a requisition under section 136, in the case of the person;

(e) where any material which has been seized, or obtained in pursuance of a requisition, has a bearing on the determination of the tax bases of a person other than the person referred to in clause (d).

15 (4) The notice under sub-section (2) shall be issued—

(a) for the seven financial years immediately preceding the financial year in which the search and seizure has been carried out or the material has been obtained; and

20 (b) within a period of seven financial years from the end of the relevant financial year in any other case.

(5) Notwithstanding anything in sub-section (4), the notice under sub-section (2) for any financial year may be issued at any time, if—

(a) the reassessment is to be made in consequence of, or to give effect to, any finding, or direction, contained in an order passed—

25 (i) by any authority or court in any proceeding under this Code by way of appeal, reference or revision; or

(ii) by a court in any proceeding under any other law for the time being in force; and

30 (b) the period referred to in sub-section (4) for issue of such notice had not expired at the time the order, which was the subject-matter of appeal, reference or revision was made.

(6) No notice under sub-section (2) shall be issued—

35 (a) in a case where an assessment has been made under section 155 or section 156 or under this section, by an Assessing Officer below the rank of Joint Commissioner—

(i) within a period of four years from the end of the relevant financial year, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issue of such notice;

40 (ii) after the expiry of a period of four years from the end of the relevant financial year, unless the Commissioner is so satisfied;

(b) in any other case, by an Assessing Officer below the rank of Joint Commissioner after the expiry of a period of four years from the end of the relevant financial year, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issue of such notice.

45 (7) The Commissioner or the Joint Commissioner, being satisfied on the reasons recorded by the Assessing Officer regarding fitness of a case for the issue of notice under this section, is not required to issue such notice himself.

(8) Any assessment proceeding relating to any financial year falling within the period of seven financial years referred to in sub-section (4) shall abate if it is pending on the date of the initiation of the search, or on the date of obtaining the material, as the case may be.

5 (9) The provisions of this section shall also apply in the case of any other person, referred to in clause (e) of sub-section (3), as if a search and seizure has been carried out under section 135 in his case, if any material which has a bearing on the determination of the tax bases of such other person, has been—

(a) seized in the course of search and seizure under section 135 in the case of the person referred to in clause (d) of sub-section (3); or

10 (b) obtained in pursuance of the requisition under section 136 in the case of the person referred to in clause (d) of sub-section (3).

(10) On receipt of a return in pursuance of a notice under sub-section (2), or after the expiry of time prescribed for furnishing the return in pursuance of such notice, the Assessing Officer shall, by an order in writing, make the reassessment of the total income and the provisions of sections 150 to 158 both inclusive shall apply accordingly.

(11) In any reassessment made under this section, the tax shall be chargeable at the rate or rates at which it would have been charged had the tax bases not escaped assessment.

20 (12) The proceedings under this section, excluding the proceedings initiated in consequence of the condition specified in clauses (d) and (e) of sub-section (3) shall be dropped, if—

(a) the assessee has not impugned any part of the original assessment order for the relevant financial year under sections 178 and 192;

25 (b) he establishes that he had been assessed on an amount not lower than what he would be rightly liable for, even if the tax base alleged to have escaped assessment had been taken into account; and

(c) the original assessment order has not been revised under section 161 or section 191.

(13) For the purposes of this section,—

30 (a) date of initiation of search, or the date of obtaining the material under sub-sections (8) and (9) shall be construed as a reference to the date of receiving the material by the Assessing Officer having jurisdiction over such other person;

35 (b) reassessment shall include any other part of the tax bases chargeable to tax which has escaped assessment and which comes to the notice of the Assessing Officer subsequently in the course of reassessment proceedings, notwithstanding that the reasons recorded for reopening under sub-section (1) do not refer to such part of tax bases; and

(c) reopening a case for reassessment shall include opening a case for assessment where return for a tax bases has not been furnished before the issue of notice under sub-section (2).

40 **160.** No order of assessment or reassessment shall be passed by an Assessing Officer without the approval of the Joint Commissioner in a case where—

Approval for search assessment.

(a) search and seizure has been carried out under section 135, or material has been obtained in pursuance of a requisition under section 136, in the case of the person;

45 (b) any material which has been seized, or obtained in pursuance of a requisition, has a bearing on the determination of the tax bases of a person other than the person referred to in clause (a).

Rectification
of mistake.

161. (1) An income-tax authority may amend any order passed, or intimation issued by it under this Code so as to rectify any mistake apparent on the face of the record.

(2) No amendment under this section shall be made after a period of four years from the end of the financial year in which the order sought to be amended was passed.

(3) The income-tax authority shall not make any amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, unless the authority concerned has given to the assessee an opportunity of being heard. 5

(4) The income-tax authority concerned may make an amendment—

(a) on its own motion; or 10

(b) on the application made to it by the assessee or, as the case may be, by the Assessing Officer.

(5) Any application received by an authority for amendment of an order shall be decided within a period of six months from the end of the month in which such application is received by it. 15

(6) In a case where the order has been decided in an appeal or revision, the power of the authority to amend the order, or intimation, shall be restricted to matters other than those decided in appeal or revision.

Notice of
demand.

162. (1) Any sum payable in consequence of any order made, or intimation issued, under this Code shall be demanded by an income-tax authority by serving upon the assessee a notice of demand in such form and manner as may be prescribed. 20

(2) The intimation issued under sub-section (2) of section 149 shall be deemed to be the notice of demand for the purposes of this section.

Time limits
for
completion of
assessment or
re-
assessments.

163. (1) The Assessing Officer shall not make,—

(a) any order of assessment under section 155 or section 156 after the expiry of a period of twenty-one months from the end of the financial year in which the return was due; 25

(b) any order of reassessment under section 159 after the expiry of a period of twenty-one months from the end of the financial year—

(i) in which the last of the authorisations was executed in the case of a person where search and seizure was carried out under section 135 or the material was obtained in pursuance to a requisition under section 136; 30

(ii) in which any material belonging to the person referred to in section 138 is handed over to the Assessing Officer having jurisdiction over such person; 35

(iii) in which the notice under section 159 is served, in any other case;

(c) any order of assessment in pursuance of an order under section 185 or section 187 or section 190 or section 262, setting aside or cancelling an assessment, as the case may be, after the expiry of a period of one year from the end of the financial year in which the order is received by the Commissioner; 40

(d) any order of assessment in pursuance of an order under section 191 or section 192, after the expiry of a period of one year from the end of the financial year in which the order is passed under that section;

(e) any order of assessment, reassessment or recomputation in pursuance of the revival of any proceeding under this Code, after the expiry of a period of one year from the end of the financial year in which the order of revival of the proceedings is received by the Commissioner. 45

(2) Notwithstanding anything a reference has been made to the Transfer Prices Officer under section 153 in sub-section (1), the Assessing Officer shall, in a case where not make an order of assessment or reassessment for such financial year after the expiry of a period of thirty-three months from the end of the financial year in which the return was due, or notice under section 159 is served, whichever is later.

(3) The provisions of sub-sections (1) and (2) shall not apply in respect of assessment, re-assessment or recomputation to be made in consequence of, or to give effect to, any finding or direction contained in any order—

(a) under section, 180, 185, 187, 190, 191, 192 or 262; or

(b) of any court in a proceeding otherwise than by way of appeal or reference under this Code.

(4) In computing the period of limitation for the purposes of sub-sections (1) and (2), the following period or time shall not be included, namely:—

(a) the period commencing from the date on which the application for Advance Pricing Agreement is filed by the assessee and ending with—

(i) the date on which the order rejecting the application is received by the Commissioner; or

(ii) the date on which the copy of the Advance Pricing Agreement, entered under section 118, is received by the Commissioner;

(b) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under section 133;

(c) the period during which the assessment proceeding is stayed by an order or injunction of any court;

(d) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited under section 151 and ending with the last date on which the report of such audit is required to be furnished under that section;

(e) the period commencing from the first day of the month in which the notice under section 154 is served on the assessee and ending with the last day of the month in which the order under that section is passed;

(f) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of section 258 and ending with the date on which the order rejecting the application, or the date on which the advance ruling pronounced by it, is received by the Commissioner under sub-section (9) or, as the case may be, sub-section (13) of that section;

(g) the period commencing from the date on which an application is made before the Income tax Settlement Commission under sub-section (1) of section 273 and ending with the date on which the order rejecting the application by it under sub-section (1) of section 275 is received by the Commissioner.

(5) The period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, shall be extended to sixty days, if the period immediately after the exclusion of the time or period specified in sub-section (4) is less than sixty days.

C. — PROCEDURE FOR ASSESSMENT IN SPECIAL CASES

164. (1) For the purposes of this Code, “representative assessee” in respect of an assessee means—

Representative assessee.

(a) the agent of a non-resident, if the assessee is a non-resident;

(b) the guardian, or manager, of a minor, lunatic or idiot, if the assessee is a minor, lunatic or idiot;

(c) the Court of Wards, the Administrator-General, the Official Trustee, any receiver or manager (including any person, whatever be his designation, who manages property on behalf of the assessee) appointed by, or under, any order of a court, if such person receives, or is entitled to receive, income on behalf, or for the benefit, of the assessee; 5

(d) a trustee appointed under an oral trust, or a trust declared by a duly executed instrument in writing whether testamentary or otherwise and who receives or is entitled to receive, income on behalf, or for the benefit, of any person, if the assessee is a trust; 10

(e) the legal representative, or the executor, if the assessee dies;

(f) a participant, or the legal representative of the deceased participant, in the case of dissolution of an unincorporated body; and

(g) the liquidator appointed under section 448, or section 490, of the Companies Act, 1956 in the case of a company. 15

(2) The “agent” in relation to a non-resident includes—

(a) any person in India—

(i) who is employed by, or on behalf of, the non-resident;

(ii) who has any business connection with the non-resident;

(iii) from, or through, whom the non-resident is in receipt of any income, whether directly or indirectly; or 20

(iv) who is the trustee of the non-resident; and

(b) any other person who has acquired, by means of transfer, a capital asset in India from the non-resident.

(3) A broker in India who, in respect of any transaction, does not deal directly with, or on behalf of, a non-resident principal but deals with, or through, a non-resident broker shall not be deemed to be an agent under this section in respect of such transaction, if the following conditions are fulfilled, namely:— 25

(a) the transactions are carried on in the ordinary course of business through the first mentioned broker; and 30

(b) the non-resident broker is carrying on such transactions in the ordinary course of his business and not as a principal.

(4) The “executor” in relation to the estate of a deceased person means—

(i) an individual, if such individual is the only executor; or

(ii) an association of persons comprising all the executors, if there are more than one executor, 35

and includes an administrator or other person administering such estate.

(5) No person shall be treated as an agent of a non-resident unless he has had an opportunity of being heard by the Assessing Officer as to his liability to be treated as such.

Rights and obligations of a representative assessee.

165. (1) Every representative assessee shall, in his representative capacity, be liable to assessment only in respect of the tax bases of the person represented by him (hereinafter in this Sub-chapter referred to as the principal). 40

(2) Subject to sub-section (3), every representative assessee shall be subject to the same duties, responsibilities and liabilities as if the tax bases accrued to, or received or owned by, him. 45

(3) The tax on tax bases of the representative assessee shall be levied upon, and recovered from, him in the manner, and to the extent, as it would have been leviable upon, and recoverable from, the principal.

5 (4) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain a sum equal to his estimated liability under this Sub-chapter out of the money payable by him to the principal on whose behalf he is liable to pay tax.

10 (5) The representative assessee, or the person referred to in sub-section (4), in the event of disagreement between him and the principal as to the amount to be so retained, may apply to the Assessing Officer for a certificate stating the amount to be so retained pending final settlement of the liability.

15 (6) Upon receipt of the application under sub-section (5), the Assessing Officer shall issue, within a period of one month from the date of receipt of the application, the certificate stating the amount to be retained by the representative assessee or the person.

(7) The certificate issued under sub-section (6) shall be the warrant for retaining the amount specified therein by the representative assessee or the person.

20 (8) The amount recoverable from the representative assessee, or the person referred to in sub-section (4), at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which the representative assessee, or the person, may have additional assets of the principal at that time.

(9) Every representative assessee who, as such, pays any sum under this Code, shall be entitled to—

(a) recover the sum so paid from the principal; or

25 (b) retain an amount equal to the sum so paid out of any moneys that may be in his possession, or may come to him, in his representative capacity.

(10) In the case of a representative assessee referred to in clause (e), (f) or clause (g) of sub-section (1) of section 164—

30 (a) any proceeding taken against the principal before his death or its dissolution or the appointment of the liquidator, shall be deemed to have been taken against the representative assessee and may be continued against him from the stage at which it stood on the date of the death or dissolution or the appointment; and

35 (b) any proceeding which could have been taken against the principal if the principal had survived or existed or the liquidator had not been appointed, may be taken against the representative assessee.

166. Nothing in this Sub-chapter shall prevent —

(a) the direct assessment of the principal; or

(b) the recovery of any sum payable under this Code from the principal.

Direct assessment or recovery not barred.

40 **167.** The Assessing Officer shall have the same remedy against all property of any kind vested in, or under the control or management of, any representative assessee as he would have against the property of the principal, in as full and ample a manner, whether the demand is raised against the representative assessee or against the principal direct.

Remedy against property in case of representative assessee.

Assessment
upon business
reorganisation.

168. (1) The assessment of the predecessor and the successor in a business reorganisation shall, in respect of the financial year in which the business reorganisation is undertaken, be made in the manner provided in this section.

(2) The predecessor shall be assessed in respect of the income for the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation. 5

(3) The successor shall be assessed in respect of the income for the period beginning with the date of business reorganisation and ending on the last day of the financial year.

(4) Any proceeding under this Code taken against the predecessor shall be deemed to have been taken against the successor and may be continued against the successor from the stage at which it stood on the date of the business reorganisation, if the predecessor does not exist or cannot be found. 10

(5) Any proceeding under this Code may be taken against the successor, which could have been taken against the predecessor if he existed or was found.

Assessment
after partition
of a Hindu
undivided
family.

169. (1) A Hindu undivided family, hitherto assessed as undivided, shall be deemed, for the purposes of this Code, to continue to be a Hindu undivided family, except where, and in so far as, a finding of partition has been given under this section in respect of the Hindu undivided family. 15

(2) The Assessing Officer shall—

(a) make an inquiry into the claim of partition made by, or on behalf of, any member of a Hindu undivided family, hitherto assessed as undivided, at the time of making the assessment; 20

(b) give notice of the inquiry to all members of the family; and

(c) record a finding as to whether there has been a total, or partial, partition of the joint family property and, if there has been such a partition, the date on which it has taken place. 25

(3) The tax bases of the Hindu undivided family, hitherto assessed as undivided, shall, for the financial year in which the partition took place, be the tax bases in respect of the period up to the date of partition, as if no partition had taken place.

(4) Each member, or group of members, of the Hindu undivided family, hitherto assessed as undivided, shall be jointly and severally liable for tax on the tax bases of any financial year or period, up to the date of partition, and such tax shall be recovered from him, or them, accordingly. 30

(5) For the purposes of this section, the several liability of any member, or group of members, shall be computed according to the portion of the joint family property allotted to him, or to them, upon the partition. 35

(6) The provisions of this section shall, so far as may be, apply in relation to the levy and collection of any penalty, interest, fine or other sum in respect of any period upto the date of the partition, whether total or partial, of a Hindu undivided family as they apply in relation to the levy and collection of tax in respect of any such period. 40

(7) For the purposes of this Code, no claim of partial partition of a Hindu undivided family shall be inquired into, or recognised as such.

(8) In case of a partial partition of a Hindu undivided family—

(a) the Hindu undivided family shall continue to be assessed under this Code as if no partial partition had taken place; and

(b) the liability of that Hindu undivided family or its members under this Code, before or after the partial partition, shall remain the same.

5 (9) In this section—

(a) “partition” means—

(i) where the property admits of a physical division, such division of the property, but a physical division of the income without a physical division of a property producing the income shall not be deemed to be a partition; or

10 (ii) where the property does not admit of a physical division, then such division as the property admits of, but a mere severance of status shall not be deemed to be a partition;

15 (b) “partial partition” means a partition which is partial as regards the persons constituting the Hindu undivided family, or the properties belonging to the Hindu undivided family, or both.

170. (1) Notwithstanding anything in this Code, the assessment of the income of a non-resident from the business of operation of ships (including an arrangement such as slot charter, space charter or joint charter) shall be made in accordance with the provisions of this section.

Assessment of non-resident in respect of occasional shipping business.

20 (2) The master of a ship belonging to, or chartered by, a non-resident shall, before the departure of the ship, furnish to the Assessing Officer a return of the full amount of transportation charges accrued to, or received by, the owner or charterer, since the last arrival of the ship in that port.

(3) The requirement of furnishing the return shall be deemed to have been complied with, if—

(a) the Assessing Officer is satisfied that—

25 (i) it is not possible for the master of the ship to furnish the return before the departure of the ship from the port; and

(ii) the master of the ship has made satisfactory arrangements for furnishing the return and payment of tax; and

(b) the return is furnished within a period of thirty days of the departure of the ship by any person authorised by the master of the ship.

30 (4) On receipt of the return, the Assessing Officer shall—

(a) assess the income referred to in sub-section (1) in accordance with serial number 7 of the Table under Paragraph 1 of the Fourteenth Schedule, after calling for such documents as he deems fit; and

35 (b) determine the sum payable as tax thereon at the rates applicable to the total income of a foreign company.

(5) The sum determined under sub-section (4) shall be payable by the master of the ship or any other person authorised by him.

40 (6) A port clearance shall not be granted to the ship until the Commissioner of Customs, or other officer duly authorised to grant it, is satisfied that the tax assessable under this section has been duly paid or that satisfactory arrangements have been made for the payment.

(7) Nothing in this section shall prevent the assessment of the income, referred to in sub-section (1), for the relevant financial year of the owner, or charterer, of the ship in accordance with the other provisions of this Code, at his option.

(8) Any payment of tax made under this section shall be treated as advance tax, in case an assessment is made as envisaged in sub-section (7). 5

Assessment of persons leaving India.

171. (1) The tax bases of an individual for part of a financial year may be chargeable to tax in that financial year, if—

(a) it appears to the Assessing Officer that the individual may leave India during the financial year or shortly after its expiry; and

(b) has no intention of returning to India. 10

(2) The part of a financial year, referred to in sub-section (1) shall be the period beginning with the first day of the financial year and ending with the probable date of his departure from India.

(3) The Assessing Officer may estimate the tax bases of the individual for part of a financial year if it cannot be readily determined in accordance with this Code. 15

(4) For the purposes of making an assessment under sub-section (1), the Assessing Officer may require the individual to furnish the return of tax bases within the time specified therein, which shall not be less than seven days.

(5) Notwithstanding anything in this Code, the Assessing Officer may, require the individual to furnish the return of tax bases, within the time specified therein, which shall not be less than seven days— 20

(a) for the financial year for which the due date for filing of return has not expired; and

(b) for such other financial years for which no return of tax bases has been filed which was otherwise required to be filed. 25

(6) The Assessing Officer shall, upon receipt of the return, or after the expiry of the time allowed for furnishing the return under sub-section (4) or sub-section (5), proceed to make the assessment in accordance with the provisions of this Code in so far as they apply.

(7) The tax payable on the tax bases computed under this section shall be in addition to the tax, if any, payable under any other provision of this Code. 30

Assessment of an unincorporated body formed for a particular event or purpose.

172. (1) Notwithstanding anything in this Code, where it appears to the Assessing Officer that an unincorporated body formed for a particular event or purpose in a financial year is likely to be dissolved in the financial year or shortly thereafter, then the Assessing Officer may charge to tax in that financial year the tax bases of the unincorporated body for the period beginning from the first day of the financial year to the likely date of its dissolution. 35

(2) The provisions of section 171 shall apply to any proceeding under this section as they apply in the case of a person leaving India.

Assessment of persons likely to transfer property to avoid tax.

173. (1) Notwithstanding anything in this Code, where it appears to the Assessing Officer that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets, in any financial year, with a view to avoiding payment of any liability under this Code, then the Assessing Officer may charge to tax in that financial year the tax bases of such person for the period beginning from the first day of the financial year to the date when the Assessing Officer commences proceedings under this section. 40

(2) The provisions of section 171 shall apply to any proceeding under this section as they apply in the case of a person leaving India.

5 **174.** (1) Notwithstanding anything in this Code, where any business is discontinued in any financial year, the Assessing Officer may, in his discretion, charge to tax in that financial year the tax bases of such business for the period beginning from the first day of the financial year to the date on which the business has been discontinued.

Discontinued
business.

(2) Any person discontinuing any business shall give to the Assessing Officer notice of such discontinuance within a period of fifteen days thereof.

10 (3) Any sum received after the discontinuance of business shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, if such sum would have been included in the tax bases of the person who carried on the business had such sum been received before such discontinuance.

15 (4) The Assessing Officer may require the person whose business has been discontinued to furnish the return of tax bases, within the time specified therein, which shall not be less than a period of seven days.

(5) The notice for furnishing the return shall be served by the Assessing Officer, in the case of discontinuance of the business of—

(a) the individual, on him;

20 (b) the unincorporated body, on the participant who was member of the unincorporated body at the time of discontinuance; and

(c) the company, on the principal officer thereof.

(6) The Assessing Officer shall, upon receipt of the return, or after the expiry of the time allowed for furnishing the return under sub-section (4) proceed to make the assessment in accordance with the provisions of this Code in so far as they apply.

25 (7) The tax payable on the tax bases computed under this section shall be in addition to the tax, if any, payable under any other provision of this Code.

175. (1) The Assessing Officer shall, in a case where a change has occurred in the constitution of an unincorporated body, make a single assessment in respect of the entire financial year in which the change has occurred.

Assessment
of
unincorporated
body in case
of change in
its
constitution.

30 (2) In this section, a change in the constitution of an unincorporated body is said to have taken place, if—

(a) one, or more, of the participants cease to be participants;

(b) one, or more, new participants are admitted; or

(c) all the participants continue with a change in their respective shares or in the shares of some of them.

35 (3) The provisions of this section shall not apply, if the change in constitution is on account of the death of a participant or the retirement of all the participants.

Assessment on retirement or death of participant.

176. (1) The Assessing Officer shall make separate assessments on any two unincorporated bodies, if—

(a) one unincorporated body succeeds another unincorporated body; and

(b) the succession is by virtue of retirement of all participants in the unincorporated body or death of any of the participants.

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(2) The separate assessments shall be made in accordance with the provisions of section 168 as if—

(a) the unincorporated body, succeeding the other unincorporated body, is the successor; and

(b) the unincorporated body being succeeded is the predecessor.

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Assessment of a deductor or collector.

177. (1) The Assessing Officer shall assess every return filed under section 198, section 199 or section 202, as if it were a return of tax bases referred to in section 144, and all the other provisions of this Code shall, as far as may be, apply accordingly.

(2) The Assessing Officer shall, in a case where a person has failed to file the return under section 198 or section 199 or section 202, issue a notice to the person requiring him to furnish the return within the time specified therein and all the other provisions of this Code shall, as far as may be, apply as if it were a return of tax bases referred to in section 144.

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D.—APPEALS AND REVISION

Appeal to Commissioner (Appeals).

178. (1) An assessee may prefer an appeal to the Commissioner (Appeals) where he is aggrieved by or an intimation issued or an order passed by any income-tax authority below the rank of the Commissioner as specified in the Twenty-First Schedule.

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(2) Without prejudice to sub-section (1), the assessee may prefer an appeal—

(i) where an application filed by him under section 161 has not been disposed of by the Assessing Officer within a period of six months from the date of filing of the application; or

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(ii) where he is required to bear the liability in respect of the tax deductible under section 195 on the income payable to a non-resident under any agreement or other arrangement and—

(a) he claims that no tax was deductible by him on such income payable by him to the non-resident; and

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(b) has paid the tax on such income to the credit of the Central Government.

Form of appeal and limitation.

179. (1) Every appeal under section 178 shall be in such form and verified in such manner and accompanied by a fee as may be prescribed.

(2) The appeal by an assessee under section 178 shall be preferred within a period of thirty days from—

(a) the date of service of the notice of demand, if the appeal relates to any order or intimation in pursuance of which such notice of demand is issued;

5 (b) the date on which the period of six months for disposing of the application expired, if the appeal relates to not disposing of the application for rectification under section 161;

(c) the date of payment of the tax to the Central Government, if the appeal is filed under clause (ii) of sub-section (2) of section 178; and

10 (d) the date on which the order sought to be appealed against is served, if the appeal relates to any other matter.

(3) The Commissioner (Appeals) may admit an appeal after the expiry of the period specified in sub-section (2), if—

15 (a) he is satisfied that the appellant had sufficient cause for not preferring it within that time; and

(b) the delay in preferring the appeal does not exceed a period of one year.

(4) No appeal under this section shall be admitted unless—

(a) the assessee has paid the tax due in accordance with the return of tax bases furnished;

20 (b) the assessee has paid an amount equal to the amount of advance-tax which was payable by him, if no return of tax bases has been filed by the assessee.

(5) The Commissioner (Appeals) may, on an application made by the assessee, exempt him from the operation of the provisions of clause (b) of sub-section (4) for any good and sufficient reason to be recorded in writing.

25 **180.** (1) The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and the Assessing Officer against whose order the appeal is preferred.

Procedure in appeal.

(2) The following shall have the right to be heard at the hearing of the appeal, namely:—

(a) the appellant, either in person or by an authorised representative;

30 (b) the Assessing Officer, either in person or by a representative.

(3) The Commissioner (Appeals) may adjourn the hearing of the appeal whenever he considers it necessary or expedient to do so.

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit.

35 (5) The Commissioner (Appeals) may, during the proceedings before him, direct the Assessing Officer to make inquiry and report the result of the same to him on the points arising out of any new question of fact or law.

(6) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission was not wilful or unreasonable.

40 (7) The order of the Commissioner (Appeals), disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons therefor.

(8) Every appeal preferred under section 178 shall be heard and disposed of by the Commissioner (Appeals) as expeditiously as possible and endeavour shall be made to dispose of such appeal within a period of one year from the end of the financial year in which the appeal is preferred.

(9) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Chief Commissioner or the Commissioner. 5

Powers of
Commissioner
(Appeals).

181.(1) In disposing of an appeal, the Commissioner (Appeals), shall have the following powers, namely:—

(a) in an appeal against an order of assessment he may confirm, reduce, enhance or annul the assessment; 10

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as to enhance or reduce the penalty;

(c) in any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit. 15

(2) The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

(3) The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had an opportunity of showing cause against such enhancement or reduction. 20

(4) In disposing of an appeal, the Commissioner (Appeals), may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him by the appellant.

Appellate
Tribunal.

182.(1) The Central Government shall constitute an Appellate Tribunal consisting of a President and as many judicial and accountant members, as it thinks fit, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Code. 25

(2) A judicial member shall be a person—

(i) who has for at least ten years held a judicial office in the territory of India;

(ii) who has been a member of the Indian Legal Service and has held a post in Grade I of that Service, or any equivalent or higher post, for at least three years; or 30

(iii) who has for at least ten years been an advocate of a High Court or of two or more such courts in succession.

(3) An accountant member shall be a person—

(a) who has for at least fifteen years been in the practice of accountancy as a chartered accountant under the Chartered Accountants Act, 1949; or 35 38 of 1949.

(b) who has been a member of the Indian Revenue Service and has held the post of Additional Commissioner of Income-tax or any equivalent or higher post for at least three years.

(4) The Central Government may appoint one or more judicial or accountant members of the Appellate Tribunal to be Vice-President or, as the case may be, Vice-Presidents thereof. 40

(5) The Central Government may appoint one of the Vice-Presidents of the Appellate Tribunal to be the Senior Vice-President thereof.

(6) The Central Government may appoint a person who is, or has been, a Chief Justice of a High Court to be the President of the Appellate Tribunal.

(7) The Senior Vice-President or a Vice-President shall exercise such of the powers and 45

perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

(8) For the purpose of sub-section (2),—

5 (a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

10 (b) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which the person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(9) In this Sub-chapter, “judicial member” means a judicial member referred to in sub-section (2) and includes the President.

15 **183.** (1) An assessee may prefer an appeal to the Appellate Tribunal, where he is aggrieved by an order passed by—

Appeals to
Appellate
Tribunal.

(a) a Commissioner (Appeals) under section 180;

(b) a Commissioner under section 98 and section 191;

20 (c) a Commissioner or Commissioner (Appeals) in respect of levy of penalty under Chapter XIV relating to Penalties;

(d) an Assessing Officer in consequence of an order of the Commissioner under section 191;

(e) an Assessing Officer in pursuance of the directions of the Dispute Resolution Panel; and

25 (f) the income-tax authorities referred to in clauses (a) to (e) above, under section 161, in respect of the orders mentioned in the said clauses.

(2) The Commissioner may, if he is not satisfied with the order passed by the Commissioner (Appeals), direct the Assessing Officer to prefer an appeal to the Appellate Tribunal against such order.

30 (3) Notwithstanding anything in sub-sections (1) and (2), no appeal shall lie to the Appellate Tribunal against the order of the Commissioner (Appeals) or the Commissioner, as the case may be, in the case of a public sector company, irrespective of the fact whether the order is prejudicial to the company or the revenue, which shall lie to the Authority as referred to in section 257.

35 (4) Every appeal under sub-section (1), or sub-section (2), shall be preferred within a period of sixty days from the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

35 (5) The Assessing Officer or the assessee may, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party, file a memorandum of cross-objection against any part of the order of the Commissioner (Appeals) within a period of thirty days of the receipt of the notice.

(6) The memorandum of cross-objection shall be disposed of by the Appellate Tribunal as if it were an appeal preferred within the time specified in sub-section (4).

(7) The Appellate Tribunal may admit an appeal, or a memorandum of cross-objection, after the expiry of the period specified in sub-section (4) or sub-section (5), if—

(a) it is satisfied that the appellant had sufficient cause for not preferring it within that time; and

(b) the delay in filing the appeal does not exceed a period of one year. 5

(8) An appeal, or the memorandum of cross-objection, to the Appellate Tribunal shall be in such form and be verified in such manner as may be prescribed.

(9) The appeal by an assessee shall be accompanied by such fees as may be prescribed.

Stay of
demand by
Appellate
Tribunal.

184. (1) An assessee may make an application to the Appellate Tribunal for stay of demand relating to the appeal preferred by him under section 183 and such application shall be accompanied by such fees as may be prescribed. 10

(2) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard and having considered the merits of the case, pass such orders on the stay application as it deems fit.

(3) The Appellate Tribunal may grant stay under sub-section (2) for a period not exceeding one hundred and eighty days from the date of passing of the order for stay and the Appellate Tribunal shall dispose of the appeal within the said period of stay specified in that order. 15

(4) The Appellate Tribunal may, on an application made by the assessee seeking extension of the period of stay, extend the period of stay allowed under sub-section (2), if it is satisfied that the delay in disposing of the appeal is not attributable to the assessee. 20

(5) The aggregate of the period originally allowed under sub-section (2) and the period or periods extended under sub-section (4) shall not, in any case, exceed three hundred and sixty-five days from the date of passing the order of stay under sub-section (2).

(6) The Appellate Tribunal shall dispose of the appeal during the period of stay allowed under sub-section (2) or the period or periods extended under sub-section (4), and where it fails to do so, the stay order shall stand vacated notwithstanding that the delay in disposing of the appeal is not attributable to the assessee. 25

Orders of
Appellate
Tribunal.

185. (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. 30

(2) The Appellate Tribunal may, either *suo motu* or the mistake on being brought to its notice by the assessee or the Assessing Officer at any time within a period of four years from the date of the order, with a view to rectifying any mistake apparent on the face of the record, amend any order passed by it under sub-section (1).

(3) The Appellate Tribunal shall not make an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee under sub-section (2) without giving the assessee an opportunity of being heard. 35

(4) Every appeal preferred under section 183 shall be heard and disposed of by the Appellate Tribunal as expeditiously as possible and endeavour shall be made to dispose of such appeal within a period of two years from the end of the financial year in which the appeal is preferred. 40

(5) The Appellate Tribunal shall send a copy of any order passed under this section to the assessee and to the Commissioner.

(6) Subject to the provisions of section 187, the orders passed by the Appellate Tribunal shall be final. 45

186. (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by its Benches constituted by the President of the Appellate Tribunal from among the members thereof.

Constitution of Benches and procedure of Appellate Tribunal.

(2) Subject to sub-section (3), a Bench shall consist of one judicial member and one accountant member.

(3) The Vice-President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting alone, dispose of any case allotted to the Bench of which he is a member and which pertains to an assessee, not being a company or a non-resident, whose tax bases as computed by the Assessing Officer does not exceed five lakh rupees.

(4) The President may, in the interest of justice and for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member.

(5) The President shall, on a reference received from the Board for the disposal of any particular case, constitute a Special Bench consisting of five members or more, two of whom shall necessarily be judicial members and two accountant members.

(6) Where on any point the members of a Bench differ in opinion, it shall be decided according to the opinion of the majority.

(7) If the members of a Bench are equally divided in opinion on any point or points, they shall state the point or points on which they differ and make a reference to the President of the Appellate Tribunal who shall either hear himself or refer for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

(8) Subject to the provisions of this Code, the Appellate Tribunal shall have powers to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the place at which the Benches shall hold their sittings.

(9) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the income-tax authorities under section 134.

(10) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 and for the purpose of section 196 of the Indian Penal Code.

(11) The Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

187. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

Appeal to High Court.

(2) The Chief Commissioner or the Commissioner or an assessee, may file an appeal to the High Court on being aggrieved by any order passed by the Appellate Tribunal and such appeal shall be—

(a) filed within a period of one hundred and twenty days from the date on which the order appealed against is received by the Chief Commissioner or the Commissioner or the assessee;

(b) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved. 5

(3) The High Court may admit an appeal after the expiry of the period of one hundred and twenty days referred to in sub-section (2), if it is satisfied that there was sufficient cause for not filing the appeal within that period.

(4) If the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. 10

(5) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

(6) Notwithstanding anything in sub-sections (4) and (5), the High Court may exercise its power to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question of law. 15

(7) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(8) The High Court may determine any issue which— 20

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on the question of law referred to in sub-section (1).

(9) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, so far as may be, apply in the case of appeals under this section. 5 of 1908. 25

(10) When the High Court delivers a judgment in an appeal filed before it under sub-section (7), effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of judgment.

Case before High Court to be heard by not less than two Judges.

188. (1) An appeal filed before the High Court shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges. 30

(2) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it. 35

Appeal to Supreme Court.

189. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered under section 187 which the High Court certified to be a fit case for appeal to the Supreme Court.

Hearing before Supreme Court.

190. (1) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 189 as they apply in the case of appeals from decrees of a High Court. 5 of 1908. 40

(2) The costs of the appeal shall be in the discretion of the Supreme Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (10) of section 187.

5 **191.** (1) The Commissioner may, for the purposes of revising any order passed in any proceeding under this Code before any income-tax authority subordinate to him, call for, and examine, all available records relating thereto.

Revision of orders prejudicial to revenue.

(2) The Commissioner may, after giving the assessee an opportunity of being heard, pass an order (hereinafter referred to as the revision order) as the circumstances of the case justify, if he is satisfied that the order sought to be revised is erroneous in so far as it is prejudicial to the interests of the revenue.

(3) The Commissioner may make, or cause to be made, such inquiry as he considers necessary for the purposes of passing an order under sub-section (2).

15 (4) The revision order passed by the Commissioner under sub-section (2) may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment.

(5) The power of the Commissioner under sub-section (2) for revising an order shall not extend to such order,—

(a) against which an appeal is pending before the Commissioner (Appeals);

20 (b) as has been considered and decided in any appeal; or

(c) as has been considered by, and passed in pursuance of the directions of, the Dispute Resolution Panel.

(6) No order under sub-section (2) shall be made after the expiry of a period of two years from the end of the financial year in which the order sought to be revised was passed.

25 (7) In computing the period of limitation under sub-section (6), the following shall not be included, namely:—

(a) the time taken in giving an opportunity to the assessee to be reheard under section 133; or

30 (b) any period during which any proceeding under this section is stayed by an order, or injunction, of any court.

(8) Without prejudice to the generality of the foregoing provisions, an order passed by an income-tax authority shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if—

35 (a) the order is passed without making inquiries or verification which, in the opinion of the Commissioner, should have been made;

(b) the order is passed allowing any relief without probing into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 129;

40 (d) the order has not been passed in accordance with any decision, prejudicial to the assessee, rendered by—

(i) the Appellate Tribunal, High Court or Supreme Court in the case of the assessee or any other person under this Code, the Income-tax Act, 1961, or the Wealth-tax Act, 1957. as stood before the commencement of this Code; or

43 of 1961.
27 of 1957.

(ii) a court under any other law; or

(e) the order has been made following the order of a jurisdictional High Court but a special leave petition has been granted by the Supreme Court against the said decision of the High Court subsequent to the passing of the order.

5

(9) An order passed by an income-tax authority shall not be considered to be erroneous in so far as it is prejudicial to the interests of the revenue, if—

(a) the order has been made by holding a view sustainable in law; and

10

(b) the Commissioner is not in agreement due to the existence of another view sustainable in law.

(10) In this section, “record” shall include all records relating to any proceeding under this Code available at the time of examination by the Commissioner.

Revision of other orders.

192. (1) The Commissioner may, *suo motu* or on an application made by the assessee, for the purposes of revising any order passed by an authority subordinate to him, other than an order to which section 191 applies, call for and examine all available records relating thereto.

15

(2) The Commissioner may pass an order, as he considers necessary, which is not prejudicial to the assessee.

20

(3) The power of the Commissioner under sub-section (2) for revising an order shall not extend to such order—

(a) against which an appeal has not been filed but the time for filing an appeal before the Commissioner (Appeals) has not expired;

(b) against which an appeal is pending before the Commissioner (Appeals);

25

(c) as has been considered and decided in any appeal; or

(d) as has been considered by, and passed in pursuance of the directions of, the Dispute Resolution Panel.

(4) The assessee shall make the application for revision of any order referred to in sub-section (1), within a period of one year from the date on which the order sought to be revised was communicated to him, or the date on which he otherwise came to know of it, whichever is earlier.

30

(5) Every application by an assessee for revision under this section shall be accompanied by such fees as may be prescribed.

(6) No order under sub-section (2) shall be made after the expiry of—

35

(a) a period of one year from the end of the financial year in which an application is made by the assessee under sub-section (4); or

(b) a period of one year from the date of the order sought to be revised, if the order is revised by the Commissioner *suo motu*.

CHAPTER XIII

COLLECTION AND RECOVERY OF TAX

A.—Deduction of tax at source

- 5 **193.** (1) The tax on any income shall be payable by deduction or collection at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter, notwithstanding that the regular assessment in respect of such income is to be made in a later financial year. Deduction or collection of tax at source and advance payment.
- (2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (2) of section 2.
- 10 **194.** (1) The tax on income shall be payable by the assessee direct if,— Direct payment.
- (a) there is no provision under this Chapter for deduction or collection of income-tax at the time of payment; or
- (b) income-tax has not been deducted or collected in accordance with the provisions of this Chapter.
- 15 (2) Any person who is required to deduct or collect any sum in accordance with the provisions of this Code does not deduct or collect, or after so deducting or collecting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Code, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an
- 20 assessee in default within the meaning of section 218 in respect of such tax.
- 195.** (1) Any person responsible for making a specified payment shall, at the time of payment, deduct income-tax therefrom at the appropriate rate. Liability to deduct tax at source.
- (2) The specified payment referred to in sub-section (1), if the deductee is a resident, shall be the payment of the nature specified in column (2) of the Third Schedule and the appropriate rate, in respect of such specified payment, shall be the rate specified in the
- 25 corresponding entry in column (3) of the said Schedule.
- (3) The specified payment referred to in sub-section (1), if the deductee is a non-resident, shall be the payment of the nature specified in column (2) of the Fourth Schedule and the appropriate rate, in respect of such specified payment, shall be the rate specified in
- 30 the corresponding entry in column (3) of the said Schedule.
- (4) Without prejudice to sub-section (3), where a rate in respect of such specified payment has been provided in the relevant agreement entered into, or adopted by, the Central Government under section 291, then appropriate rate referred to in sub-section (1) shall be the rate specified in the corresponding entry in column (3) of the Fourth Schedule or
- 35 the rate provided in such agreement whichever is lower.
- (5) Notwithstanding anything in this Code, the appropriate rate referred to in sub-section (1) shall, in a case where the deductee has failed to furnish his permanent account number to the deductor (except where the deductee is not required to obtain permanent account number under section 292), be the higher of following rates, namely:—
- 40 (a) twenty per cent.; and
- (b) the rate specified in sub-sections (2), (3) or sub-section (4), as the case may be.
- 40 **196.** (1) For the purposes of section 195, the specified payment shall be deemed to have been made, if the payment has been made— Payment of income and deduction of tax.
- (a) in cash;
- (b) by issue of a cheque or draft;

(c) by credit to any account, whether called suspense account or by any other name; or

(d) by any other mode as may be prescribed,

whichever is earlier.

(2) If the payment is wholly or partly in kind, the deductor shall ensure that the tax deductible in respect of such payment has been paid before making the payment. 5

(3) The deductor may, at the time of making any deduction of tax from the payment liable to be taxed under the head "Income from employment" or from the payment in the nature of interest, increase or reduce the amount to be deducted from any payment to be made to a deductee for the purposes of adjusting any deficiency, or excess, arising out of any previous deduction or non-deduction during the financial year in respect of such deductee. 10

(4) For the purposes of making any deduction of tax from the payment liable to be taxed under the head "Income from employment", the deductor shall take into account the following particulars, if any, furnished by the deductee in such form and manner as may be prescribed, namely:— 15

(i) details of payment liable to be taxed under the head "Income from employment" due to or received by the deductee from any other employer during the year and any tax deducted therefrom;

(ii) tax relief for arrears or advance receipts under section 206.

(5) If the tax payable on any payment is to be borne by the deductor in pursuance of an agreement or arrangement, then, for the purposes of deduction of tax, the payment shall be grossed up to such amount as would, after deduction of tax thereon at the rate referred to in sub-section (1) of section 195, be equal to the net amount payable under such agreement or arrangement. 20

Certificate for lower or no deduction of tax.

197. (1) The deductee may make an application, in such form and manner as may be prescribed, to the Assessing Officer seeking a certificate for deduction of income-tax at a lower rate or, as the case may be, no deduction of income-tax from payments to be received by him. 25

(2) The deductor may make an application, in such form and manner as may be prescribed, to the Assessing Officer seeking a certificate for deduction of income-tax at a lower rate or, as the case may be, no deduction of income-tax from payments to be made by him to a non-resident deductee. 30

(3) Where the Assessing Officer is satisfied that the total income of the deductee justifies deduction of income-tax at a lower rate or no deduction of income-tax, he shall give to the deductee or the deductor, as the case may be, such certificate as may be appropriate. 35

(4) The deductor shall deduct income-tax at the rates specified in the certificate issued under sub-section (3), until—

(a) such certificate is cancelled by the Assessing Officer; or

(b) the expiry of the validity of the certificate,

whichever is earlier. 40

(5) The Board may prescribe the circumstances and the cases in which an application may be made for the grant of the certificate and the conditions subject to which such certificate may be granted and provide for all other matters connected therewith.

Obligation of deductor.

198. (1) Every deductor shall pay the sum deducted to the credit of the Central Government within such time and manner as may be prescribed. 45

(2) Every deductor shall furnish to the deductee a certificate to the effect that tax has been deducted within such time and containing such particulars as may be prescribed.

(3) Every deductor shall deliver, or cause to be delivered, a return of tax deduction in such manner as is provided under sub-section (4) of section 199.

5 **199.** (1) Every deductor shall deliver, or cause to be delivered, a return in respect of payment of interest to residents without deduction of tax.

Reporting of payments without deduction of tax.

(2) The deductor referred to in sub-section (1) shall be—

(a) any financial institution; or

(b) any co-operative society.

10 (3) The Central Government may, by notification, require any deductor to deliver, or cause to be delivered, a return in respect of any payment without deduction of tax.

(4) The Board shall, in respect of the return of tax deduction under section 198 and the return under this section, prescribe the following, namely:—

(a) the period in respect of which the return is to be furnished;

15 (b) the form of the return and the particulars therein;

(c) the manner of verification of the return;

(d) the time by, and the medium in, which the return is to be delivered;

(e) the income-tax authority, or any other person, authorised to receive the return; and

20 (f) any other matter connected therewith.

200. Notwithstanding anything in section 195, no tax shall be deducted at source,—

No deduction of tax in certain cases.

(A) where the payee is a resident, from the following, namely:—

25 (a) any payment, other than salary, made by an individual or a Hindu undivided family, if the individual or the Hindu undivided family is not liable to get the accounts audited under section 88 for the financial year immediately preceding the financial year in which the payment is made;

(b) any interest payable on any security,—

(i) of the Central Government or a State Government; or

30 (ii) issued by a company, if such security is in dematerialised form and is listed on a recognised stock exchange in India;

(c) any interest on debenture payable to an individual, if -

(i) the debentures are issued by a widely held company;

(ii) the debentures are listed in a recognised stock exchange in India; and

35 (iii) the aggregate amount payable during the financial year does not exceed five thousand rupees;

(d) any interest on time deposits (being deposits repayable on the expiry of fixed periods, excluding recurring deposits) payable, if—

40 (i) the time deposits are made with a banking company or a co-operative bank or a housing-finance public company; and

- (ii) the aggregate amount payable by the payer, being a branch of the bank or company during the financial year, does not exceed ten thousand rupees;
- (e) any other interest payable if the aggregate amount of the payments during the financial year does not exceed five thousand rupees; 5
- (f) any interest payable to,—
- (i) any banking company;
- (ii) any co-operative bank;
- (iii) any financial corporation established by or under a Central or State or Provincial Act; 10
- (iv) any insurer;
- (v) any mutual fund; or
- (vi) any institution, association or body, or class of institutions, associations or bodies, which the Central Government may, for reasons to be recorded in writing, notify in this behalf; 15
- (g) any interest payable by a firm to a partner of the firm;
- (h) any interest payable in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf;
- (i) any interest payable in respect of deposits (other than time deposits) with a banking company or a co-operative bank; 20
- (j) any interest payable by the Central Government under any provision of 43 of 1961. this Code or the Income-tax Act, 1961, or the Wealth-tax Act, 1957, as they stood 27 of 1957. before the commencement of this Code;
- (k) any interest payable on the amount of compensation awarded by the Motor Accidents Claims Tribunal, if the aggregate of the amounts of such interest paid, or credited, during the financial year does not exceed one lakh rupees; 25
- (l) any amount payable on maturity, or redemption, of a zero coupon bond;
- (m) any payment for carriage of goods by road transport if the payee furnishes his permanent account number to the payer;
- (n) any payment to a contractor in respect of works contract, service contract, advertising, broadcasting and telecasting, supply of labour for carrying out any works, or service, contract or carriage of goods or passengers by any mode of transport, other than by railways, if — 30
- (i) the amount of any payment during the financial year does not exceed thirty thousand rupees; and 35
- (ii) the aggregate amount of the payments during the financial year does not exceed seventy-five thousand rupees;
- (o) any payment of commission or brokerage, if the aggregate amount of the payments during the financial year does not exceed five thousand rupees;
- (p) any payment of rent, if the aggregate amount of the payments during the financial year does not exceed one lakh eighty thousand rupees; 40
- (q) any payment of compensation on compulsory acquisition of immovable property, if the aggregate amount of the payments during the financial year does not exceed two lakh rupees;

(r) any amount payable by way of distribution of income by a mutual fund in respect of a fund, not being an equity oriented fund, to any unitholder, if,—

(i) such unitholder is not a company; and

5 (ii) the aggregate amount of the payment to the unitholder during the financial year does not exceed ten thousand rupees;

(s) any amount payable, by a life insurer to any policy-holder, if,—

(i) such policy-holder is not a company;

10 (ii) the policy is other than a policy referred to in clause (d) or clause (e) of sub-section (3) of section 59; and

(iii) the aggregate amount of the payment to the policy-holder during the financial year does not exceed ten thousand rupees;

15 (B) where the payee is a non-resident, being a foreign institutional investor, on any payment made to it as a consideration for sale of securities listed on a recognised stock exchange.

201. (1) All sums deducted in accordance with the provisions of this Chapter shall, for the purposes of computing total income of a deductee be deemed to be the income received. Credit for tax deducted.

20 (2) Any deduction made in accordance with the provisions of this Chapter and paid to the credit of the Central Government shall be treated as a payment of tax on behalf of the person in respect of whom the deduction was made.

(3) For the purposes of giving credit in respect of tax deducted, the Board may prescribe—

(a) the procedure for giving credit to the deductee, or any other person;

(b) the financial year for which such credit may be given; and

25 (c) any other matter connected therewith.

B.—Collection of tax at source

30 **202.** (1) Any person, being a seller, lessor or licensor, who is responsible for collecting any amount on account of any transaction specified in column (2) of the Table given below, shall collect from the buyer, lessee or licensee, as the case may be, a sum by way of income-tax, equal to the percentage, as specified in the corresponding entry in column (3) of the said Table, of such amount: Tax collection at source.

TABLE

Serial number	Nature of transaction	Percentage
(1)	(2)	(3)
35	1. Sale of alcoholic liquor for human consumption	Three per cent.
	2. Sale of tendu leaves	Three per cent.
	3. Sale of timber obtained under a forest lease or otherwise	Three per cent.
	4. Sale of any other forest produce not being timber or tendu leaves	Three per cent.
	5. Sale of scrap	Three per cent.
40	6. Grant of lease or licence or contract or transfer of any right or interest, either in whole or in part, for a parking lot	Three per cent.
	7. Grant of lease or licence or contract or transfer of any right or interest, either in whole or in part, for a toll plaza	Three per cent.
45	8. Grant of lease or licence or contract or transfer of any right or interest, either in whole or in part, for mining or quarrying	Three per cent.

(2) For the purposes of sub-section (1), the collection of an amount shall be deemed to have been made, if the amount has been received—

(a) in cash;

(b) by way of a cheque or a draft;

(c) by debit to any account, whether called “suspense account” or by any other name; or

(d) by any other mode as may be prescribed,

whichever is earlier.

(3) Any person collecting any amount under sub-section (1) shall pay the sum so collected to the credit of the Central Government within such time and manner as may be prescribed.

(4) Every person responsible for collecting any amount under sub-section (1) shall furnish to the buyer, lessee or licensee referred to in sub-section (1), a certificate of tax collection within such time as may be prescribed .

(5) Every person responsible for collecting any amount under sub-section (1) shall deliver, or cause to be delivered, a return of tax collection in the manner provided under sub-section sub-section (6).

(6) The Board shall in respect of the return of tax collection, prescribe the following namely:—

(a) the period in respect of which the return is to be furnished; 20

(b) the form of the return and the particulars therein;

(c) the manner of verification of the return;

(d) the time by, and the medium in, which the return is to be delivered;

(e) the income-tax authority, or any other person, authorised to receive the return; and 25

(f) any other matter connected therewith.

Credit for tax collected.

203. (1) All sums collected in accordance with the provisions of this Sub-chapter and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom such amount has been collected (in this section referred to as collectee). 30

(2) For the purpose of giving credit in respect of tax collected, the Board may prescribe—

(a) the procedure for giving credit to the collectee, or any other person;

(b) the financial year for which such credit may be given; and

(c) any other matter connected therewith.

Interpretations under Sub-chapters A and B.

204. (1) In Sub-chapter A— 35

(a) “broadcasting and telecasting” includes production of programmes for broadcasting or telecasting;

(b) “contract” and “contractor” include “sub-contract” and “sub-contractor” respectively;

(c) “professional or technical services” means services rendered by a person in the course of carrying on legal, medical, engineering, architectural or accountancy profession, technical consultancy, interior decoration or any other profession as notified by the Board; 40

(d) “service contract” includes a contract for job work;

(e) “work” includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer and not from any other person.

5 (2) In Sub-chapter B—

(a) “buyer” means a person who obtains in any sale, by way of auction, tender, or any other mode, goods of the nature specified in the Table given in sub-section (1) of section 202 or the right to receive any such goods but does not include,—

10 (i) a public sector company, the Central Government, a State Government, an embassy, a high commission, legation, commission, consulate and trade representation of a foreign State, and a club; or

(ii) a buyer in the retail sale of such goods, purchased by him for personal consumption;

15 (b) “lessee or licensee” means a person other than a public sector company who is granted a lease or licence or is awarded a contract or is transferred, wholly or partly, any right or interest by a lessor or licensor;

(c) “lessor or licensor” means a person who grants a lease or licence or enters into a contract or otherwise transfers, wholly or partly, any right or interest to a lessee or licensee;

20 (d) “scrap” means waste from the manufacture or mechanical working of materials which is unusable because of breakage, wear and tear and other reasons;

(e) “seller” means,—

(i) the Central Government, a State Government or any local authority;

25 (ii) a corporation or authority established by or under a Central, State or Provincial Act;

(iii) any company, firm or co-operative society; and

30 (iv) an individual or a Hindu undivided family, if the total sales, gross receipts or turnover from the business carried on by him exceed the monetary limits specified in sub-section (1) of section 88 during the financial year immediately preceding the financial year in which the goods of the nature specified in column (2) of the Table given in sub-section (1) of section 202 against serial numbers 1 to 5 are sold.

C.—Advance Tax

35 **205.** (1) Every assessee shall be liable to pay advance income-tax during any financial year in respect of his total income of the financial year, if the amount of advance income-tax payable exceeds ten thousand rupees. Liability to pay advance tax

(2) The amount of advance income-tax payable by an assessee in the financial year shall be computed in the following manner, namely:—

40 (a) the assessee shall first estimate his total income and calculate income-tax thereon at the rates in force in the financial year;

(b) the income-tax so calculated shall be reduced by –

(i) the amount of income-tax which would be deductible or collectible at source during the financial year from any income which is taken into account in estimating the total income;

(ii) the amount of credit under section 207, allowed to be set-off in the financial year; and

(c) the balance amount of income-tax shall be the advance income-tax payable.

(3) The advance income-tax, in case of any person other than a company, shall be payable in three instalments during the financial year on or before the dates specified in column (2) of the Table given below and shall be equal to the amount specified in corresponding entry in column (3) of the said Table: 5

TABLE

Serial Number	Date of instalment in the financial year	Amount payable	
(1)	(2)	(3)	
1.	On or before the 15th September.	Not less than thirty per cent. of the advance income-tax.	
2.	On or before the 15th December.	Not less than sixty per cent. of the advance income-tax, as reduced by the amount, if any, paid in the earlier instalment.	15
3.	On or before the 15th March.	The whole amount of the advance income-tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.	20

(4) The advance income-tax, in the case of a company, shall be payable in four instalments during the financial year on or before the dates specified in column (2) of the Table given below and shall be equal to the amount specified in corresponding entry in column (3) of the said Table: 25

TABLE

Serial Number	Date of instalment in the financial year	Amount payable	
(1)	(2)	(3)	
1.	On or before the 15th June.	Not less than fifteen per cent. of the advance income-tax.	
2.	On or before the 15th September.	Not less than forty-five per cent. of the advance income-tax, as reduced by the amount, if any, paid in the earlier instalment.	35
3.	On or before the 15th December.	Not less than seventy-five per cent. of the advance income-tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.	
4.	On or before the 15th March.	The whole amount of the advance income-tax as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.	40

(5) Any amount of advance income-tax paid after the 15th March but before the expiry of the financial year shall be treated as advance income-tax paid during the financial year.

(6) Every person who is liable to pay advance income-tax shall, of his own volition, pay the appropriate percentage of the advance income-tax on or before the due dates.

5 (7) The assessee may increase or reduce the payment of remaining instalments of the advance income-tax in accordance with his estimation of the total income.

(8) Where in the opinion of the Assessing Officer, any person is liable to pay advance income-tax, he may by an order in writing—

10 (a) require such person to pay advance income-tax calculated in such manner as may be prescribed; and

(b) issue to such person a notice of demand under section 162 specifying the instalments in which such tax is to be paid.

(9) The person who has been served with an order under sub-section (8)—

15 (a) may file an estimation, in such form as may be prescribed, to the Assessing Officer, if in his estimation, the advance income-tax payable by him is lower than the amount specified in the said order; and

(b) pay the advance income-tax in accordance with his estimation on or before the due dates specified in this section.

20 (10) No order under sub-section (8) shall be passed after the last day of February of the financial year for which the advance tax is due.

D.—Tax relief in respect of arrears or advance receipts

206. (1) The Assessing Officer shall, on an application made to him by any person, grant such relief as may be prescribed, if the person is in receipt in any financial year of any arrears, or advance, of salary or family pension relating to any other financial year.

Tax relief for arrears or advance receipts

25 (2) The relief referred to in sub-section (1) shall not be allowed in respect of any compensation received towards retrenchment, voluntary retirement or termination of service.

E.—Foreign tax credit

30 **207.** (1) An assessee, being a resident in India in any financial year, shall be allowed a credit in respect of income-tax paid by deduction or otherwise, in any country or other specified territory under the law in force in that country or territory, in accordance with the provisions of this section.

Foreign tax credit.

(2) An assessee, referred to in sub-section (1), shall be allowed a credit against the Indian income-tax payable by him in respect of his income of the financial year,—

35 (a) which has been taxed in any country or other specified territory with which India has an agreement under section 291, in accordance with the agreement entered into with such country or specified territory; or

40 (b) which has accrued outside India (but not deemed to be received in India) and taxed in a country with which India does not have an agreement under section 291, of the amount determined in the following manner, namely:—

(i) at the Indian rate of tax or the rate of tax of the other country, whichever is lower;

(ii) at the Indian rate of tax, if both the rates are equal.

45 (3) Notwithstanding anything in sub-section (2), the amount of credit of foreign tax referred to therein shall not, in any case, exceed—

(a) the Indian income-tax payable in respect of income which is taxed outside India; and

(b) the Indian income-tax payable on total income of the assessee.

(4) The Central Government may, for the relief or avoidance of double taxation, pre-

scribe—

- (a) the method for computing the amount of credit;
- (b) the manner of claiming credit; and
- (c) such other particulars as may be considered necessary.

F.—*Payment of Wealth-tax*

5

Payment of
wealth-tax

208. The wealth-tax referred to in section 112 shall be payable by the due date of filing of the return of tax bases.

G.—*Interest payable to the Central Government*

Interest for
default in
furnishing
return of tax
basis.

209. (1) Where an assessee defaults in furnishing the return of tax-bases, he shall be liable to pay simple interest at the rate of one per cent. per month, in circumstances specified in sub-section (2) for the period mentioned in sub-section (3) on the amount computed under sub-section (4).

10

(2) The circumstances referred to in sub-section (1) shall be –

(a) where the return of tax-bases for any financial year under sub-section (1) or sub-section (6) of section 144 or sub-section (1) of section 146 is furnished after the due date, or is not furnished;

15

(b) where the return of tax-bases for any financial year is required by a notice under section 159 and no return of tax-bases has been furnished for such year before the issue of such notice; or

(c) where the return of tax bases for any financial year is required by a notice under section 159 and—

20

(i) such notice has been issued after the determination of income under sub-section (1) of section 149 or after the completion of an assessment under section 155 or section 156 or section 159; and

(ii) such return has been furnished after the expiry of time allowed under such notice or is not furnished.

25

(3) The period referred to in sub-section (1) shall—

(a) in a case referred to in clause (a) or clause (b) of sub-section (2), shall commence on the date immediately following the due date and—

(i) end on the date of furnishing of the return; or

30

(ii) end on the date of completion of assessment under section 156 or section 159, where no return has been furnished;

(b) in a case referred to in clause (c) of sub-section (2), shall commence on the date immediately following the last date of the time allowed under the notice referred in said clause (c), and—

35

(i) end on the date of furnishing of the return where the return is furnished after expiry of the time allowed; or

(ii) end on the date of completion of assessment under section 159 where no return has been furnished.

(4) The amount referred to in sub-section (1),—

40

(a) in a case referred to in clause (a) or clause (b) of sub-section (2), shall be computed in accordance with the following formula –

A – B

Where

A = the amount of the tax on the total income determined under sub-section (1) of section 149 or on assessment made under sub-section (1) of section 155 or sub-section (1) of section 156 or under section 159, as the case may be;

45

B = the aggregate of —

(i) advance tax paid, if any;

(ii) any tax deducted or collected at source;

5 (iii) any relief of tax allowed under section 291 on account of tax paid in a country or specified territory outside India;

(iv) any deduction, from the Indian income-tax payable, allowed under section 207, on account of the tax paid in a country outside India; and

(v) any tax credit available for set-off under section 106;

10 (b) in a case referred to in clause (c) of sub-section (2), shall be the amount by which tax determined on reassessment exceeds the tax on the total income determined under sub-section (1) of section 149 or on the basis of the earlier assessment, as the case may be.

(5) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 147 towards the interest chargeable under this section.

15 (6) The interest payable under this section shall be increased or reduced, in accordance with the variation in the amount of tax on which interest was payable under this section, as a result of modification in the assessed income on account of any rectification, revision or appellate order under this Code.

20 (7) The Assessing Officer shall serve on the assessee a notice of demand, in such form as may be prescribed, specifying the sum payable on account of increase in the interest referred under sub-section (6) and such notice shall be deemed to be a notice under section 162 and the provisions of this Code shall apply accordingly.

(8) The excess interest paid, if any, shall be refunded in a case where the interest is reduced under sub-section (6).

25 **210.** (1) Where an assessee defaults in payment of advance income-tax, he shall be liable to pay simple interest at the rate of one per cent. per month in the circumstances specified in sub-section (2) for the period mentioned in sub-section (3) on the amount computed under sub-section (4).

Interest for default in payment of advance income-tax.

30 (2) The circumstances referred to in sub-section (1) shall be the following, namely:—

(a) where the assessee is liable to pay advance income-tax under section 205 and has failed to pay such tax; or

(b) where the advance income-tax paid by such assessee is less than ninety per cent. of the assessed tax.

35 (3) The period referred to in sub-section (1) shall in a case referred to in sub-section (2) commence on the 1st day of April next following the financial year and—

(a) end on the date of determination of total income under sub-section (1) of section 149; or

40 (b) end on the date of assessment, where an assessment has been made under section 155 or section 156 or an assessment under section 159 made for the first time.

(4) The amount referred to in sub-section (1) shall be,—

(a) the assessed tax less the advance tax; and

(b) in a case where the assessee has paid self-assessment tax under section 147 before the date of determination of total income or the date of an assessment referred to in clause (b) of sub-section (3), as the case may be,—

(i) the assessed tax less the advance tax, for the period up to the date on which the self assessment tax is paid; and 5

(ii) the assessed tax less the advance tax and such self-assessment tax, for the period commencing immediately after the date on which such self-assessment tax is paid.

(5) The assessed tax referred to in sub-section (4) shall be calculated in accordance with the following formula— 10

A – B

Where

A = the amount of the tax on the total income determined under sub-section (1) of section 149, and where an assessment referred to in clause (b) of sub-section (3) has been made, the amount of tax on the total income determined on such assessment; 15

B = the aggregate of —

(i) any tax deducted or collected at source;

(ii) any relief of tax claimed under section 207; and

(iii) any tax credit available for set-off under section 106. 20

(6) Where tax is paid under section 147 or otherwise before the determination of total income under sub-section (1) of section 149 or completion of an assessment referred to in clause (b) of sub-section (3), interest shall be calculated—

(i) in accordance with sub-sections (1) to (5), up to the date on which the tax is so paid and reduced by the interest, if any, paid under section 147 towards the interest chargeable under this section; and 25

(ii) thereafter, at the rate specified in sub-section (1) on the amount by which the tax so paid together with the advance tax paid falls short of the assessed tax.

(7) In a case where as a result of reassessment under section 159 (not being an assessment made for the first time), the amount of tax on total income, as referred to in sub-section (5) is increased then, in addition to the interest under sub-section (1), the assessee shall be liable to pay simple interest at the rate of one per cent. per month for the period mentioned in sub-section (8) on the amount computed under sub-section (9). 30

(8) The period referred to sub-section (7) shall commence on the day immediately following the end of the period, as applicable, mentioned in sub-section (3) and end on the date of reassessment under section 159. 35

(9) The amount referred to in sub-section (7) shall be the amount by which the tax on the total income determined on the basis of reassessment under section 159 exceeds the relevant amount determined in variable A in the formula contained in sub-section (5).

(10) The interest payable under this section shall be increased or reduced, in accordance with the variation in the amount on which interest was payable under this section, on account of any rectification, revision or appellate order under this Code. 40

(11) The Assessing Officer shall serve on the assessee a notice of demand in such form as may be prescribed specifying the sum payable on account of increase in the interest referred to in sub-section (10) and such notice shall be deemed to be a notice under section 162 and the provisions of this Code shall apply accordingly. 45

(12) The excess interest paid, if any, shall be refunded in a case where the interest is reduced under sub-section (10).

211. (1) Where a person other than a company, who is liable to pay advance income-tax under section 205 has—

Interest for
deferment
of advance
income-tax.

5 (a) failed to pay such tax; or

(b) paid the tax on or before the dates specified in column (2) of the Table given below which is less than the percentage of the advance income-tax payable specified in column (3) of the said Table,

10 he shall be liable to pay simple interest at the rate of one per cent. per month for the period specified in column (4) of the said Table on the amount of shortfall from the percentages of advance income-tax payable as specified in column (5) and the interest payable by such person under this section shall be the aggregate of all such amounts.

TABLE

Serial number	Due date	Percentage for purposes of ascertaining liability	Period	Percentage for purposes of computing Interest
(1)	(2)	(3)	(4)	(5)
1.	15th September.	Thirty per cent.	Three months.	Thirty per cent.
20 2.	15th December.	Sixty per cent.	Three months.	Sixty per cent.
3.	15th March.	One hundred per cent.	One month.	One hundred per cent.

(2) Where a company, which is liable to pay advance income-tax under section 205 has,—

(a) failed to pay such tax; or

25 (b) paid the tax on or before the dates specified in column (2) of the Table given below which is less than the percentage of the advance income-tax payable specified in column (3) of the said Table,

30 it shall be liable to pay simple interest at the rate of one per cent. per month for the period specified in column (4) of the said Table on the amount of shortfall from the percentages of advance income-tax payable as specified in column (5) and the interest payable by such company under this section shall be the aggregate of all such amounts:

TABLE

Serial number	Due date	Percentage for purposes of ascertaining liability	Period	Percentage for purposes of computing Interest
(1)	(2)	(3)	(4)	(5)
1.	15th June.	Twelve per cent.	Three months	Fifteen per cent.
2.	15th September.	Thirty-six per cent.	Three months	Forty-five per cent.
40 3.	15th December.	Seventy-five per cent.	Three months	Seventy-five per cent.
4.	15th March.	One hundred per cent.	One month	One hundred per cent.

(3) The assessee shall not be liable to pay interest under sub-section (1) or sub-section (2), as the case may be, on any shortfall in the advance income-tax payable where such shortfall is on account of under estimation or failure to estimate,—

(a) the amount of capital gains; or

(b) income of nature listed at serial number 4 in the Table in Part III of the First Schedule. 5

(4) The provisions of sub-section (3) shall apply in a case where the assessee has paid the whole of the amount of tax payable, in respect of the income of nature referred to in that sub-section, in the remaining instalments of advance tax or where no such instalments are due, by the 31st day of March of the financial year. 10

Interest on
excess refund.

212. (1) An assessee shall be liable to pay simple interest at the rate of one-half per cent. per month on the excess amount of refund granted to him in circumstances specified in sub-section (2) for the period mentioned in sub-section (3).

(2) The circumstances referred to in sub-section (1) shall be where any refund is granted to the assessee under sub-section (1) of section 149, and— 15

(a) no refund is due on assesment made under section 155 or section 156 or section 159; or

(b) the amount refunded under sub-section (1) of section 149 exceeds the amount refundable on assesment, assesment made under section 155 or section 156 or section 159. 20

(3) The period referred to in sub-section (1) shall commence from the date of grant of refund and end on the date of regular assesment.

(4) The interest chargeable, if any, under sub-section (1) shall be varied in accordance with any rectification, revision or appellate order under this Code.

Interest
payable on
demand raised.

213. (1) Any amount, otherwise than by way of advance tax, specified as payable in a notice of demand under section 162 shall be paid within a period of thirty days of the service of the notice. 25

(2) The period mentioned in sub-section (1) may be reduced with the prior approval of the Joint Commissioner, if the Assessing Officer has any reason to believe that it will be detrimental to revenue if the period of thirty days is allowed. 30

(3) If the amount specified in any notice of demand under section 162 is not paid within the period specified therein, then the assessee shall be liable to pay simple interest at the rate of one per cent. per month for the period commencing from the day immediately following the end of the period specified in such notice and ending with the day on which the amount is paid. 35

(4) The interest payable under this section shall be increased or reduced, in accordance with the variation in the amount on which interest was payable under this section, on account of any rectification, revision or appellate order under this Code.

Interest for
failure to
deduct or
collect or pay
tax.

214. (1) Where any person who is required to deduct or collect any tax in accordance with the provisions of this Code, does not deduct or collect the whole or any part of the tax, or after deduction fails to pay the tax, he shall be liable to pay simple interest or collection- 40

(a) at the rate of one per cent. per month on the amount of such tax for the period from the date on which such tax was deductible or collectable to the date on which such tax is deducted or collected, as the case may be; and

(b) at the rate of one and one-half per cent. per month on the amount of such tax for the period from the date on which such tax was deducted or collected, as the case may be, to the date on which such tax is paid. 45

H.—*Refunds*

215. (1) An assessee shall be entitled to a refund of the excess of any amount paid by him or on his behalf, or treated as paid by him or on his behalf, for any financial year over the amount with which he is liable under this Code. Refunds.

5 (2) Every claim for refund shall be made within such time and such form and manner, as may be prescribed.

(3) An assessee shall, in a case where an assessment is set aside or cancelled or an order of fresh assessment is directed to be made in an appeal, or any other proceeding under this Code, be entitled to the refund only on the making of the fresh assessment.

10 (4) The amount of refund determined under this sub-chapter shall be reduced by the amount, if any, remaining payable under this Code by the assessee to whom the refund is due, and the balance amount of refund, if any, shall be issued along with an intimation to this effect to the assessee.

15 (5) In a claim under this Sub-chapter, it shall not be open to the assessee to question the correctness of any assessment or other matter which has become final and conclusive or ask for a review of the same, and accordingly the assessee shall not be entitled to any relief on such claim except refund of tax paid in excess.

216. (1) An assessee shall be entitled to receive simple interest at the rate of one-half per cent. per month on any amount refundable to him under section 215 in respect of any financial year for the period mentioned in sub-section (2). Interest on refund.

(2) The period referred to in sub-section (1) shall, —

25 (a) in a case where refund is out of any tax paid by way of advance tax or treated as so paid under section 201 or collected at source under section 203, commence on the 1st day of April next following the financial year and end on the date on which the refund is granted; and

(b) in any other case, commence from the date on which such amount was paid and end on the date on which the refund is granted.

30 (3) Notwithstanding anything in sub-section (2), in a case where the return is furnished after the due date, the period referred to in sub-section (1) shall commence on the date on which the return is furnished and end on the date on which the refund is granted.

(4) No interest shall be payable under clause (a) of sub-section (2) if the amount of refund is less than ten per cent. of the tax as determined under sub-section (1) of section 149 or on regular assessment.

35 (5) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, the period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or the Commissioner.

40 (6) The interest under this section shall be increased or reduced in accordance with the variation in the amount on which the interest was payable as a result of any rectification, revision or appellate order under this Code.

(7) The Assessing Officer shall serve on the assessee a notice of demand in such form as may be prescribed specifying the amount of excess interest paid to him where interest is reduced under sub-section (6) and such notice shall be deemed to be a notice under section 162 and the provisions of this Code shall apply accordingly.

45 (8) An assessee shall be entitled to receive simple interest at the rate of one-half per cent. per month on the amount of interest receivable by him under this section for the period

from the date of grant of refund to the date of actual payment of such interest, if such interest is not paid to him along with the refund.

Person entitled to claim refund in certain special cases.

217. (1) If the income of a person is included in the total income of any other person under the provisions of this Code, then such other person shall be entitled to a refund in respect of such income. 5

(2) The legal representative or the trustee or guardian or receiver, as the case may be, of a person shall be entitled to claim or receive refund for the benefit of such person or his estate if such person is unable to claim or receive any refund due to him on account of death, incapacity, insolvency, liquidation or any other similar cause.

J.—*Recovery*

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Recovery by Assessing Officer.

218. (1) Any amount specified as payable in a notice of demand, otherwise than by way of advance tax, shall be paid within thirty days of the service of the notice, to the credit of the Central Government in such manner as may be prescribed.

(2) Where the Assessing Officer has any reason to believe that it will be detrimental to the interests of revenue, if the period of thirty days referred to in sub-section (1) is allowed, he may, with the previous approval of the Joint Commissioner reduce such period, as he deems fit. 15

(3) The Assessing Officer may, on an application made by the assessee, before the expiry of a period of thirty days or the period reduced under sub-section (2) or during the pendency of appeal with the Commissioner (Appeals), extend the time for payment, or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case. 20

(4) An assessee shall be deemed to be an assessee in default, if the tax arrear is not paid within the time allowed under sub-section (1) or the period reduced under sub-section (2) or extended under sub-section (3), as the case may be. 25

(5) Where an assessee defaults in paying any one of the instalments within the time fixed under sub-section (3), he shall be deemed to be an assessee in default in respect of the whole of the amount then outstanding.

(6) The Assessing Officer may, in a case where no certificate has been drawn up under section 219 by the Tax Recovery Officer, recover the amount in respect of which the assessee is in default, or is deemed to be in default, by any one or more of the modes provided in section 220. 30

(7) The Tax Recovery Officer vested with the powers to recover the tax arrear on drawing up of a statement of tax arrear under section 219.

Recovery by Tax Recovery Officer.

219. (1) The Tax Recovery Officer may draw up under his signature a statement of tax arrears of an assessee referred to in sub-section (4) or sub-section (5) of section 218, in form, as may be prescribed such statement being hereafter in this Chapter and in the Fifth Schedule referred to as “certificate”). 35

(2) The certificate under sub-section (1) shall stand amended from time to time consequent to any proceeding under this Code and the Tax Recovery Officer shall recover the amount so modified. 40

(3) The Tax Recovery Officer may rectify any mistake apparent on the face of the record.

(4) The Tax Recovery Officer shall have the power to extend the time for payment, or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case. 45

(5) The Tax Recovery Officer shall proceed to recover from the assessee the amount specified in the certificate by one or more of the modes referred to in section 220 or in the Fifth Schedule.

(6) It shall not be open to the assessee to dispute the correctness of any certificate drawn up by the Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do.

5 **220.** (1) The Assessing Officer or the Tax Recovery Officer may require the employer of the assessee to deduct from any payment to the assessee such amount as is sufficient to meet the tax arrear from the assessee.

Modes of
recovery.

10 (2) Upon requisition under sub-section (1), the employer shall comply with the requisition and shall pay the sum so deducted to the credit of the Central Government in manner such as may be prescribed.

5 of 1908. (3) Any part of the salary exempt from attachment in execution of a decree of a civil Court under section 60 of the Code of Civil Procedure, 1908, shall be exempt from any requisition made under sub-section (1).

15 (4) The Assessing Officer or the Tax Recovery Officer may, by notice in writing, require any debtor of the assessee to pay such amount, not exceeding the amount of debt, as is sufficient to meet the tax arrear of the assessee.

20 (5) Upon receipt of the notice under sub-section (4), the debtor shall comply with the requisition and shall pay the sum to the credit of the Central Government in such manner as may be prescribed within the time (not being before the debt becomes due to the assessee) specified in the notice.

25 (6) A copy of the notice issued under sub-section (4) shall be forwarded to the assessee at his last address known to the Assessing Officer or the Tax Recovery Officer and in the case of a joint account to all the joint holders at their last addresses known to the Assessing Officer or the Tax Recovery Officer.

30 (7) It shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary if the notice under sub-section (4) is issued to a post office, banking company, insurer or any other person.

(8) Any claim in respect of any property, in relation to which a notice under sub-section (4) has been issued, arising after the date of the notice, shall be void as against any demand contained in the notice.

35 (9) A person to whom a notice under sub-section (4) has been issued, shall not be required to pay the amount of tax arrear specified therein, or part thereof, if he objects to it by a statement on oath that the sum demanded, or any part thereof, is not due to the assessee or that he does not hold any money for, or on account of, the assessee.

40 (10) The person referred to in sub-section (9) shall be personally liable to the Assessing Officer or the Tax Recovery Officer, as the case may be, to the extent of his own liability to the assessee on the date of the notice, or to the extent of the liability of the assessee for any sum due under this Code, whichever is less, if it is discovered that the statement made by him was false in any respect.

45 (11) The Assessing Officer or the Tax Recovery Officer may amend or revoke any notice issued under sub-section (4) or extend the time for making any payment in pursuance of such notice.

(12) The Assessing Officer or the Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under sub-section (4), and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.

(13) Any person discharging any liability to the assessee after receipt of a notice under sub-section (4) shall be personally liable to the Assessing Officer or the Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the liability of the assessee for any sum due under this Code, whichever is less.

(14) The debtor to whom a notice under sub-section (4) is sent shall be deemed to be an assessee in default, if he fails to make such payment and further proceedings may be initiated against him for the realisation of the amount in the manner provided in this section and the Fifth Schedule. 5

(15) The Assessing Officer or the Tax Recovery Officer may apply to the court, in whose custody there is money belonging to the assessee, for payment to him of the entire amount of such money or if it is more than the tax due, an amount sufficient to discharge the tax liability. 10

(16) The Assessing Officer or the Tax Recovery Officer shall effect the recovery of any tax arrear in the same manner as attachment, distraint and sale of any movable property under the Fifth Schedule, if he is so authorised by the Chief Commissioner, or the Commissioner, by general or special order. 15

(17) In this section,—

(a) “debtor” in relation to an assessee, means,—

(i) any person from whom money is due, or may become due, to the assessee; or 20

(ii) any person who holds, or may subsequently hold, money for, or on account of, the assessee; or

(iii) any person who holds, or may subsequently hold, any money for, or on account of, the assessee jointly with any other person;

(b) shares of the joint holders in the account shall be presumed, until the contrary is proved, to be equal. 25

Tax Recovery Officer by whom recovery is to be effected.

221. (1) The Tax Recovery Officer competent to take action under section 219 shall be the Tax Recovery Officer —

(a) within whose jurisdiction —

(i) the assessee carries on his business; 30

(ii) the principal place of business of the assessee is situate;

(iii) the assessee resides; or

(iv) any movable or immovable property of the assessee is situate; or

(b) who has been assigned jurisdiction under section 130.

(2) The Tax Recovery Officer, referred to in sub-section (1), may send a certificate, in such manner as may be prescribed, specifying the tax arrear to be recovered, to another Tax Recovery Officer within whose jurisdiction the assessee resides or has property, if the first-mentioned Tax Recovery Officer — 35

(a) is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction; or 40

(b) is of the opinion that, for the purpose of expediting, or securing, the recovery of the whole, or any part, of the amount under this Chapter, it is necessary so to do.

(3) The second-mentioned Tax Recovery Officer shall, on receipt of the certificate, assume jurisdiction for recovery of the amount of tax arrear specified therein and proceed to recover the amount in accordance with the provisions of this Chapter. 45

222. The amount of tax arrears due from a non-resident may be recovered from—

- (a) any asset of the non-resident, wherever located; or
- (b) any amount payable by any person to the non-resident.

Recovery of tax arrear in respect of non-resident from his assets.

223. (1) The liquidator shall inform the Assessing Officer, who has jurisdiction to assess the income of the company, of his appointment within a period of thirty days of his becoming the liquidator.

Recovery in case of a company in liquidation.

(2) The Assessing Officer shall, within a period of three months from the date on which he receives the information, intimate to the liquidator the amount which, in his opinion, would be sufficient to provide for any tax arrears or any amount which is likely to become payable thereafter, by the company under this Code or under the Income tax Act, 1961 or the Wealth-tax Act, 1957 as they stood before the commencement of this Code.

43 of 1961.
27 of 1957.

(3) The liquidator—

(a) shall not part with any of the assets of the company, or the properties, in his custody until he has been intimated by the Assessing Officer under sub-section (2); and

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(b) on being so intimated, shall set aside an amount equal to the amount intimated.

(4) Upon receipt of the intimation from the Assessing Officer under sub-section (2), the amount so intimated shall, notwithstanding anything in any other law for the time being in force, be the first charge on the assets of the company remaining after payment of the following dues, namely:—

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (iii) of the proviso to sub-section (1) of section 529 of the Companies Act, 1956 *pari passu* with such dues.

1 of 1956.

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(5) The liquidator shall be personally liable for the payment of the amount payable by the company, if he—

(a) fails to inform in accordance with sub-section (1); or

(b) fails to set aside the amount as required by sub-section (3).

(6) The obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally in a case where there are more than one liquidator.

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(7) The provisions of this section shall prevail over anything to the contrary contained in any other law for the time being in force.

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(8) In this section,—

(a) "liquidator" in relation to a company shall include a receiver of the assets of the company;

(b) "workmen's" and "workmen's dues" shall have the meaning respectively assigned to them in section 529 of the Companies Act, 1956.

1 of 1956.

224. (1) Every person being a manager at any time during the financial year shall be jointly and severally liable for the payment of any amount due under this Code in respect of the company for the financial year, if the amount cannot be recovered from the company.

Liability of manager of a company.

(2) The provisions of sub-section (1) shall not apply, if the manager proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

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(3) The provisions of this section shall prevail over anything to the contrary contained in the Companies Act, 1956.

(4) In this section, “manager” shall include a managing director and both shall have the meaning respectively assigned to them in clause (24) and clause (26) of section 2 of the Companies Act, 1956. 5 1 of 1956

Joint and several liability of participants.

225. (1) Every person, being a participant in an unincorporated body at any time during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Code and all the provisions of this Code shall apply accordingly. 10

(2) In case of a limited liability partnership, the provisions of sub-section (1) shall not apply, if the partner proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of partnership.

(3) The provisions of this section shall prevail over anything to the contrary contained in the Limited Liability Partnership Act, 2008. 15 6 of 2009.

Recovery through State Government.

226. If the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct, with respect to that area or any part thereof, that tax shall be recovered therein with, and as an addition to, any municipal tax or local rate, by the same person and in the same manner as the municipal tax or local rate is recovered. 20

Recovery of tax in pursuance of agreements with foreign countries specified territory.

227. (1) The Board may forward a certificate to any Tax Recovery Officer for recovery of any amount under the corresponding law in force in any country or specified territory outside India from a person having property in India, if such country or territory or any authority under the Government of that territory or country, has entered into an agreement with India under sub-sections (1) and (2) or sub-section (4) of section 291, as the case may be, for the purposes specified in clause (d) of sub-section (1) of section 291. 25

(2) On receipt of the certificate under sub-section (1) from the Board, the Tax Recovery Officer shall —

(a) proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate under section 219; and 30

(b) remit any sum so recovered by him to the Board after deducting his expenses in connection with the recovery proceedings.

(3) The Tax Recovery Officer may, in a case where an assessee has property in a specified territory outside India, forward a certificate to the Board for recovery of the tax arrears from the assessee, if the Central Government or any specified association in India has entered into an agreement with that country or territory under sub-sections (1), (2) or sub-section (4) of section 291, as the case may be, for the purposes specified in clause (d) of sub-section (1) of section 291. 35

(4) On receipt of the certificate under sub-section (3) from the Tax Recovery Officer, the Board may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country or a specified territory. 40

Tax clearance certificate in certain cases.

228. (1) No person shall leave the territory of India unless he furnishes to such authority as may be notified an undertaking to the effect that he has made satisfactory arrangement for discharging his tax liability, if any, in respect of any income or wealth liable to tax in India. 45

(2) The person referred to in sub-section (1) shall be a person—

(a) who is not domiciled in India;

- (b) who has come to India in connection with a business or employment; and
- (c) who has income derived from any source in India.

(3) Every person, who is domiciled in India at the time of his departure from India, shall—

- (a) furnish to the notified authority such particulars as may be prescribed; and
- (b) obtain a certificate from the notified authority that he has no liability, if in the opinion of the Assessing Officer it is necessary for such person to obtain such certificate.

(4) The Central Government may notify the class of persons to whom the provisions of sub-section (1) or sub-section (3) shall not apply.

(5) The notified authority shall, on receipt of the undertaking or particulars referred to in sub-section (1) or sub-section (3), immediately issue to the person a no objection certificate for leaving India.

(6) The owner, or charterer, of any ship, or aircraft, shall be personally liable to pay the whole, or any part, of the amount payable under this Code by any person required to obtain a no objection certificate in accordance with the foregoing sub-sections if the person leaves India, without the possession of the certificate, in the ship, or aircraft, of the owner or the charterer.

(7) The owner, or charterer, of any ship, or aircraft, shall be deemed to be an assessee in default in respect of the liability created under sub-section (6) and such amount shall be recoverable from him in the manner provided in this Chapter as if it were tax arrears.

(8) The Board may, having regard to the interests of revenue, prescribe:—

- (a) the circumstances;
- (b) the form and the manner, in which the undertaking is to be furnished; and
- (c) any other matter connected therewith.

(9) In this section, the expressions “owner” and “charterer” include any representative, agent or employee authorised by the owner, or charterer, to allow persons to travel by the ship or aircraft.

229. (1) The several modes of recovery specified in this Chapter shall not affect in any way—

- (a) any other law for the time being in force relating to the recovery of debts due to the Government; or
- (b) the right of the Government to institute a suit for the recovery of the tax arrears from the assessee.

(2) It shall be lawful for the Assessing Officer, or the Government, to have recourse to any such law or suit, notwithstanding that the tax arrears are being recovered from the assessee by any mode specified in this Sub-chapter.

CHAPTER - XIV

PENALTIES

230. (1) A person shall be liable to a penalty if he has under reported the tax bases for any financial year.

(2) The penalty referred to in sub-section (1) shall be a sum which shall not be less than, but which shall not exceed two times, the amount of tax payable in respect of the amount of tax bases under reported for the financial year.

Recovery by suit or under other law not Affected.

Penalty for under reporting of tax bases.

(3) A person shall be considered to have under reported the tax bases, if—

(a) the tax bases assessed or reassessed, for the first time, is greater than the maximum amount not chargeable to tax, if any, where no return of tax bases has been filed;

(b) the tax bases assessed is greater than the tax bases disclosed in the return of tax bases; or 5

(c) the tax bases reassessed is greater than the tax bases assessed immediately before the re-assessment.

(4) The amount of tax bases under reported shall be the aggregate amount of the addition or disallowance made by the Assessing Officer, the Commissioner or the Commissioner (Appeals), as the case may be. 10

(5) The aggregate amount of the addition or disallowance made by the Assessing Officer in assessment or re-assessment shall, in a case—

(a) where no return of tax bases has been filed as required by any provision of this Code, be the assessed tax bases as reduced by the maximum amount not chargeable to tax, if any; 15

(b) where the return of tax bases has been filed as required by section 144 or section 146, be the amount of tax bases assessed as reduced by the tax bases disclosed in the return so filed;

(c) where no return of tax bases has been filed under section 144 or in response to a notice under section 146 and whether or not the return of tax bases has been filed in response to a notice under section 159, be the tax bases reassessed as reduced by the maximum amount not chargeable to tax, if any; and 20

(d) where a return of tax bases has been filed as required by section 144 or in response to a notice under section 146 and whether or not the return of the tax bases has also been filed as required by section 159, be the amount of the tax bases reassessed as reduced by the tax bases assessed immediately before the reassessment. 25

(6) The aggregate amount of the addition or disallowance made by the Commissioner in revision shall be tax bases assessed consequent to revision as reduced by the tax bases assessed in the order so revised. 30

(7) The aggregate amount of the addition or disallowance made by the Commissioner (Appeals) in appeal shall be the aggregate of all enhancements made by the Commissioner (Appeals) in the order under appeal.

(8) Subject to the provisions of sub-section (10), the aggregate amount of the addition or disallowance referred to in sub-sections (5) to (7) shall include— 35

(a) the amount of any money or the value of bullion, jewellery or other valuable article or thing, (hereinafter referred to as “assets”), found in the possession of the assessee, or under his control, in the course of search under section 135, if the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any financial year which has ended before the date of search, and— 40

(i) the due date for filing the return of tax bases for the financial year has expired, but the assessee has not filed such return before such due date; or

(ii) the return of tax bases for such financial year has been furnished before the date of search, but such income has not been declared therein; 45

(b) the amount, or value, of assets belonging to the assessee and delivered to the requisitioning officer under sub-section (3) of section 136 or handed over to the Assessing Officer under section 138, if the assessee claims that such assets have

been acquired by him by utilising (wholly or partly) his income for any financial year which has ended before the date of requisition or the date of search, as the case may be, during the course of which the assets were seized, and—

5 (i) the due date for filing the return of tax bases for the financial year has expired, but the assessee has not filed such return; or

(ii) the return of tax bases for such financial year has been furnished before the date of requisition or the date of search, as the case may be, but such income has not been declared therein;

10 (c) any tax bases based on any entry in any books of account or other documents or transactions, if the assessee claims that such entry in the books of account or other documents or transactions represents his tax bases, wholly or in part, for any financial year which has ended before the date of search during the course of which the assets were seized, and—

15 (i) the due date for filing the return of tax bases for the financial year has expired, but the assessee has not filed such return; or

(ii) the return of tax bases for such financial year has been furnished before the date of search, but such tax bases has not been declared therein;

20 (d) in a case where the source of any receipt, deposit or investment in any financial year is claimed to have been added or deducted, as the case may be, in any year prior to the financial year in which such receipt, deposit or investment appears (hereinafter referred to as “preceding year”) and no penalty was levied for such preceding year, then such amount as is sufficient to cover such receipt, deposit or investment.

25 (9) For the purposes of clause (d) of sub-section (8), the amount referred to in said clause shall be deemed to be amount of tax bases under reported for the preceding year in the following order—

(a) the preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year, and

30 (b) where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.

(10) The aggregate amount of the addition or disallowance referred to in sub-sections (5) to (7) shall not include the following, namely:—

35 (a) the amount relating to addition or disallowance in respect of which the assessee offers an explanation and the Assessing Officer is satisfied that—

(i) the explanation is *bona fide*;

(ii) the assessee has disclosed all the facts material to the addition or disallowance; and

(iii) the assessee has disclosed all the facts relating to the explanation.

40 (b) the amount relating to addition or disallowance determined on the basis of an estimate by the Assessing Officer, if the accounts are correct and complete to the satisfaction of the Assessing Officer, but the method employed is such that, in the opinion of the Assessing Officer, the income cannot properly be deduced therefrom;

45 (c) the amount relating to addition or disallowance pertaining to any issue, determined on the basis of an estimate by the Assessing Officer, if the assessee—

(i) has, on his own, estimated a lower amount of addition or disallowance on the same issue;

(ii) has included such amount in the computation of his tax bases; and
 (iii) has disclosed all the facts material to the addition or disallowance;
 and

(d) the amount of undisclosed tax bases referred to in section 231.

(11) The tax payable in respect of the aggregate amount of the addition or disallowance shall be the amount of tax calculated on the aggregate amount of the addition or disallowance made by the Assessing Officer, the Commissioner or the Commissioner (Appeals), as the case may be,—

(a) at the applicable rate in the case to which Paragraph A or Paragraph B of Part I of the First Schedule applies; and

(b) at the rate specified in Part I of the First Schedule or the Second Schedule, as the case may be, in all other cases.

(12) No addition or disallowance of an amount shall form the basis for imposition of penalty, if—

(a) such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other financial year; or

(b) the amount relates to any addition or disallowance made pursuant to the adjustment under section 149.

(13) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by—

(a) the Assessing Officer, if the amount of tax bases under reported is determined in assessment or re-assessment;

(b) the Commissioner, if the amount of tax bases under reported is determined in revision of the tax bases by the Commissioner; or

(c) the Commissioner (Appeals), if the amount of tax bases under reported is determined in appeal against an assessment or re-assessment order.

Penalty where search has been initiated.

231. (1) A person shall be liable to a penalty in respect of the undisclosed tax bases for the specified financial year, if a search and seizure has been conducted under section 135 in his case.

(2) The person referred to in sub-section (1) shall be liable to a penalty—

(a) at the rate of ten per cent. of the undisclosed tax bases for the specified financial year, if such person—

(i) in a statement under sub-section (9) of section 135 in the course of the search, admits the undisclosed tax bases;

(ii) substantiates the manner in which the undisclosed tax bases was derived; and

(iii) pays the tax, together with interest, if any, in respect of the undisclosed tax bases.

(b) at the rate of twenty per cent. of the undisclosed tax bases for the specified financial year, if in a statement under sub-section (9) of section 135 in the course of the search, such person does not admit the undisclosed tax bases, but declares such tax bases in the return of tax bases for such financial year and pays the tax, together with interest, if any, in respect of such tax bases; or

(c) of the sum specified in sub-section (2) of section 230, if in a statement under sub-section (9) of section 135 in the course of the search, such person does not admit

the undisclosed tax bases and also fails to declare such tax bases in the return of tax bases for such financial year.

(3) The penalty referred to in sub-section (1) shall be imposed, by an order in writing, by the Assessing Officer.

5 (4) In this section—

(a) “undisclosed tax bases” means—

(i) any tax bases of the specified financial year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other document or any transaction, found in the course of a search under section 134, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to the specified financial year; or

(B) otherwise not been disclosed to the Chief Commissioner or the Commissioner before the date of the search; or

(ii) any tax bases of the specified financial year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified financial year which is found to be false and would not have been found to be so, had the search not been conducted;

(b) “specified financial year” means the financial year—

(i) which has ended before the date of search, but the due date for filing the return of tax bases for such year has not expired before the date of search and the assessee has not furnished the return of tax bases for the financial year before the said date; or

(ii) in which search was conducted.

232. (1) A person shall be liable to a penalty if he has, without reasonable cause, failed to—

Penalty for other defaults.

(a) keep and maintain any books of account and other documents as required by section 87 for any financial year or to retain such books of account and other documents in accordance with the rules made thereunder;

(b) get his accounts audited in respect of any financial year or obtain and furnish a report of such audit as required by section 88;

(c) deduct the whole, or any part, of the tax as required by the provisions of Sub-chapter A of Chapter XIII;

(d) collect the whole, or any part, of the tax as required by the provisions of Sub-chapter B of Chapter XIII;

(e) pay the whole, or any part, of the tax as required by section 198 or section 202;

(f) pay any sum as required by notice under section 162;

(g) furnish the return of tax bases under section 144 by the end of the financial year in which such return is due;

(h) comply with the provisions of section 294;

(i) furnish the information as required under section 140;

(j) answer any question put to him by an income-tax authority in the exercise of its powers under this Code;

(k) sign any statement made by him in the course of any proceedings under this Code which an income-tax authority may legally require him to sign;

(l) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents, at certain place and time in response to summons issued under sub-section (l) of section 134; 5

(m) furnish in time the return of tax deduction as required under section 198;

(n) furnish in time the return of tax collection as required under section 202; 10

(o) furnish a certificate to the deductee as required by section 198;

(p) furnish a certificate to the buyer, lessee or licensee as required by section 202;

(q) deduct and pay tax as required by sub-section (2) of section 220;

(r) deliver, or cause to be delivered, a return in respect of payment of interest as required by sub-section (l) of section 199; 15

(s) deliver, or cause to be delivered, a return in respect of payment as required by sub-section (3) of section 199;

(t) comply with the provisions of section 292;

(u) comply with the provisions of section 293; 20

(v) comply with a notice issued under section 146 or section 150 or directions under section 151; or

(w) furnish the annual information return as required by section 295.

(2) The penalty referred to in sub-section (l) shall be any sum—

(a) which shall not be less than fifty thousand rupees but which shall not exceed two lakh rupees, in the cases referred to in clause (a) or clause (b) of sub-section (l); 25

(b) which shall not be less than twenty-five per cent. but which shall not exceed the amount, of tax deductible or collectible or payable, as the case may be, in the cases referred to in clauses (c) to (f) of sub-section (l); 30

(c) equal to five thousand rupees, in the case referred to in clause (g) of sub-section (l);

(d) equal to the amount of loan or deposit taken or accepted, or repaid, as the case may be, in the case referred to in clause (h) of sub-section (l);

(e) which shall not be less than five thousand rupees but which shall not exceed one lakh rupees, in any other case referred to in sub-section (l). 35

Procedure.

233. (l) The income-tax authority shall, for the purposes of imposing any penalty under this Chapter, issue a notice to any assessee requiring him to show cause why the penalty should not be imposed on him.

(2) The income-tax authority for the purposes of sub-section (l) shall be— 40

(a) the income-tax authority referred to in sub-section (l3) of section 230, if the penalty is imposable under the said section;

(b) the Assessing Officer, if the penalty is imposable under section 231; and

(c) the income-tax authority before whom the default has been committed, if the penalty is imposable under section 232.

(3) The notice referred to in sub-section (1) shall be issued—

5 (a) during the pendency of any proceedings under this Code for the relevant financial year, in respect of penalties referred to in section 230 or section 232;

(b) within a period of three years from the end of the financial year in which the default is committed, in respect of penalties referred to in section 232.

(4) No order imposing a penalty under this Chapter shall be made unless the assessee has been given an opportunity of being heard.

10 (5) An order imposing a penalty under this Chapter shall be made with the approval of the Joint Commissioner, if—

(a) the penalty exceeds one lakh rupees and the income-tax authority levying the penalty is in the rank of Income-tax Officer; or

15 (b) the penalty exceeds five lakh rupees and the income-tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner.

(6) Every order of penalty issued under this Chapter shall be accompanied by a notice of demand in respect of the amount of penalty imposed and such notice of demand shall be deemed to be a notice under section 162.

20 **234.** (1) No order imposing a penalty under this Chapter shall be passed after the expiry of a period of one year from the end of the financial year in which the notice for imposition of penalty is issued under section 233.

Bar of limitation for imposing penalty

25 (2) An order imposing, or dropping the proceedings for imposition of, penalty under this Chapter may be revised, or revived, as the case may be, on the basis of assessment of the tax bases as revised after giving effect to the order of the Commissioner (Appeals), the Appellate Tribunal, the High Court or the Supreme Court or order of revision under section 191 or section 192.

30 (3) An order revising the penalty under sub-section (2) shall not be passed after the expiry of a period of six months from the end of the month in which order of the Commissioner (Appeals), the Appellate Tribunal, the Authority for Advance Ruling and Dispute Resolution, the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 191 or section 192 is passed.

(4) In computing the period of limitation for the purposes of this section, the following time or period shall not be included—

35 (a) the time taken in giving an opportunity to the assessee to be re-heard again under section 133;

(b) any period during which the immunity granted under section 283 remained in force; and

(c) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order, or injunction, of any court.

40 CHAPTER XV

PROSECUTION

235. The provisions of this Chapter shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, relating to prosecution for offences thereunder.

Chapter not in derogation of any other law

Contravention of any restraint order	236. Whoever contravenes any order referred to in sub-section (7) of section 139 shall be punishable with rigorous imprisonment which may extend to two years and with fine, which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.	
Failure to comply with the provisions of clause (d) of sub-section (2) of section 135.	237. If a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents, as required under clause (d) of sub-section (2) of section 135, fails to afford such facility to the authorised officer, he shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.	5
Removal, concealment, transfer or delivery of property to thwart tax recovery.	238. Whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Fifth Schedule shall be punishable with rigorous imprisonment for a term which may extend to two years and with fine, which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.	10
Failure to comply with the provisions of sub-sections (1) and (3) of section 223.	239. (1) If a person — (a) fails to give the information as required by sub-section (1) of section 223; (b) fails to set aside the amount as required by sub-section (3) of that section; or (c) parts with any of the assets of the company, or the properties, in his custody in contravention of the provisions of the said sub-section (3), he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years and with fine, which shall not be less than fifty thousand rupees, but which may extend to five lakh rupees. (2) No person shall be punishable for any failure referred to in sub-section (1), if he proves that there was reasonable cause for such failure.	15 20 25
Failure to pay tax deducted or collected at source or to pay dividend or income distribution tax.	240. (1) If a person fails to pay to the credit of the Central Government,— (a) the tax deducted, or collected, at source by him as required by, or under, the provisions of Sub-chapter A or Sub-chapter B of Chapter XII; (b) the dividend distribution tax under section 109; or (c) the tax on distributed income under section 110, he shall be punishable— (i) with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years; and (ii) with fine to be determined at the rate of three per cent. of the tax for each month of default, for the period commencing from the date on which the amount was required to be paid to the credit of the Central Government and ending with the date of payment or the date of conviction, whichever is earlier. (2) No person shall be punishable for any failure referred to in clause (a) of sub-section (1), if he proves that there was reasonable cause for such failure.	30 35
Wilful attempt to evade tax.	241. (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Code, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Code, be punishable,— (i) in a case where the amount sought to be evaded exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but	40 45

which may extend to seven years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Code, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Code, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

(3) For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Code or the payment thereof shall include a case where any person—

(a) has in his possession, or control, any books of account or other documents, relevant to any proceeding under this Code, containing a false entry or statement;

(b) makes, or causes to be made, any false entry, or statement, in such books of account or other documents;

(c) wilfully omits, or causes to be omitted, any relevant entry, or statement, in such books of account or other documents; or

(d) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Code, or the payment thereof.

242 (1) If a person wilfully fails to furnish in due time the return of tax bases—

(a) under sub-section (1) of section 144, or in response to a notice given under section 146; or

(b) in response to a notice given under section 159,

he shall be punishable—

(i) in a case where the amount of tax which would have been evaded, if the failure had not been discovered, exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine which shall not be less than one hundred rupees but which may extend to five hundred rupees, for every day during which the default continues;

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine which shall not be less than fifty rupees but which may extend to three hundred rupees, for every day during which the default continues.

(2) A person shall not be proceeded against under this section for failure to furnish in due time the return of tax bases—

(a) under sub-section (1) of section 144, or in response to a notice given under section 146, if the return is furnished before the expiry of the financial year in which such return is due;

(b) in response to a notice given under section 159, if the return is filed before the expiry of the period specified in the said notice; or

(c) the tax payable by the person on the tax bases determined on assessment or re-assessment as reduced by advance tax, or tax collected or deducted at source, does not exceed twenty-five thousand rupees.

Failure to furnish returns of tax bases.

Failure to furnish statements, reports etc.	<p>243. If a person wilfully fails to produce, or cause to be produced, on or before the date specified in any notice served on him under sub-section (2) of section 150, such accounts and documents as are referred to in the notice, he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than fifty rupees or more than one hundred rupees for every day during which the default continues, or with both.</p>	5
Failure to comply with direction under this Code.	<p>244. If a person wilfully fails to comply with a direction issued to him under sub-section (1) of section 151, he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than fifty rupees or more than one hundred rupees for every day during which the default continues, or with both.</p>	10
False statement in verification.	<p>245. (I) If a person makes a statement in any verification under this Code or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,—</p> <p>(i) in a case where the amount of tax which would have been evaded if the statement or account had been accepted as true exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees;</p> <p>(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees.</p>	15 20
Falsification of books of account or documents.	<p>246. (I) If any person (herein referred to as the first person) wilfully and with intent to enable any other person (herein referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Code, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Code, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees.</p> <p>(2) For the purposes of establishing the charge under this section, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Code.</p>	25 30 35
Abetment of false return.	<p>247. (I) If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any tax bases chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (I) of section 241, he shall be punishable,—</p> <p>(i) in a case where the amount of tax, penalty or interest which would have been evaded, if the declaration, account or statement had been accepted as true, or which is wilfully attempted to be evaded exceeds one lakh rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees;</p> <p>(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees.</p>	40 45

248. (1) Where an offence under this Code has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Offences by companies, etc.

5 (2) Nothing in sub-section (1) shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything in sub-section (1), where an offence under this Code has been committed by a company and it is proved that the offence has been committed with
10 the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Where an offence under this Code has been committed by a person, being a
15 company, and the punishment for such offence is imprisonment and fine, then, without prejudice to in sub-section (1) or sub-section (3), such company shall be punished with fine and every person, referred to in sub-section (1), or the director, manager, secretary or other officer of the company referred to in sub-section (3), shall be liable to be proceeded against and punished in accordance with the provisions of this Code.

20 (5) In this section—

(a) “company” means a body corporate, and includes —

(i) an unincorporated body;

(ii) a Hindu undivided family;

(b) “director”, in relation to —

25 (i) an unincorporated body, means a participant in the body;

(ii) a Hindu undivided family, means an adult member of the family; and

(iii) a company, means a whole-time director, or where there is no such director, any other director or manager or officer, who is in charge of the affairs of the company.

30 **249.** (1) The entries in the records, or other documents, in the custody of an income-tax authority shall be admitted in evidence in any proceeding for the prosecution of any person for an offence under this Chapter.

Proof of entries in records or documents.

(2) The entries referred to in sub-section (1) may be proved by the production of—

35 (a) the records or other documents (containing such entries) in the custody of the income-tax authority; or

(b) a copy of the entries certified by that authority under its signature, as true copy of the original entries contained in the records or other documents in its custody.

40 **250.** (1) Where during the course of any search made under section 135, any material has been found in the possession or control of any person and such material is tendered by the prosecution in evidence against such person or against such person and the person referred to in section 247 for an offence under this Code, the provisions of section 311 shall, so far as may be, apply in relation to such material.

Presumption as to assets, and books of account, in certain cases.

45 (2) Where any material taken into custody, from the possession or control of any person, is delivered to the requisitioning officer under section 136 and such material is tendered by the prosecution in evidence against such person or against such person and the

person referred to in section 247 for an offence under this Code, the provisions of section 311 shall, so far as may be, apply in relation to such material.

Presumption
as to culpable
mental state

251. (1) In any prosecution for any offence under this Code which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. 5

(2) In this section—

(a) “culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact;

(b) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. 10

Prosecution to
be at instance
of Chief
Commissioner
or Commis-
sioner.

252. (1) A person shall not be proceeded against for an offence under sections 236 to 247 (both inclusive) except with the previous sanction of the Commissioner or the Commissioner (Appeals), as the case may be. 15

(2) The Chief Commissioner may issue such instructions, or directions, to the income-tax authorities referred to in sub-section (1) as he may think fit for the institution of proceedings under this section.

(3) The Chief Commissioner may compound, either before or after the institution of proceedings (with permission of the Court), any offence under this Chapter, under the circumstances and for the amount, as may be prescribed. 20

(4) The power of the Board to issue orders, instructions or directions under this Code shall include the power to issue orders, instructions or directions (including instructions or directions to obtain its previous approval) to other income-tax authorities for the proper composition of offences (including an authorisation to file and pursue complaints by one or more Inspectors of Income-tax) under this section. 25

(5) An offence in relation to which a punishment has been awarded by a court shall not be compounded.

(6) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any income-tax authority, other than an Inspector, shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the offence in respect of which such proceeding was taken would be compounded. 30

Punishment
for second and
subsequent
offences.

253. If any person convicted of an offence under sections 240, 241, 242, 243, 245, 246 and section 247 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and every subsequent offence with rigorous imprisonment for a term which shall not be less than six months, but which may extend to seven years and with fine. 35

Offences to be
non-cogni-
zable

254. Notwithstanding anything in the Code of Criminal Procedure, 1973, any offence punishable under this Chapter shall be deemed to be non-cognizable within the meaning of that Code. 40 2 of 1974.

Disclosure of
information
by public
servants.

255. (1) If a public servant furnishes any information or produces any document in contravention of the provisions of section 142, he shall be punishable with imprisonment for a term which may extend to six months, and with fine. 45

(2) No prosecution shall be instituted under this section except with the previous sanction of the Central Government, which may be accorded only after giving such public servant an opportunity of being heard.

CHAPTER XIV

ADVANCE RULINGS AND DISPUTE RESOLUTION

5 **256.** An applicant or appellant, specified in column (2) of the Table given below, may seek a ruling or, as the case may be, a resolution of dispute on matters specified in the corresponding entry of column (3) of the said Table:

Scope of ruling and dispute resolution.

TABLE

Serial number	Applicant/Appellant	Scope of ruling and dispute resolution
(1)	(2)	(3)
10	1. Non-resident.	A determination in relation to a transaction which has been undertaken, or is proposed to be undertaken, by the applicant, and such determination shall include the determination of any question of law, or of fact, specified in the application.
15	2. Resident.	A determination in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken, or is proposed to be undertaken, by the applicant with such non-resident, and such determination shall include the determination of any question of law, or of fact, specified in the application.
20	3. Any class of residents, as notified by the Central Government in this behalf.	A determination in respect of an issue relating to computation of tax bases which is pending before any income-tax authority, or the Appellate Tribunal, and such determination shall include the determination of any question of law or of fact relating to such computation of tax bases specified in the application.
25	4. Public Sector company or Commissioner	A resolution of any dispute relating to Company computation of tax bases or any other issue arising from—
30		(i) an appellate, penalty or rectification order of the Commissioner (Appeals);
35		(ii) a revision, penalty or rectification order of the Commissioner, made in the case of a public sector company.
40	5. Public Sector Company.	A resolution of any dispute relating to computation of tax bases or any other issue arising from the order of an Assessing Officer passed in pursuance of the direction of the Dispute Resolution Panel,
		or any rectification order in relation to such order.

45 **257.** (1) The Central Government shall constitute an Authority for Advance Rulings and Dispute Resolution (hereinafter referred to as the Authority) for the purposes of pronouncing an advance ruling and resolution of disputes.

Authority for Advance Rulings and Dispute Resolution.

(2) The Authority shall consist of a Chairperson and such number of Vice-chairpersons, legal Members and revenue Members as the Central Government may appoint.

(3) A person shall not be qualified for appointment as—

(a) the Chairperson unless he has been a Judge of the Supreme Court;

(b) the Vice-chairperson unless he has been a Judge of a High Court; 5

(c) a revenue Member unless he is an officer of the Indian Revenue Service and is a Chief Commissioner;

(d) a legal Member unless he is an officer of the Indian Legal Service and is an Additional Secretary to the Government of India.

(4) The salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed. 10

(5) The Central Government shall provide to the Authority such officers and staff, as may be necessary, for the efficient exercise of the powers of the Authority under this Code.

(6) The powers and functions of the Authority may be discharged by its Benches constituted by the Chairperson of the Authority from amongst the members thereof. 15

(7) A Bench shall consist of the Chairperson or the Vice-chairperson and one legal Member and one revenue Member.

(8) The principal Bench of the Authority shall be located in National Capital Territory of Delhi and other Benches of the Authority shall be located at such places as is deemed fit by the Central Government. 20

(9) No proceeding before, or pronouncement of advance ruling or order or direction on appeal for resolution of dispute by, the Authority shall be questioned, or shall be invalid, on the ground merely of the existence of any vacancy, or defect, in the constitution of the Authority.

Procedure for
advance
ruling.

258. (1) An applicant may make an application for seeking advance ruling, under this Chapter, stating the question on which the advance ruling is sought. 25

(2) The application shall be made in such form and manner and be accompanied by such fees as may be prescribed.

(3) An applicant may withdraw an application within a period of thirty days from the date of filing of the application. 30

(4) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the Commissioner and, if necessary, call upon him to furnish the relevant records.

(5) The Authority may, after examining the application and the records called for, by an order in writing, either allow or reject the application.

(6) No application shall be rejected under sub-section (5) unless an opportunity of being heard has been given to the applicant and reasons for such rejection shall be given in the order. 35

(7) The Authority shall not allow the application where the question raised in the application—

(a) is already pending before any income-tax authority, Appellate Tribunal or any court; 40

(b) involves determination of fair market value of any property;

(c) relates to a transaction or issue which is designed *prima facie* for the avoidance of income-tax.

(8) Notwithstanding anything in sub-section (7), in the case of any person falling within the class of persons notified under section 256, the Authority may allow the application even if the question raised therein is pending before any income-tax authority or Appellate Tribunal.

5 (9) A copy of every order made under sub-section (5) shall be sent to the applicant and to the Commissioner.

(10) The Authority shall, in a case where an application is allowed under sub-section (5), pronounce its advance ruling on the question specified in the application, after examining such further material as may be placed before it by the applicant or the Commissioner or
10 obtained by the Authority.

(11) The Authority shall, before pronouncing its advance ruling, provide an opportunity of being heard to the applicant or to the Commissioner.

(12) The Authority shall pronounce its advance ruling in writing within a period of six months of the receipt of the application.

15 (13) A copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in such manner as may be prescribed, shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

20 **259.** No income-tax authority, or the Appellate Tribunal, shall proceed to decide any issue in respect of which an application has been made by a person falling within the class of persons notified under section 256.

Income-tax authority or Appellate Tribunal not to proceed in certain cases.

260. (1) The advance ruling pronounced by the Authority under section 258 shall be binding only—

Applicability of advance ruling.

(a) on the applicant in whose case the advance ruling has been pronounced;

25 (b) in respect of the transaction in relation to which the advance ruling has been pronounced; and

(c) on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

(2) The advance ruling referred to in sub-section (1) shall not be binding, if there is a change in law, or fact, on the basis of which the advance ruling has been pronounced.

30 **261.** (1) The Authority may, by order, declare an advance ruling to be void *ab initio* if it finds that the ruling has been obtained by the applicant by fraud or misrepresentation of facts.

Advance ruling to be void in certain circumstances.

35 (2) Upon declaring the ruling to be void *ab initio*, all the provisions of this Code shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) to the applicant as if such advance ruling had never been made.

(3) A copy of the order made under sub-section (1) shall be sent to the applicant and the Commissioner.

40 **262.** (1) An appellant may prefer an appeal against the orders referred to in serial numbers 4 and 5 of the Table given in section 256 for seeking resolution of a dispute.

Procedure for dispute resolution.

(2) Every appeal under sub-section (1) shall be preferred within a period of sixty days from the date on which the order sought to be appealed against is communicated to the appellant.

45 (3) The respondent, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been preferred under sub-section (1) by the other party, may

file a memorandum of cross objections against any part of the order of the Commissioner (Appeals) within a period of thirty days of the receipt of the notice.

(4) The memorandum of cross objections shall be disposed of by the Authority as if it were an appeal preferred within the time specified in sub-section (2).

(5) The Authority may admit an appeal, or a memorandum of cross objections, after the expiry of the period specified in sub-section (2) or sub-section (3), if— 5

(a) it is satisfied that the appellant had sufficient cause for not preferring it within that time; and

(b) the delay in filing the appeal does not exceed a period of one year.

(6) The appeal, or the memorandum of cross objections, shall be in such form and manner and be verified in such manner as may be prescribed. 10

(7) The appeal by the public sector company shall be accompanied by such fees as may be prescribed.

(8) The Authority may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. 15

(9) A copy of the order passed by the Authority shall be sent to both the parties.

(10) Every appeal preferred under this section shall be heard and disposed of by the Authority as expeditiously as possible and endeavour shall be made to dispose of such appeal within a period of two years from the end of the financial year in which the appeal is preferred. 20

(11) The order or direction of the Authority in the matter of an appeal shall be final and binding on both the parties.

Stay of demand by the Authority.

263. (1) A public sector company may make an application to the Authority for stay of demand relating to the appeal preferred by it under section 256 and such application shall be accompanied by such fees as may be prescribed. 25

(2) The Authority may, after giving both the parties to the appeal an opportunity of being heard and having considered the merits of the case, pass such orders on the stay application as it deems fit.

(3) The Authority may pass an order of stay under sub-section (2) for a period not exceeding one hundred and eighty days from the date of passing of the order for stay and the Authority shall dispose of the appeal within the said period of stay specified in that order. 30

(4) The Authority may, on an application made by the public sector company seeking extension of the period of stay, extend the period of stay allowed under sub-section (2), if it is satisfied that the delay in disposing of the appeal is not attributable to the company. 35

(5) The aggregate of the period originally allowed under sub-section (2) and the period or periods extended under sub-section (4) shall not, in any case, exceed three hundred and sixty-five days from the date of passing the order of stay under sub-section (2).

(6) The Authority shall dispose of the appeal during the period of stay allowed under sub-section (2) or the period or periods extended under sub-section (4), notwithstanding that the delay in disposing of the appeal is not attributable to the company and where the Authority fails to do so, the stay order shall stand vacated. 40

Power to rectify a mistake.

264. (1) The Authority may, either *suo motu* or the mistake on being brought to its notice by the public sector company or the Commissioner or the Assessing Officer, with a view to rectifying any mistake apparent on the face of record, amend any order passed by it under section 258 or section 262. 45

(2) No order under sub-section (1) shall be passed after a period of four years from the date on which order sought to be amended was made.

(3) The Authority shall not make an amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the public sector company without giving the said company an opportunity of being heard.

5 of 1908. 2 of 1974. **265.** (1) The Authority shall, for the purpose of exercising its powers, have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 134 of this Code. Powers of Authority.

10 (2) The Authority shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973, but not for the purposes of Chapter XXVI of the said Code.

45 of 1860. (3) Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and for the purpose of section 196 of the said Code.

15 **266.** The Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure in all matters arising out of the exercise of its powers under this Code. Procedure of Authority.

267. In this Chapter, unless the context otherwise requires,—

20 (a) “advance ruling” means a ruling by the Authority on a question raised by the applicant under section 258 within the scope as specified under section 256; Interpretations in this Chapter.

(b) “appellant” means a public sector company or the Commissioner who prefers an appeal under sub-section (1) of section 262;

(c) “applicant” means any person who makes an application under sub-section (1) of section 258;

25 (d) “application” means an application made to the Authority under sub-section (1) of section 258;

(e) “Authority” means the Authority for Advance Rulings and Dispute Resolution constituted under section 257;

(f) “Chairperson” means the Chairperson of the Authority;

30 (g) “Member” means a Member of the Authority and includes the Chairperson and Vice-chairperson;

(h) “Vice-chairperson” means the Vice-chairperson of the Authority.

CHAPTER XVI

SETTLEMENT OF CASES

35 **268.** (1) The Central Government shall constitute a Commission to be called the Income-tax Settlement Commission for the settlement of cases under this Chapter. Income-tax Settlement Commission.

(2) The Settlement Commission shall consist of a Chairperson and as many Vice-Chairpersons and other members as the Central Government deems fit and shall function within the Department of the Central Government dealing with direct taxes.

40 (3) The Chairperson, Vice-Chairperson and other members of the Settlement Commission shall be appointed by the Central Government from amongst the officers of the Indian Revenue Service who have served for at least twenty-eight years in the service, including at least five years in the rank of Commissioner or above.

45 **269.** (1) The jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches thereof. Jurisdiction and powers of Settlement Commission.

(2) A Bench shall be presided over by the Chairperson or a Vice-Chairperson, as the case may be, and shall consist of two other members.

(3) A Bench may function with only two members if—

(a) the third member is unable to discharge his functions owing to absence, illness or any other cause; or

(b) any vacancy occurs either in the office of the Presiding Officer or in the office of any member of the Bench.

(4) The Bench, referred to in sub-section (3), shall be presided over by the senior among the two members if none of such members is the Chairperson or Vice-Chairperson.

(5) The Presiding Officer of the Bench, referred to in sub-section (3), may refer a case or matter to the Chairperson for transfer to such Bench as the Chairperson may deem fit if at any stage of the hearing of any such case or matter it appears to the Presiding Officer that the case or matter is of such a nature that it ought to be heard of by a Bench consisting of three members.

(6) The Bench for which the Chairperson is the Presiding Officer shall be the principal Bench and the other Benches shall be known as Additional Benches.

(7) The Chairperson may authorise the Vice-Chairperson or other Member appointed to one Bench to also discharge the functions of the Vice-Chairperson or, as the case may be, other member of another Bench.

(8) The Chairperson may, for the disposal of any particular case, constitute a Special Bench consisting of more than three Members.

(9) The principal Bench and the additional Benches shall ordinarily sit at such places as the Central Government may, by notification, specify.

(10) The Special Bench shall sit at a place to be fixed by the Chairperson.

Vice-Chairperson to act as Chairperson.

270. The Vice-Chairperson or, as the case may be, such one of the Vice-Chairpersons as the Central Government may, by notification, authorise in this behalf, shall act as the Chairperson –

(a) till the date on which a new Chairperson, appointed in accordance with the provisions of this Chapter, enters upon his office, in case there occurs any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise; or

(b) till the date on which the Chairperson resumes his duties, in case the Chairperson is unable to discharge his functions owing to absence, illness or any other cause.

Power of Chairperson to transfer cases from one Bench to another.

271. (1) The Chairperson may, on the application of the assessee or the Chief Commissioner or the Commissioner or on his own motion, transfer any case pending before one Bench for disposal to another Bench.

(2) The case under sub-section (1) shall be transferred by the Chairperson after recording the reasons for doing so.

Decision to be by majority.

272. (1) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority.

(2) If the Members of a Bench differ in opinion on any point and they are equally divided, they shall state the point on which they differ and make a reference to the Chairperson.

(3) The Chairperson, on receipt of the reference under sub-section (2), shall—

(a) either hear the point himself, or

(b) refer the case for hearing on the point by one or more of the other Members.

(4) The point, referred to in sub-section (2), shall be decided according to the opinion of the majority of the Members who have heard the case, including those who first heard it.

5 **273.** (1) An assessee may, at any stage of a case relating to him, make an application to the Settlement Commission in such form and manner as may be prescribed, to have the case settled. Application for settlement of cases.

(2) The application made under sub-section (1) by an assessee shall contain –

(a) a full and true disclosure of his income or wealth which has not been disclosed before the Assessing Officer;

(b) the manner in which such income or wealth has been derived;

10 (c) the details of additional amount of income-tax or wealth-tax payable on such income or wealth along with the proof of payment of such tax; and

(d) such other particulars as may be prescribed.

(3) The application under sub-section (1) shall not be made unless –

15 (a) the assessee has furnished the return of tax bases which he is or was required to furnish under any of the provisions of this Code; and

(b) the additional amount of income-tax payable on the income disclosed in the application exceeds,—

20 (i) fifty lakh rupees in a case where proceedings for assessment or re-assessment way financial year have been initiated in consequence of an action under section 135 or section 136, as the case may be;

(ii) ten lakh rupees in any other case; and

(c) the additional amount of income-tax or wealth-tax payable together with interest has been paid on or before the date of making the application and proof of such payment is submitted with the application.

25 (4) Every application made under sub-section (1) shall be accompanied by such fees as may be prescribed.

(5) The assessee shall not be allowed to withdraw an application made by him under sub-section (1).

30 (6) The assessee shall, on the date on which he makes an application under sub-section (1) to the Settlement Commission, also intimate the Assessing Officer in such manner as may be prescribed, of having made such application to the Settlement Commission.

274. The additional amount of tax payable in respect of the income or wealth disclosed in the application referred to in clause (c) of sub-section (2) of section 273 shall be calculated in the following manner, namely: - Additional amount of income-tax.

35 (a) in the case where the income or wealth disclosed in the application relates to only one financial year and –

(i) the applicant has furnished a return of tax bases of that year—

(A) the amounts of the total income returned and the income disclosed in the application shall be aggregated;

40 (B) the tax shall be calculated on the aggregate income so arrived at as if such aggregate income were the total income;

(C) the amount of tax so calculated shall be reduced by the amount of tax calculated on the total income returned for that financial year;

(D) the balance amount of tax so determined shall be the additional

amount of tax payable in respect of the income disclosed in the application;

(ii) if the applicant has not furnished a return in respect of the total income of that financial year, tax shall be calculated on the income disclosed in the application;

(b) in the case where the income disclosed in the application relates to more than one financial year,— 5

(i) the additional amount of income-tax payable in respect of the income disclosed for each of the financial years shall first be calculated in the manner provided under clause (a);

(ii) the additional amount of income-tax so calculated for each of the financial years shall be aggregated; 10

(iii) the aggregate amount of the additional income-tax so computed shall be the additional amount of tax payable in respect of the income disclosed in the application;

(c) in a case where the wealth disclosed in the application relates to,— 15

(i) one financial year the additional amount of tax payable shall be calculated in the manner provided in clause (a); and

(ii) more than one financial year, the additional amount of tax payable shall be calculated in the manner provided in clause (b).

Admission of application.

275. (1) The Settlement Commission shall, within a period of ten days from the date of the receipt of an application under section 273, issue a notice to the applicant requiring him to explain as to why the application made by him may be allowed to be proceeded with. 20

(2) The Settlement Commission shall, on hearing the applicant, within a period of twenty days from the date of receipt of the application, by an order in writing, reject or allow the application to be proceeded with. 25

(3) The application received under section 273 shall be deemed to have been allowed to be proceeded with, if no order has been passed within the period specified in sub-section (2).

(4) The Settlement Commission shall in respect of an application which has been allowed to be proceeded with under sub-section (1) or sub-section (2), call for a report from the Commissioner within a period of forty-five days from the date on which the application is made. 30

(5) The Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission under sub-section (4).

(6) The Settlement Commission may, on the basis of the report of the Commissioner, and within a period of fifteen days of the receipt of the report by an order in writing, declare the application in question as invalid. 35

(7) The Settlement Commission, before passing the order under sub-section (6), shall—

(a) consider the report of the Commissioner, if it is furnished within the time specified in sub-section (5); 40

(b) take into account the nature and circumstances of the case or the complexity of the investigation involved therein; and

(c) provide an opportunity of being heard to the applicant and to the Commissioner.

(8) The Settlement Commission shall send a copy of order under sub-sections (2) and (6) to the applicant and to the Commissioner. 45

Further inquiry into the case.

276. (1) The Settlement Commission may, if the application has not been declared as invalid under sub-section (6) of section 275, call for the records from the Commissioner.

(2) If the Settlement Commission, on examination of the records made available by the Commissioner or on an application made by him, is of the opinion that any further inquiry or 50

investigation in the matter is necessary, it may direct the Commissioner to –

(a) make or cause to be made such further inquiry or investigation; and

(b) furnish a report on the matters covered by the application and any other matter relating to the case.

5 (3) The Commissioner shall furnish the report required under clause (b) of sub-section (2) within a period of one hundred and twenty days from the date of receipt of communication from the Settlement Commission.

(4) If the Commissioner does not furnish his report within the time specified in sub-section (3), the Settlement Commission may proceed to pass an order without such report.

10 **277.** (1) The Settlement Commission shall, after the application has not been declared as invalid under sub-section (6) of section 275, pass such order in writing as it thinks fit, in accordance with the provisions of this Code, on the matters covered by the application and any other matters relating to the case not covered by the application but referred to in the report of the Commissioner under sub-section (5) of section 275 or sub-section (3) of section
15 276.

Order of settlement.

(2) The order passed by the Settlement Commission under sub-section (1) shall provide –

20 (a) for the terms of settlement including any demand by way of tax, penalty or interest, the manner in which any sum due under the settlement shall be paid and all other matters to make the settlement effective; and

(b) that the settlement shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.

(3) The Settlement Commission, before passing any order under sub-section (1), shall –

25 (a) examine the records called for from the Commissioner;

(b) examine all the issues arising from the report of the Commissioner received under sub-section (5) of section 275 or sub-section (3) of section 276;

(c) provide an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf; and

30 (d) examine such further evidence as may be placed before it or obtained by it.

(4) The Settlement Commission shall pass the order under sub-section (1) within a period of eighteen months from the end of the month in which the application was made.

278. (1) The assessee shall pay any sum payable in pursuance of an order under sub-section (1) of section 277 within a period of thirty days of the receipt of a copy of the order.

Payment of tax on settlement.

35 (2) The Settlement Commission may, on an application by the assessee, extend the time for payment of additional amount of income-tax or wealth-tax or allow the payment by instalments if the assessee furnishes adequate security for such payment.

40 (3) The assessee shall, if the tax is not paid within the time specified in sub-section (1), be liable to pay simple interest at the rate of fifteen per cent. per annum on the amount remaining unpaid from the date of expiry of the period specified under sub-section (1) to the date on which the amount is paid irrespective of the fact that the Settlement Commission has extended the time for payment of such tax or has allowed payment thereof by instalment.

(4). The Assessing Officer may, in accordance with the provisions of Chapter XI,-

45 (a) recover the amount of any sum specified in the order under sub-section (1) of section 277, together with any interest payable thereon under sub-section (3); and

(b) impose and recover any penalty for default in making payment of such sum.

50 **279** (1) The Settlement Commission may, during the pendency of any proceeding before it, by order, attach provisionally any property belonging to the applicant in the manner provided in the Fifth Schedule if it is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue.

Power of Settlement Commission to order provisional attachment to protect revenue

(2) Every provisional attachment made by the Settlement Commission under

sub-section (1) shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1).

(3) The Settlement Commission may, for reasons to be recorded in writing, extend the period specified under sub-section (2) by such further period or periods as it thinks fit, provided that the total period of extension shall not in any case exceed two years. 5

(4) If a provisional attachment made under section 297 is pending immediately before an application is made under section 273, then such order shall continue to have effect under this section up to the period to which the order made under section 297 would have continued if such application had not been made.

Revival of proceedings before Assessing Officer.

280. (1) The order passed by the Settlement Commission under sub-section (1) of section 277 shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts. 10

(2) If the order becomes void,—

(a) the proceedings before the Assessing Officer with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was admitted by the Settlement Commission; and 15

(b) the Assessing Officer may complete such proceedings at any time before the expiry of twenty-one months from the end of the financial year in which the order becomes void.

Powers of Settlement Commission after admission.

281. (1) The Settlement Commission shall have all the powers which are vested in an income-tax authority under this Code. 20

(2) The Settlement Commission shall, after an application has been made under section 273—

(a) and until a report under sub-section (3) of section 276 is made by the Commissioner or the time allowed for submission of the report under said section has expired, whichever is later, have concurrent jurisdiction with the Assessing Officer; and 25

(b) thereafter until an order of settlement is passed under sub-section (1) of section 277, have exclusive jurisdiction to exercise the powers and perform the functions of any income-tax authority under this Code in relation to the case.

(3) Notwithstanding anything in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Code requiring the applicant to pay tax on the basis of self-assessment in relation to the matters before the Settlement Commission. 30

(4) In the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Code in so far as they relate to any matters other than those before the Settlement Commission. 35

(5) The Settlement Commission shall, subject to the provisions of this Chapter, have powers to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings. 40

Inspection and furnishing reports.

282. (1) No person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of such fees as may be prescribed.

(2) For the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on the payment of such fees as may be prescribed, furnish such person with a certified copy of any such report or part thereof relevant for the purpose. 45

Power of Settlement Commission to grant immunity.

283. (1) The Settlement Commission may, subject to such conditions as it may think fit to impose, grant to a person who made application under section 273, immunity, with respect to the case covered by the settlement, from— 50

43 of 1961. (a) imposition of any penalty under this Code or under the Income-tax Act, 1961
27 of 1957. or the Wealth-tax Act, 1957 as they stood immediately before the commencement of this Code; or

43 of 1961. 5 (b) prosecution for any offence under this Code or under the Income-tax Act,
27 of 1957. 1961 or the Wealth-tax Act, 1957 as they stood immediately before the commencement of this Code, instituted after the date of receipt of application under section 273 by the Settlement Commission.

(2) The Settlement Commission shall grant immunity under sub-section (1) only if it is satisfied that the person has—

10 (a) co-operated with the Settlement Commission in the proceedings before it; and

(b) made a full and true disclosure of his income, and the manner in which such income has been derived, in the application for settlement.

15 (3) An immunity granted to a person under sub-section (1) shall stand withdrawn, if such person—

(a) fails to pay any sum specified in the order passed under sub-section (1) of section 277 within the time allowed by the Settlement Commission;

(b) fails to comply with any other condition subject to which the immunity was granted; or

20 (c) had, in the course of the settlement proceedings, concealed any particular material to the settlement or given false evidence.

(4) The person, in whose case the immunity is withdrawn under sub-section (4),—

(a) may be tried—

(i) for the offence with respect to which the immunity was granted;

25 (ii) for any other offence of which he appears to be guilty in connection with the settlement;

(b) shall become liable to the imposition of any penalty under this Code to which he would have been liable, had the immunity not been granted.

30 **284.** (1) The proceedings before the Settlement Commission shall abate on the date specified in sub-section (2), if—

(a) an application made under section 273,—

(i) has not been allowed to be proceeded with or has been rejected under sub-section (2) of section 275; or

(ii) has been declared as invalid under sub-section (6) of section 275; or

35 (b) an order under sub-section (1) of section 277 has not been passed within the time period specified under sub-section (4) of section 277.

(2) The date referred to in sub-section (1) shall be —

(a) in respect of sub-clause (i) of clause (a) of the said sub-section, the day on which the application was rejected;

40 (b) in respect of sub-clause (ii) of clause (a) of the said sub-section, the last day of the month in which the application was declared invalid; and

(c) in respect of clause (b), on the date on which the time period specified in sub-section (4) of section 277 expires.

Abatement of proceeding before Settlement Commission.

(3) If a proceeding before the Settlement Commission abates, the Assessing Officer, or, as the case may be, any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Code as if no application under section 273 had been made.

(4) For the purposes of sub-section (3), the Assessing Officer or, as the case may be, other income-tax authority, shall be entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him.

(5) In a case referred to in sub-section (3), the period commencing from the date of application to the Settlement Commission under section 273 and ending with the date referred to in sub-section (2) shall be excluded from the time limits specified in sections 161 and 163, for the purposes of making a rectification or an assessment or reassessment, and under section 216 for the purposes of payment of interest.

Credit for tax paid in case of abatement of proceedings.

285. In a case where the proceedings before the Settlement Commission abate under sub-section (1) of section 284, the Assessing Officer shall allow the credit for the tax and interest paid,—

(a) on or before the date of making the application under section 273; or

(b) during the pendency of the case before the Settlement Commission.

Recovery of sums due under order of settlement.

286. Any sum specified in an order of settlement passed under sub-section (1) of section 277 may, subject to such conditions, if any, as may be specified therein, be recovered, and any penalty for default in making payment of such sum may be imposed and recovered in accordance with the provisions of Chapter XIII, by the Assessing Officer having jurisdiction over the person who made the application for settlement under section 273.

Order of settlement to be conclusive.

287. Every order of settlement passed under sub-section (1) of section 277 shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any proceedings under this Code or under any other law for the time being in force.

Bar on subsequent application.

288. (1) A person shall not be entitled to make an application under section 273 in relation to any other matter if—

(a) an order passed under sub-section (1) of section 277 provides for the imposition of a penalty on that person under section 230; or

(b) such person is convicted of any offence under this Code in relation to that case.

(2) Subject to the provisions of sub-section (1), a person shall be entitled to make application under section 273 only once in the following circumstances, namely:—

(a) where search and seizure has been carried out under section 135, or material has been obtained in pursuance to a requisition under section 136, in the case of the person; or

(b) where any material, seized or obtained in pursuance of a requisition in the case of another person, has a bearing on the determination of the tax bases of the person making application under section 273.

Proceedings to be judicial proceedings.

289. Any proceeding under his Chapter before the Settlement Commission shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code.

290. (1) In this Chapter, unless the context otherwise requires,—

Interpretations
in this
Chapter.

(a) “Bench” means a Bench of the Settlement Commission;

(b) “case” means any proceeding under this Code for the assessment or reassessment of any person in respect of any financial year or years which may be pending before the Assessing Officer on the date on which an application under sub-section (1) of section 273 is made but does not include,—

(i) a proceeding for making fresh assessment in pursuance of an order under section 191 or section 192;

(ii) an assessment or reassessment proceeding during which prosecution proceedings under Chapter-XV have been initiated;

(c) “Chairperson” means the Chairperson of the Settlement Commission;

(d) “Member” means a Member of the Settlement Commission, and includes the Chairperson and a Vice-Chairperson;

(e) “Settlement Commission” means the Income-tax Settlement Commission constituted under section 268;

(f) “Vice-Chairperson” means a Vice-Chairperson of the Settlement Commission.

(2) For the purpose of clause (b) of sub-section (1), a proceeding for,—

(a) prosecution shall be deemed to have been initiated from the date on which a show cause notice for institution of prosecution is issued to any person.;

(b) making fresh assessment in pursuance of an order under section 192 shall be deemed to have commenced from the date on which the order under section 192, setting aside or cancelling an assessment was passed.

PART G

GENERAL

CHAPTER XVIII

291. (1) The Central Government may enter into an agreement with the Government of any other country—

Agreement
with foreign
countries or
specified
territory.

(a) for the granting of relief in respect of —

(i) income or wealth on which income-tax or wealth-tax, as the case may be, has been paid both under this Code and under the corresponding law in force in that country; or

(ii) income-tax or wealth-tax chargeable under this Code and under the corresponding law in force in that country to promote mutual economic relations, trade and investment;

(b) for the avoidance of double taxation of income or wealth under this Code and under the corresponding law in force in that country;

(c) for exchange of information for the prevention of evasion or avoidance of income-tax or wealth-tax chargeable under this Code or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance;

(d) for recovery of income-tax or wealth-tax under this Code and under the corresponding law in force in that country; or

(e) for carrying out any other purpose of this Code not expressly covered under clauses (a) to (d) above or the corresponding law in force in that country.

(2) The Central Government may enter into an agreement with the Government of any specified territory outside India for the purposes specified in sub-section (1).

(3) The Central Government may, by notification, make such provisions as may be necessary for implementing the agreements referred to in sub-sections (1) and (2).

(4) Any specified association in India may enter into an agreement with any specified association in the specified territory outside India for the purposes of sub-section (1) and the Central Government may by notification make such provisions as may be necessary for adopting and implementing such agreement. 5

(5) A person shall not be entitled to claim relief under the provisions of the agreement unless a certificate of his being a resident in the other country or specified territory is obtained by him from the tax authority of that country or specified territory, in such form as may be prescribed. 10

(6) The provisions of this Code shall not be regarded as discriminatory against the foreign company merely on the consideration that the liability of the foreign company to pay tax is calculated at a rate higher than the rate at which the liability of a domestic company is calculated. 15

(7) Any term used but not defined in this Code or in the agreement referred to in sub-sections (1), (2) or sub-section (4) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Code or the Agreement, have the meaning assigned to it in the notification issued by the Central Government. 20

(8) Where the Central Government has entered into an agreement under sub-section (1) or sub-section (2), or has adopted an agreement entered into by the specified association under sub-section (4), as the case may be, then the provisions of this Code shall apply in relation to the assessee to whom such agreement applies, to the extent they are more beneficial to him. 25

(9) Notwithstanding anything in sub-section (8), the provisions of this Code relating to—

(a) General Anti-Avoidance Rule under section 123;

(b) levy of Branch Profit Tax under section 111; or

(c) Control Foreign Company Rules referred to in the Twentieth Schedule, 30

shall apply to the assessee referred to in sub-section (8), whether or not such provisions are beneficial to him.

Permanent
account
number.

292. (1) Every person who fulfils such conditions and requirements as may be prescribed shall make an application for the allotment of a permanent account number and such person shall be allotted a permanent account number. 35

(2) Any person not required to make an application under sub-section (1), may make an application for the allotment of permanent account number and he shall be allotted a permanent account number.

(3) A permanent account number may, having regard to the nature of transactions as may be prescribed, be allotted to any other person, whether or not an application is made by him. 40

(4) Any person who has been allotted a permanent account number shall quote the number in such transactions or documents as may be prescribed.

(5) In respect of the permanent account number, the Board shall prescribe—

(a) the form and the manner in which an application may be made for the allotment of a permanent account number and the particulars which the application shall contain; 45

(b) the income-tax authority, or any other person who shall be authorised to receive the application or allot the permanent account number;

5 (c) the categories of transactions in relation to which permanent account number shall be quoted by every person in the documents pertaining to those transactions;

(d) the categories of documents in which the permanent account number shall be quoted by every person;

(e) class, or classes, of persons to whom the provisions of this section shall not apply;

10 (f) the form and the manner in which the person who has not been allotted a permanent account number shall make his declaration in relation to categories of transactions and documents;

(g) the manner in which the permanent account number shall be quoted in respect of the categories of transactions referred to in clause (c); and

15 (h) any other matter connected therewith.

293. (1) Every person liable to deduct tax at source, or collect tax at source, shall make an application for the allotment of a tax account number and such person shall be allotted a tax account number. Tax account number.

20 (2) Any person who has been allotted a tax account number shall quote the number in such transactions or documents as may be prescribed.

294. (1) No person shall accept from, or repay to, any other person any loan or deposit otherwise than by an account payee cheque or bank draft, if the aggregate amount of such loan or deposit in a financial year exceeds fifty thousand rupees. Mode of acceptance or repayment of certain loans or deposits.

25 (2) The provisions of this section shall not apply to any loan or deposit taken or accepted from, or by —

(a) the Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

1 of 1956. 30

(d) any Government company as defined in section 617 of the Companies Act, 1956;

(e) such other institution, association or body, or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify;

(f) any person having only agricultural income.

35 (3) In this section,—

(a) “loan or deposit” means a loan or deposit of money;

(b) “loan or deposit” in relation to repayment, means—

(i) any loan or deposit of money repayable after a period or notice; and

40 (ii) in case of a person other than a company, includes a loan or deposit of any nature;

(c) “aggregate amount of loan or deposit”, in the case of repayment, means any loan or deposit together with interest repaid during a financial year.

Obligation to furnish annual information return.

- 295.** (1) Every person responsible for registering or maintaining books of account or other documents containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction.
- (2) The person referred to in sub-section (1) shall be—
- (a) an assessee;
 - (b) a designated person in the case of an office of the Government;
 - (c) a local authority or other public body or association;
 - (d) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; 10 1 of 1908.
 - (e) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; 59 of 1988.
 - (f) the Post Master General as referred to in clause (j) of section 2 of the Indian Post Office Act, 1898; 6 of 1898.
 - (g) the Collector referred to in clause (c) of section 3 of the Land Acquisition Act, 1894; 15 1 of 1894.
 - (h) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; 42 of 1956.
 - (i) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934; or 20 2 of 1934.
 - (j) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996. 22 of 1996.
- (3) The annual information return referred to in sub-section (1) shall be furnished to such income-tax authority or any other authority or agency, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) and within such time as may be prescribed. 25
- (4) In this section, “specified financial transaction” means—
- (a) a transaction of purchase, sale or exchange of goods or property or right or interest in a property;
 - (b) a transaction by way of an investment made or an expenditure incurred; 30
 - (c) a transaction for taking or accepting any loan or deposit; or
 - (d) any other transaction as may be prescribed.
- (5) The person referred to in sub-section (2) shall furnish the annual information return in respect of the financial transactions referred to in sub-section (4) if the aggregate value of each such transaction in any financial year exceeds the amount as may be prescribed. 35
- (6) The income-tax authority referred to in sub-section (3) may, if he considers that the annual information return furnished under sub-section (1) is defective, intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the service of such intimation.
- (7) The income-tax authority referred to in sub-section (3) shall treat the annual information return as invalid if the defect referred to in sub-section (6) is not removed within the time allowed, and the provisions of this Code shall apply as if such person had failed to furnish the annual information return. 40
- (8) If a person who is required to furnish an annual information return under sub-section (1) has not furnished the same within the specified time, then, the income-tax authority 45

referred to in sub-section (3) may serve upon such person a notice requiring him to furnish the return within a period not exceeding sixty days from the date of service of the notice and such person shall furnish the annual information return within the time specified in the notice.

5 **296.** (1) If a person creates a charge on, or transfers, any of his assets in favour of any other person during the pendency of any proceeding under this Code or after the completion thereof, then, such charge on, or transfer of, any asset by him in favour of the other person, shall be void as against any claim in respect of any sum payable by him under this Code. Certain transfers to be void.

(2) The charge, or transfer, referred to in sub-section (1) by a person shall not be void, 10 if it is made—

(a) for adequate consideration and without knowledge of the pendency of such proceeding or of any such sum payable by the person;

(b) with the previous permission of the Assessing Officer.

(3) This section applies to cases where the amount of tax or other sum payable, or 15 likely to be payable, under this Code exceeds five thousand rupees and the assets charged or transferred exceeds ten thousand rupees in value.

(4) In this section, “asset” shall not include any business trading asset.

297.(1) Where during the pendency of any proceeding for the assessment of any tax bases, the Assessing Officer is of the opinion that for the purpose of protecting the interests 20 of revenue, it is necessary so to do, he may, with the previous approval of the Chief Commissioner or the Commissioner, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Fifth Schedule. Provisional attachment to protect revenue in certain cases.

(2) Every such order shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1).

(3) The Chief Commissioner or the Commissioner may, for reasons to be recorded 25 in writing, extend the period referred to in sub-section (2) by such further period or periods as he thinks fit, provided that the total period of extension shall in no case exceed two years.

298.(1) The service of any notice, summons, requisition, order or any other 30 communication under this Code (hereinafter in this section referred to as communication) may be made by delivering or transmitting a copy thereof, to the person named therein,— Service of notice generally.

(a) by post or by such courier service as may be approved by the Board;

(b) in such manner as provided for the service of summons in the Code of Civil 5 of 1908. Procedure, 1908;

(c) in the form of any electronic record as provided in Chapter IV of the Informa- 35 21 of 2000. tion Technology Act, 2000; or

(d) by any other means of transmission of documents, including fax message or electronic mail message, as may be prescribed.

(2) The Board may make rules providing for the addresses including the address for 40 electronic mail or electronic mail message to which the communication referred to in sub-section (1) may be delivered or transmitted to the person named therein.

(3) In this section, the expressions “electronic mail” and “electronic mail message” shall have the same meaning as assigned to them in the *Explanation* to section 66A of the 21 of 200040 Information Technology Act, 2000.

45 **299.** (1) A notice or any other document required to be issued, served or given for the purposes of this Code by any income-tax authority shall be authenticated in manuscript by that authority. Authentication of notices and other documents.

(2) Every notice or other document to be issued, served or given for the purposes of this Code by any income-tax authority shall be deemed to be authenticated, if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.

(3) In this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2).

Notice deemed to be valid in certain circumstances.

300. (1) A notice which is required to be served upon a person for the purposes of assessment under this Code shall be deemed to have been duly served upon him in accordance with the provisions of this Code, if the person has appeared in any proceeding or cooperated in any inquiry relating to an assessment.

(2) The person, referred to in sub-section (1), shall be precluded from taking any objection in any proceeding or inquiry under this Code that the notice was—

(a) not served upon him;

(b) not served upon him in time; or

(c) served upon him in an improper manner.

(3) The provisions of this section shall not apply, if the person has raised the objection before the completion of the assessment.

Service of notice when family is disrupted or unincorporated body is dissolved.

301. (1) Any notice under this Code in respect of the tax bases of a Hindu undivided family shall, in a case where a finding of total partition has been recorded by the Assessing Officer under section 169 in respect of any Hindu undivided family, be served on the person who was the last manager of such family.

(2) If the last manager of the Hindu undivided family is dead, then the notice shall be served on all adults who were members of such family immediately before the partition.

(3) The notice under this Code, in respect of the tax bases of an unincorporated body, shall, where the unincorporated body is dissolved, may be served on any person who was a participant (not being a minor) immediately before its dissolution.

Publication of information respecting assessee in certain cases.

302. (1) The Central Government may, if it is of the opinion that it is necessary or expedient in the public interest, cause to be published in any manner the name and any other particulars relating to any proceeding, or prosecution, under this Code in respect of—

(a) any assessee;

(b) any participant of an unincorporated body; or

(c) any director, managing agent, secretary, treasurer, or manager of the company.

(2) No publication under this section shall be made in relation to any penalty imposed under this Code until the time for preferring an appeal to the Commissioner (Appeals) has expired without an appeal having been preferred or the appeal, if preferred, has been disposed of.

Appearance by registered valuer in certain matters.

303. (1) Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal, in connection with any matter relating to the valuation of any asset, may attend through a registered valuer.

(2) The provisions of sub-section (1) shall not apply in a case where the assessee is required to attend personally for examination on oath or affirmation under section 134.

Appearance by authorised representative.

304. (1) Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal, in connection with any proceeding under this Code, may attend through an authorised representative.

(2) The provisions of sub-section (1) shall not apply in a case where the assessee is required to attend personally for examination on oath or affirmation under section 134.

(3) In this section, "authorised representative" means a person authorised by the assessee in writing to appear on his behalf, being —

5 (a) a person related to the assessee in any manner, or a person regularly employed by the assessee;

(b) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings;

(c) any legal practitioner who is entitled to practice in any civil court in India;

10 (d) an accountant;

(e) any person who has passed any accountancy examination recognised in this behalf by the Board; or

(f) any person who has acquired such educational qualifications as may be prescribed.

15 (4) The following persons shall not be qualified to represent an assessee under sub-section (1):—

(a) a person who has been dismissed or removed from Government service;

20 (b) a legal practitioner, or an accountant, who is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him;

(c) a person, not being a legal practitioner or an accountant, who is found guilty of misconduct in connection with any income-tax proceedings by such authority, as may be prescribed.

25 (5) The Chief Commissioner may, by an order in writing, specify the period upto which the disqualification under sub-section (4) shall continue, having regard to the nature of misconduct and such disqualification shall not exceed a period of six years.

(6) A person shall not be allowed to appear as an authorised representative, if he has committed any fraud or misrepresented the facts which resulted in loss to the revenue and that person has been declared as such by an order of the Chief Commissioner.

30 **305.** (1) The amount of tax bases computed in accordance with this Code shall be rounded off to the nearest multiple of hundred rupees.

Rounding off of tax bases and tax.

(2) Any amount payable or receivable by the assessee under this Code shall be rounded off to the nearest multiple of ten rupees.

35 (3) The method of rounding off under sub-section (1) or sub-section (2), shall be such as may be prescribed.

306. Every person deducting, retaining, or paying any tax in pursuance of this Code in respect of income belonging to another person is hereby indemnified for the deduction, retention, or payment thereof.

Indemnity.

307. (1) The Central Government may tender immunity to any person from—

45 of 1860. 40

(a) prosecution for any offence under this Code, the Indian Penal Code, or any other Central Act for the time being in force; and

(b) the imposition of any penalty under this Code.

Power to tender immunity from prosecution.

(2) The immunity under sub-section (1) shall be granted by the Central Government, if—

40 (a) the person makes a full and true disclosure of the whole circumstances relating to the concealment of income or evasion of payment of tax on income;

- (b) it is of the opinion that it is necessary or expedient so to do; and
- (c) the reasons for the opinion are recorded in writing.

(3) A tender of immunity made to and accepted by the person concerned, shall, to the extent to which the immunity extends, render him immune from—

- (a) prosecution for any offence in respect of which the tender was made; or 5
- (b) the imposition of any penalty under this Code.

(4) The immunity granted under this section shall be deemed to have been withdrawn, if the Central Government records a finding to the effect that the person to whom the immunity has been tendered has—

- (a) wilfully concealed any particular which has the effect of altering the opinion 10
formed under sub-section (2);
- (b) given any false evidence; or
- (c) not complied with any condition on which the tender was made.

(5) The person, whose immunity has been withdrawn under sub-section (4), may be tried for the offence in respect of which the tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall become liable to the imposition of any penalty under this Code to which he would otherwise have been liable. 15

Cognizance of offences.

308. No court inferior to that of a metropolitan magistrate or a magistrate of the First Class shall try any offence under this Code. 20

Section 360 of the Code of Criminal Procedure, 1973, and the Probation of Offenders Act, 1958, not to apply.

309. Nothing contained in section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Code, unless the person is under eighteen years of age. 2 of 1974.
20 of 1958.

Return of tax bases not to be invalid on certain grounds.

310. No return of tax-bases, assessment, notice, summons or other proceedings, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Code shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of tax-bases, assessment, notice, summons or other proceeding if such return of taxbases, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Code. 25
30

Presumption as to material found.

311. (1) Where any material found in the possession, or control, of any person in the course of a search under section 135 or survey under section 141, may, in any proceeding under this Code be presumed that—

- (a) the material belongs to such person;
- (b) the contents of the material, being books of account and other documents, 35
are true;
- (c) the signature and every other part of the books of account and other documents which purport to be in the handwriting of any particular person, or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting; and 40
- (d) a document which is stamped, executed or attested, was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) The presumption under sub-section (1) shall also apply to a case, where any material has been delivered to the requisitioning officer in accordance with the provisions of section 136 as if they had been found in the possession or control of the person referred to in section 136.

5 **312.** (1) No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Code. Bar of suits in civil courts.

(2) No prosecution, suit or other proceeding shall lie against the Government, or any officer of the Government, for anything in good faith done, or intended to be done, under this Code.

10 **313.** Where the Central Government or the Board or an income-tax authority who has been conferred upon the power under any provision of this Code to issue any notification or order, or grant any approval or registration in respect of an assessee, shall, for reasons to be recorded in writing, have all the powers to rescind such notification, order, approval or registration provided that the assessee has been given an opportunity of showing cause
15 against the proposed rescindment. Power to rescind.

PART H

INTERPRETATIONS AND MISCELLANEOUS PROVISIONS

CHAPTER XIX

INTERPRETATIONS AND CONSTRUCTIONS

20 **314.** In this Code, unless the context otherwise requires —

Interpretations in this Code.

(1) “absolute value” means the numerical value without regard to its sign;

38 of 1949.
1 of 1956.

(2) “accountant” means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 and includes any person who is entitled to act as an auditor of companies under sub-section (2) of section 226 of the Companies Act, 1956;

25 (3) “accrual” in relation to income, expenditure or liability, with its grammatical variations, shall include income, expenditure or liability which has arisen;

(4) “accumulated profits” in relation to dividend means—

(a) all profits of the company of three consecutive financial years immediately preceding the financial year in which its undertaking is compulsorily acquired in the case where the company is in liquidation consequent to such compulsory acquisition by—

30

(i) the Government; or

(ii) a corporation owned or controlled by the Government under any law for the time being in force; and

35

(b) all profits of the company up to the date of distribution or payment of dividend or upto the date of liquidation, as the case may be, in any other case;

(5) “actual cost” in relation to a business capital asset shall be the cost computed under section 44;

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(6) “advance tax” means the advance tax payable in accordance with the provisions of section 205;

(7) “advance ruling” shall have the meaning assigned to it in section 267;

(8) “agreement” includes any arrangement or understanding or action in concert, whether or not such arrangement, understanding or action, is—

(a) in writing;

45

(b) formal; or

- (c) intended to be enforceable by legal proceedings;
- (9) “agreement of association” means—
- (a) a partnership deed in relation to a firm; or
- (b) an oral, or written, agreement between the participants of any other unincorporated body; 5
- (10) “agreement for non-compete” means an agreement for—
- (a) not carrying out any activity in relation to any business; or
- (b) not sharing any—
- (i) know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature; or 10
- (ii) information or technique likely to assist in the trading or manufacture or processing of goods or provision for services;
- (11) “agricultural income” means the following income, namely:—
- (a) any profits and gains derived from cultivation of agricultural land;
- (b) any rent derived from any agricultural land; 15
- (c) any rent derived from any farm house; and
- (d) any income derived from saplings or seedlings grown in a nursery;
- (12) “agricultural land” means any land situated in India which is used for agricultural purposes and—
- (a) is assessed to land revenue in India; or 20
- (b) is subject to a local rate assessed and collected by officers of the Government as such;
- (13) “amalgamated company” means—
- (a) a company with which amalgamating company or companies merge; 25
- or
- (b) a company formed as a result of merger of two or more amalgamating companies;
- (14) “amalgamating company” means—
- (a) a company which merges with another company; or
- (b) a company which merges with another company to form a new company; 30
- (15) “amalgamating co-operative” means—
- (a) a co-operative which merges with another co-operative; or
- (b) every co-operative merging to form a new co-operative;
- (16) “amalgamation” in relation to— 35
- (a) a company means the merger of an amalgamating company or companies with an amalgamated company, if —
- (i) all the assets and liabilities of the amalgamating company immediately before the merger (other than the assets transferred, by sale or distribution on winding up, to the amalgamated company) become the 40
- assets and liabilities of the amalgamated company;

(ii) shareholders holding seventy-five per cent. or more, in value of the shares in the amalgamating company (other than shares already held by the amalgamated company or its nominee or its subsidiary, immediately before the merger), become shareholders of the amalgamated company; and

5

(iii) the scheme of amalgamation is in accordance with the provisions of the Companies Act, 1956; and

1 of 1956.

(b) a co-operative means the merger of an amalgamating co-operative with an amalgamated co-operative, if—

10

(i) all the assets and liabilities of the amalgamating co-operative immediately before the merger (other than the assets transferred, by sale or distribution on winding up, to the amalgamated co-operative) become the assets and liabilities of the amalgamated co-operative;

15

(ii) the members holding seventy-five per cent. or more voting rights in the amalgamating co-operative become members of the amalgamated co-operative; and

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(iii) the shareholders holding seventy-five per cent. or more in value of the shares in the amalgamating co-operative (other than the shares held by the amalgamated co-operative or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative; or

(c) an unincorporated body or a proprietary concern means the succession of an amalgamating unincorporated body or proprietary concern with an amalgamated company if—

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(i) all the assets and liabilities of such body or concern relating to the business immediately before the succession become the assets and liabilities of the amalgamated company;

30

(ii) the participants of the body or the proprietor of the concern do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of allotment of shares in the amalgamated company;

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(iii) the aggregate of the shareholding in the amalgamated company of the participants of the body or the proprietor of the concern, upon succession, is not less than fifty per cent. of the total value of the shares in the company; and

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(17) “Appellate Tribunal” means the Appellate Tribunal constituted under section 182;

(18) “Approved Fund” means—

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(a) a provident fund, superannuation fund or gratuity fund approved in accordance with the provisions of the Nineteenth Schedule;

(b) a pension fund, which has been approved by the Board in accordance with the Scheme framed and prescribed by the Central Government in this behalf;

(c) any other fund which has been approved by the Board in accordance with the scheme framed and prescribed by the Central Government in this behalf.

(19) “arm’s length price” shall have the meaning assigned to it in section 124;

(20) “assessee” means every person—

(a) who is required to file a return of his tax bases or the tax bases of any other person in respect of which such person is assessable for the relevant financial year; 5

(b) who files a return of his tax bases, notwithstanding the fact that he is otherwise not required to do so;

(c) who is required to furnish any information or document under this Code;

(d) in respect of whom any proceeding under this Code has been initiated; 10

(e) by whom any tax, or any other sum of money, is payable under this Code;

(f) to whom, or to any other person in respect of which such person is assessable, any amount of refund is payable under this Code; 15

(g) who is deemed to be an assessee under any provision of this Code; or

(h) who is deemed to be an assessee in default under any provision of this Code;

(21) “assessee in default” means—

(a) an assessee who has failed to fulfill his obligation under this Code and has consequently failed to make payment of any amount due from him to the Central Government; or 20

(b) an assessee who is deemed to be assessee in default under any provision of this Code;

(22) “Assessing Officer” means the Income Tax Officer, Assistant Commissioner, Assistant Director, Deputy Commissioner, Deputy Director, Joint Commissioner, Joint Director, Additional Commissioner or Additional Director, who is vested with the relevant jurisdiction by virtue of direction or order issued under section 130 or any other provision of this Code; 25

(23) “assessment” includes— 30

(a) reassessment;

(b) any order giving effect to the directions of an Appellate Authority;

(c) any order under section 191 or section 192; and

(d) any order under section 161 rectifying any mistake apparent on the face of the record with reference to sub-clause (a) or sub-clause (b) or sub-clause (c); 35

(24) “asset” means—

(a) a business asset; or

(b) an investment asset;

(25) “Assistant Commissioner” means a person appointed to be an Assistant Commissioner of Income-tax under section 127; 40

(26) "Assistant Director" means a person appointed to be an Assistant Director of Income-tax under section 127;

(27) "associated concern" shall have the meaning assigned to "associated enterprise" in section 124;

5 (28) "associated enterprise" shall have the meaning assigned to it in section 124;

(29) "associated operation" shall have the meaning assigned to it in section 124;

(30) "associated person" shall have the meaning assigned to it in section 124;

(31) "backward classes" means such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified, from time to time, by the Central Government or any State Government;

10 of 1949. (32) "banking company" means a company to which the Banking Regulation Act, 1949, applies;

(33) "block of assets" means a group of business capital assets falling within a class of business capital assets, for which the same percentage of depreciation is specified;

54 of 1963. (34) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 and notified by the Central Government for the purposes of this Code;

(35) "books" or "books of account" includes ledgers, day-books, cash books, account-books, stock register and other books, kept—

(a) in the written form;

(b) as data stored in a disc, floppy, tape or any other form of electromagnetic data storage device; or

25 (c) as print outs of the data stored in any of the form referred to in sub-clause (b);

(36) "broken-period income" means the income for the period commencing from the date on which the debt instrument is acquired by the person or the beginning of the financial year, whichever is later, and ending on the date on which the security is sold, and calculated in such manner as may be prescribed;

30 (37) "business" includes —

(a) any trade, commerce or manufacture; or any adventure or concern of that nature;

(b) any profession or vocation;

(38) "business asset" means—

35 (a) business trading asset; or

(b) business capital asset;

(39) "business capital asset" means—

(a) any capital asset self-generated in the course of business;

(b) any intangible capital asset in the nature of—

40 (i) goodwill of a business,

(ii) a trade mark or brand name associated with the business,

(iii) a right to manufacture or produce any article or thing,

(iv) right to carry on any business,

- (v) tenancy right in respect of premises occupied by the assessee and used by him for the purposes of his business, or
- (vi) licence, right or permit (by whatever name called) acquired in connection with, or in the course of, any business;
- (c) any tangible capital asset in the nature of a building, machinery, plant or furniture; or 5
- (d) any other capital asset not being land connected with or used for the purposes of any business of the assessee;
- (40) “business connection” in relation to a non-resident shall include a permanent establishment; 10
- (41) “business reorganisation” means reorganisation of business of two or more residents, involving—
- (a) an amalgamation;
- (b) a merger under a scheme sanctioned and brought into force by the Central Government under the Banking Regulation Act, 1949; or 15 10 of 1949.
- (c) a demerger;
- (42) “business trading asset” means stock-in-trade, consumable stores or raw materials held for the purposes of business;
- (43) “capital asset” means property of any kind held by an assessee other than business trading asset; 20
- (44) “capital employed in the business” in relation to actual cost means the aggregate of the paid-up share capital, debentures and long-term borrowings—
- (a) in a case where the prescribed expenditure referred to in serial number 7 of the Table of the Twenty-second Schedule is incurred before the commencement of the business, as on the last day of the financial year in which the business of the company commences; 25
- (b) in any other case as on the last day of the financial year in which the extension of the business is completed, or the new business commences production or operation, in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the business or the setting up of the new business of the company; 30
- (45) “capital gains” means the income as computed under section 46;
- (46) “carbon credit” for trading purposes in respect of its one unit shall mean reduction of one ton of carbon dioxide emissions or emissions of its equivalent gases which can be traded in market at its prevailing market price, which is validated by the United Nations Framework on Climate Change. 35
- (47) “card game and other game of any sort” includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;
- (48) “Chief Commissioner” means a person appointed to be a Chief Commissioner of Income-tax or Director-General of Income-tax under section 127; 40
- (49) “child” in relation to an individual, includes a step-child and an adopted child of that individual;
- (50) “closely-held company” means a company which is not a widely held company; 45

(51) “cold chain facility” means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce;

(52) “Commissioner (Appeals)” means a person appointed to be a Commissioner of Income-tax (Appeals) under section 127;

(53) “Commissioner” means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax under section 127;

(54) “company” means—

(a) any Indian company,

(b) any body corporate incorporated by or under the laws of a country outside India, or

(c) any person who is or was assessable or was assessed as a company under the Indian Income-tax Act, 1922, or the Income-tax Act, 1961;

(55) “Competent Investigating Authority” means any income-tax authority not below the rank of Joint Commissioner prescribed as such;

(56) “Comptroller and Auditor-General of India” means the Comptroller and Auditor General of India appointed under article 148 of the Constitution;

(57) “computer software” means—

(a) any computer programme recorded on any disc, tape, perforated media or other information storage device; or

(b) any customised electronic data or any product or service of similar nature, as may be notified by the Board;

(58) “Controller of Insurance” shall have the same meaning assigned to it in clause (5B) of section 2 of the Insurance Act, 1938;

(59) “converted property” means—

(a) any property having been the separate property of an individual has been converted by the individual into property as belonging to the Hindu undivided family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family; or

(b) any property which has been transferred by the individual, directly or indirectly, to such family otherwise than for adequate consideration;

(60) “co-operative bank” shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949;

(61) “co-operative sector company” means a company in which not less than fifty-one per cent. of the paid up equity share capital is beneficially held by, one or more co-operative societies throughout the financial year;

(62) “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1912 or under any State or Provincial Act for the time being in force for the registration of co-operative societies;

(63) “cost inflation index” in relation to a financial year means such index as the Central Government may specify by notification, having regard to seventy-five per cent. of the average rise in the consumer price index for non-urban manual employees for the immediately preceding financial year;

(64) “cost of the project” in relation to actual cost means the actual cost of the fixed assets, being land, buildings (including expenditure on development of land and buildings), leaseholds, plant, machinery, furniture, fittings and railway sidings, which are shown in the books of the assessee—

(a) in a case where the prescribed expenditure referred to in serial number 7 of the Table of the Twenty-second Schedule is incurred before the commencement of the business, as on the last day of the financial year in which the business of the assessee commences; 5

(b) in any other case, as on the last day of the financial year in which the extension of the business is completed, or the new business commences production or operation, in so far as such fixed assets have been acquired or developed in connection with the extension of the business or the setting up of the new business of the assessee; 10

(65) “cultivation” includes any process ordinarily employed by a cultivator or receiver-of-rent in kind to render the produce raised or received by him fit to be taken to market; 15

(66) “current income from ordinary sources” means the net result of the aggregation under sub-section (1) of section 61;

(67) “current income from the special source” means the income referred to in sub-section (2) of section 62; 20

(68) “date of setting up of a business” means—

(a) in the case of business of manufacturing, production or processing of goods, the date on which the manufacture, production or processing of the goods begins after successful trial run of the plant; or

(b) in any other case, the date on which it is ready to commence its commercial operations; 25

(69) “debt” includes a loan or borrowing;

(70) “debt instrument” means a paper or electronic obligation that enables the borrower to raise funds by promising to repay the lender, or investor, in accordance with the terms of a contract and includes note, bond, certificate, mortgage, lease, loan, borrowing or other agreement between the borrower and the lender; 30

(71) “deduction of tax at source” or “collection of tax at source” with all their grammatical variations, mean deduction or collection of tax under Chapter XIII;

(72) “deductor” means a person responsible for making any payment in respect of which he is liable to deduct tax at source under Sub-chapter A of Chapter-XIII; 35

(73) “demerged company” means—

(a) the company whose undertaking is transferred, pursuant to a demerger, to a resulting company; or

(b) the authority or the body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company, which is split up or reconstructed, to form a resulting company; 40

(74) “demerger” means—

(a) the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956, by a demerged company of one or more of its undertakings to any resulting company, if— 1 of 1956. 45

(i) all the assets and liabilities of the undertaking or undertakings

immediately before the transfer become the assets and liabilities of the resulting company;

(ii) the assets and the liabilities are transferred at values (other than change in the value of assets consequent to their revaluation) appearing in its books of account immediately before the transfer;

5 (iii) the resulting company issues, in consideration of the transfer, its equity shares to the shareholders of the demerged company on a proportionate basis;

10 (iv) the shareholders holding seventy-five per cent. or more, in value of the shares in the demerged company (other than shares already held by the resulting company or its nominee or its subsidiary, immediately before the transfer), become shareholders of the resulting company or companies, otherwise than as a result of the acquisition of the assets of the demerged company or any undertaking thereof by the resulting company;

15 (v) the transfer of the undertaking is on a going concern basis; and

(vi) the transfer is in accordance with such other conditions as may be notified by the Central Government having regard to the necessity to ensure that the transfer is for genuine business purposes; or

20 (b) the splitting up, or the reconstruction, of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company to form a resulting company, in accordance with the conditions as may be notified by the Central Government;

(75) "Deputy Commissioner" means a person appointed to be a Deputy Commissioner of Income-tax under section 127;

25 (76) "Deputy Director" means a person appointed to be a Deputy Director of Income-tax under section 127;

(77) "Director" means a person appointed to be a Director of Income-tax under section 127;

30 (78) "Director General" means a person appointed to be a Director General of Income-tax under section 127;

1 of 1956. (79) "director", "manager" and "managing agent", in relation to a company, have the meanings respectively assigned to them in the Companies Act, 1956;

(80) "Dispute Resolution Panel" means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;

35 (81) "dividend" distributed or paid by a company

(I) includes—

(a) any distribution by a company of accumulated profits, whether capitalised or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company;

40 (b) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to shareholders of its preference shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalised or not;

45 (c) any distribution made to the shareholders (other than shareholders not entitled in the event of liquidation to participate in the surplus assets) of a company on its liquidation, to the extent to which the distribution is attributable

to the accumulated profits of the company immediately before its liquidation, whether capitalised or not;

(d) any distribution to its shareholders (other than shareholders not entitled in the event of liquidation to participate in the surplus assets) by a company on the reduction of its capital, to the extent to which the company possesses accumulated profits, whether such accumulated profits have been capitalised or not; and

(e) any payment by a closely-held company, to the extent of its accumulated profits, if such payment is—

(i) by way of advance or loan to a shareholder being the beneficial owner of equity shares holding not less than ten per cent. of the voting power; or

(ii) by way of advance or loan to any Hindu undivided family, or a firm, or an association of persons, or a body of individuals, or a company (in this clause referred to as the said concern), in which such shareholder is a member or a partner or a shareholder, and in which he has a substantial interest; or

(iii) to any person on behalf, or for the individual benefit, of such shareholder;

(II) but does not include:—

(a) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company;

(b) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;

(c) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956; and

(d) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company);

(82) “dividend distribution tax” means the tax chargeable under section 109;

(83) “document” includes an electronic record as defined in clause (t) of sub-section (I) of section 2 of the Information Technology Act, 2000;

(84) “domestic company” means a company resident in India;

(85) “disaster” shall have the same meaning as assigned to it under clause (d) of section 2 of the Disaster Management Act, 2005;

(86) “due date” means—

(a) in relation to the return of tax bases—

(i) the 30th June following the financial year if the person is not a company and does not derive any income from business; or

(ii) the 31st August following the financial year, in all other cases; or

(b) in relation to any other return, such date as may be prescribed;

(c) in relation to the report required to be furnished under section 88, the 31st August following the financial year.

(87) “electoral trust” means a trust so approved by the Board in accordance with the scheme made in this regard by the Central Government.

5 (88) “employer” means a person who controls an individual under an express or implied contract of employment and is obliged to compensate him by way of salary;

(89) “equity oriented” in relation to a scheme means the scheme—

15 of 1992. (a) of a Mutual Fund registered under the Securities and Exchange Board of India Act, 1992 or regulations made thereunder; and

10 (b) which invests sixty-five per cent. or more of its investible funds in the form of equity shares in domestic companies, computed with reference to the annual average of the monthly averages of the opening and closing figures;

1 of 1956. (90) “equity shares” shall have the same meaning as assigned to it in section 85 of the Companies Act, 1956;

15 (91) “execution of an authorisation for search or requisition” means —

(a) in the case of a search, on the conclusion of the search as recorded in the last panchnama drawn in relation to the person in whose case the authorisation has been issued; or

20 (b) in the case of requisition under section 136, on the date on which all the books of accounts, other documents or assets are received by the Requisitioning Officer;

(92) “ex-serviceman” means—

25 (a) a person who has served in any rank, whether as combatant or non-combatant, in the armed forces of the Union (but excluding the Assam Rifles, Defence Security Corps, General Reserve Engineering Force, Lok Sahayak Sena, Jammu and Kashmir Militia and Territorial Army) for a continuous period of not less than six months after attestation and has been released, otherwise than by way of dismissal or discharge on account of misconduct or inefficiency; and

30 (b) in the case of a deceased or incapacitated ex-serviceman, it includes the spouse, children, father, mother, minor brother, widowed daughter and widowed sister, wholly dependant upon such ex-serviceman immediately before his death or incapacitation;

(93) “fair market value”, in relation to an asset, means the price determined in such manner as may be prescribed;

35 (94) “family” in relation to an individual, means —

(a) the spouse and children of the individual; and

(b) the parents, brothers or sisters of the individual, if mainly dependant on the individual;

40 (95) “family pension” means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of the death of the employee;

(96) “farm house” means any building which fulfills the following conditions, namely:—

(a) it is situated on, or in the immediate vicinity of an agricultural land;

- (b) the building is used exclusively—
- (i) as a dwelling house, store-house, or other out-building, for agricultural purpose; or
 - (ii) to carry out any process to render the produce raised or received by the owner fit to be taken to the market; and 5
- (c) the building is—
- (i) occupied by the cultivator or the receiver of rent-in-kind; or
 - (ii) owned and occupied by the receiver of rent;
- (97) “fees for technical services” —
- (a) means any consideration (including any lump sum consideration) paid or payable, directly or indirectly, for— 10
 - (i) rendering of any managerial, technical or consultancy services;
 - (ii) provision of services of technical or other personnel; or
 - (iii) development and transfer of a design, drawing, plan or software, or such other services; and 15
 - (b) does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head “Income from employment”;
- (98) “finance charges” means—
- (a) any interest; or 20
 - (b) any incidental financial charges;
- (99) “financial institution” means—
- (a) a banking company or a scheduled bank;
 - (b) a non-banking financial company;
 - (c) a public financial institution; 25
 - (d) state financial corporations;
 - (e) state industrial investment corporations; or
 - (f) a housing finance public company;
- (100) “financial intermediary” means stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996; 30 15 of 1992. 22 of 1996.
- (101) “financial lease” with its grammatical variations, means a lease transaction where—
- (a) contract for lease is entered into between two parties for leasing of a specific asset; 35
 - (b) such contract is for use and occupation of the asset by the lessee;
 - (c) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and
 - (d) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment; 40

(102) “financial year” or “year” means—

(a) the period beginning with the date of setting up of a business and ending with the 31st day of March following the date of setting up of such business;

5 (b) the period beginning with the date on which a source of income newly comes into existence and ending with the 31st day of March following the date on which such new source comes into existence;

(c) the period beginning with the 1st day of the financial year and ending with the date of discontinuance of the business or dissolution of the unincorporated body or liquidation of the company, as the case may be;

(d) the period beginning with the 1st day of the financial year and ending with the date of retirement or death of a participant of the unincorporated body;

(e) the period immediately following the date of retirement, or death, of a participant of the unincorporated body and ending with the date of retirement, or death, of another participant or the 31st day of March following the date of the retirement, or death, as the case may be; or

(f) the period of twelve months commencing from the 1st day of April of the relevant year in any other case;

9 of 1932. 20 (103) “firm” shall have the meaning assigned to it in the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;

(104) “foreign company” means a company which is not a domestic company;

42 of 1999. (105) “foreign currency” shall have the same meaning as assigned to it in section 2 of the Foreign Exchange Management Act, 1999;

25 (106) “forward contract” means a contract with an authorised person, as defined in section 2 of the Foreign Exchange Management Act, 1999, for providing a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract;

30 (107) “general public” shall have the same meaning assigned to it in clause (c) of section 103;

(108) “Global Depository Receipts” means any instrument (by whatever name called)-

35 (a) created by the Overseas Depository Bank outside India against issue of foreign currency convertible bonds or ordinary shares, of a domestic company; and

(b) issued to non-residents;

(109) “gross total income” for a financial year means the aggregate of the gross total income from ordinary sources and the gross total income from special sources, for that financial year;

40 (110) “gross total income from ordinary sources” of a financial year means the net result of the aggregation under sub-section (2) or sub-section (3) of section 61, for that financial year;

45 (111) “gross total income from the special source” of a financial year means the net result of the aggregation under sub-section (2) or sub-section (3) of section 62, for that special source for that financial year;

(112) “head office expenditure” means executive and general administration

expenditure incurred by the assessee outside India, including expenditure incurred in respect of—

(a) rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business;

(b) salary, wages, annuity, pension, fees, bonus, commission, gratuity, 5
perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;

(c) traveling by any employee or other person employed in, or managing 10
the affairs of, any office outside India; and

(d) such other matters connected with administration as may be prescribed;

(113) “heavy goods vehicle” shall have the same meaning as assigned to it in 59 of 1988.
section 2 of the Motor Vehicles Act, 1988;

(114) “horse race” means a horse race upon which wagering or betting is law- 15
fully made;

(115) “hospital” includes a dispensary or a clinic or a nursing home;

(116) “house property” means—

(a) any building or land appurtenant thereto; along with facilities and 20
services whether in-built or provided separately; or

(b) any building along with any machinery, plant, furniture or any other 20
facility or services whether inbuilt or provided separately;

(117) “housing development company” means any public sector company which 25
is engaged in providing long-term finance for construction or purchase of houses in India for residential purposes;

(118) “housing-finance public company” means a company— 25

(a) which is a public company;

(b) whose main object is carrying on the business of providing long-term 30
finance for construction or purchase of houses in India for residential purposes; and

(c) which is registered in accordance with the Housing Finance Compa- 30
nies (NHB) Directions, 1989 given under section 30 and section 31 of the Na-
tional Housing Bank Act, 1987; 53 of 1987.

(119) “incidental financial charges” means any fee, commission, brokerage, tax 35
payable or any other similar expenditure incurred for the purposes of borrowing or incurring any debt or in respect of any credit facility which has not been utilised;

(120) “income” includes,—

(a) gross salary referred to in section 22;

(b) gross rent referred to in section 26;

(c) the amount of any accrual or receipt from the businesses referred to in 40
column (2) of the Table in sub-section (2) of section 32;

(d) gross earnings from the business referred to in section 32;

(e) full value of the consideration received or accruing as a result of the 40
transfer of any investment asset referred to in section 50;

(f) gross residuary income referred to in section 58;

(g) gross receipts referred to in section 93;

(h) voluntary contributions received by a political party or an electoral trust;

5 (i) any sum deducted at source on payment received, in accordance with the provisions of Chapter XIII; and

(j) income of the nature referred to in column (3) of the Table in Part III of the First Schedule;

(121) “income from business” means the profits of the business as computed under section 32;

10 (122) “income under the head ‘Capital gains’ ” means the income in respect of that head as computed under sub-section (3) or sub-section (4), as the case may be; of section 60;

(123) “income under the head ‘Income from business’ ” means the income in respect of that head, as computed under sub-section (9) of section 60;

15 (124) “income from employment” means the income as computed under section 21;

(125) “income under the head ‘Income from employment’ ” means the income in respect of that head, as computed under sub-section (1) of section 60;

20 (126) “income from house property” means the income as computed under section 25;

(127) “income under the head ‘Income from house property’ ” means the income in respect of that head, as computed under sub-section (1) of section 60;

(128) “income from residuary sources” means the income as computed under section 55;

25 (129) “income under the head ‘Income from residuary sources’ ” means the income in respect of the head as computed under sub-section (11) of section 60;

(130) “Income-tax Officer” means a person appointed to be an Income-tax Officer under section 127;

(131) “India” means—

30 (a) the territory of India as referred to in article 1 of the Constitution;

80 of 1976. (b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;

(c) the sea-bed and the subsoil underlying the territorial waters; and

35 (d) the air space above its territory and territorial waters;

(132) “Indian company” means a body corporate which—

(a) is registered or established or constituted by or under—

1 of 1956. (i) the Companies Act, 1956;

(ii) a Central, State or Provincial Act;

40 (iii) any law relating to companies formerly in force in any part of India other than the State of Jammu and Kashmir;

(iv) any law for the time being in force in the State of Jammu and Kashmir; and

(b) has its registered or, as the case may be, principal office in India;

- (133) “Indian currency” shall have the same meaning as assigned to it in section 2 of the Foreign Exchange Management Act, 1999; 42 of 1999.
- (134) “Indian income-tax” means income-tax charged in accordance with the provisions of this Code;
- (135) “Indian rate of tax” means the rate determined by dividing the amount of Indian income-tax after deduction of any relief due under the provisions of this Code but before deduction of any relief due under section 207, by the total income; 5
- (136) “Indian ship” shall have the same meaning as assigned to it in clause (18) of section 3 of the Merchant Shipping Act, 1958; 44 of 1958.
- (137) “infrastructure facility” means the following facilities, namely:— 10
- (a) a road including toll road, a bridge or a rail system;
- (b) a highway project including housing or other activities being an integral part of the highway project;
- (c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system; and 15
- (d) a port, airport, inland waterway or inland port;
- (138) “Inspector of Income-tax” means a person appointed to be an Inspector of Income-tax under section 127;
- (139) “insurer” means an Indian insurance company under clause (7A) and any person referred to in clause (9) of section 2 of the Insurance Act, 1938, which has been granted a certificate of registration under section 3 of that Act; 20 4 of 1938.
- (140) “interest” means any amount payable to any person (including any participant), in any manner, in respect of any borrowing or debt incurred or any other similar right or obligation and includes any service fee or other charges in respect of the money borrowed or debt incurred or in respect of any credit facility which has not been utilised; 25
- (141) “investment asset” means,—
- (a) any capital asset which is not a business capital asset;
- (b) any security held by a Foreign Institutional Investor;
- (c) any undertaking or division of a business; 30
- (142) “jewellery” in relation to a capital asset, includes—
- (a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel; 35
- (b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article, worked or sewn into any wearing apparel;
- (143) “Joint Commissioner” means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under section 127;
- (144) “Joint Director” means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under section 127; 40
- (145) “Keyman insurance policy” means a life insurance policy taken by—
- (a) an employer on the life of an employee or a former employee; or
- (b) a person on the life of another person who is, or was, connected in any manner whatsoever with the business of the first-mentioned person; 45

61 of 1956. (146) “khadi” and “village industries” shall have the meanings respectively assigned to them in the Khadi and Village Industries Commission Act, 1956;

5 of 1908. (147) “legal representative” shall have the same meaning as assigned to it in clause (II) of section 2 of the Code of Civil Procedure, 1908;

5 (148) “liabilities” in relation to a demerger shall include—

(a) the liabilities which arise out of the activities or operations of the undertaking;

(b) the loans or borrowings (including debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and

10 (c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the assessee as they stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such assessee immediately before the demerger;

15 (149) “life insurer” means an insurer who is wholly engaged in the business of providing assurance on the life of human beings;

(150) “light goods vehicle or other vehicle” means a vehicle which is not a heavy goods vehicle;

(151) “local authority” means—

20 (a) a Panchayat as referred to in clause (d) of article 243 of the Constitution;

(b) a Municipality as referred to in clause (e) of article 243P of the Constitution;

25 (c) a Municipal Committee and a District Board, legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund; or

41 of 2006. (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(152) “long-term borrowings” means—

30 (a) moneys borrowed from the Government, a scheduled bank or a financial institution where the terms of the borrowings provide for the repayment during a period of not less than five years; or

35 (b) moneys borrowed or debt incurred in a foreign country for the purchase of plant and machinery outside India, where the terms of the borrowings provide for the repayment during a period of not less than seven years;

(153) “long-term finance” means any loan or advance where the terms under which money is loaned or advanced provide for its repayment along with interest thereon during a period of not less than five years;

(154) “long term leasing” means—

40 (a) a lease for a term of not less than twelve years; or

(b) a lease which provides for the extension of its term by a further term or terms, and the aggregate of the term for which such lease is granted or to be extended is not less than twelve years;

45 (155) “lottery” includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;

(156) “manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing—

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;

(157) “material” includes any books of account, document, money, bullion, jewellery or other valuable article or thing;

(158) “maximum marginal rate” means the rate of income-tax applicable in relation to the highest slab of income in the case of an individual or Hindu undivided family or artificial juridical person, as specified in the First Schedule;

(159) “medical authority” means,—

(i) the medical authority referred to in clause (p) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or

(ii) such other medical authority as may be notified by the Central Government for this purpose.

(160) “mineral” includes a group of associated minerals specified in Part I or Part II of the Eighteenth Schedule;

(161) “mineral oil” shall have the meaning assigned to it in the Eleventh Schedule;

(162) “mutual benefit finance company” means a company—

(a) which carries on, as its principal business, the business of acceptance of deposits from its members; and

(b) which is a *Nidhi* or Mutual Benefit Society within the meaning of section 620A of the Companies Act, 1956;

(163) “mutual fund” means a mutual fund registered as such under the Securities and Exchange Board of India Act, 1992;

(164) “NABARD” means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981;

(165) “National Housing Bank” means the National Housing Bank established under section 3 of the National Housing Bank Act, 1987;

(166) “net worth” in relation to,—

(a) a demerged company, mean the aggregate of the paid-up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger; and

(b) an undertaking or division transferred under slump sale, means the value determined in such manner as may be prescribed;

(167) “new investment asset” means the new investment asset within the meaning of section 55;

(168) “New Pension System Trust” means the New Pension System Trust established on the 27th day of February, 2008 under the provisions of the Indian Trusts Act, 1882;

(169) “non-profit organisation” means an organisation, by whatever name called, including a trust, if—

(i) it is not established for the benefit of any particular caste or religious community;

5 (ii) it does not provide any benefit for the members of any particular caste or religious community;

(iii) it is established for the benefit of the general public or for the benefit of the Scheduled Castes, the Scheduled Tribes, backward classes, women or children;

10 (iv) it is established for carrying on charitable activities;

(v) it is not established for the benefit of any of its members;

(vi) it actually carries on the charitable activities during the financial year;

15 (vii) the actual beneficiaries of its activities are the general public, the Scheduled Castes, the Scheduled Tribes, backward classes, or women or children; and

(viii) it is registered as such under section 98;

(170) “non-resident” means a person who is not a resident;

(171) “non-resident deductee” means a person who is non-resident in India and receives any amount which is liable to deduction of tax at source under Chapter XIII;

20 (172) “notice” means the legal instrumentality by which intimation is provided;

25 (173) “notification” means a notification published in the Gazette of India and the expression “notify” shall be construed accordingly;

30 (174) “option” in relation to sweat equity shares means a right but not an obligation, granted to an employee to apply for the sweat equity shares at a predetermined price;

(175) “original investment asset” means an investment asset in respect of which deduction under section 55 is claimed;

35 (176) “Overseas Depository Bank” means a bank authorised by the issuing company to issue Global Depository Receipts against issue of Foreign Currency Convertible Bonds or ordinary shares of the issuing company;

(177) “owner” in relation to a house property includes—

(a) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child;

40 (b) the holder of an impartible estate;

(c) a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association; and

(d) a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882. 4 of 1882.

(178) “paid”—

(a) in relation to “Income from business” or “Income from residuary sources”, means incurred or actually paid, according to the method of accounting on the basis of which the income under those heads are computed; and 5

(b) in all other cases, mean actually paid;

(179) “participant” means—

(a) a partner in relation to a firm; or 10

(b) a member in relation to an association of persons or body of individuals;

(180) “partner” shall have the same meaning as assigned to it in the Indian Partnership Act, 1932 and shall include— 9 of 1932.

(a) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008; and 15 6 of 2009.

(b) any person who, being a minor, has been admitted to the benefits of partnership;

(181) “partnership” shall have the same meaning as assigned to it in the Indian Partnership Act, 1932 and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008; 20 9 of 1932. 6 of 2009.

(182) “permanent account number” means a permanent account number allotted to a person under section 292;

(183) “permanent establishment” means a fixed place of business through which the business of a non-resident assessee is wholly or partly carried on and—

(a) includes— 25

(i) a place of management;

(ii) a branch;

(iii) an office;

(iv) a factory;

(v) a workshop; 30

(vi) a sales outlet;

(vii) a warehouse in relation to a person providing storage facilities for others;

(viii) a farm, plantation other place where agricultural, forestry, plantation or related activities are carried on; 35

(ix) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

(x) a building site or construction, installation or assembly project or supervisory activities in connection therewith;

(xi) furnishing of services, including consultancy services, by the 40 assessee through employees or other personnel engaged by him for such purpose; and

(xii) an installation or structure or plant or equipment, used for

exploration or for exploitation of natural resources; and

(b) deemed to include—

5 (i) a person, other than an independent agent being a broker, general commission agent or any other agent of independent status acting in the ordinary course of his business, acting in India on behalf of an assessee, if such person—

(A) has and habitually exercises in India an authority to conclude contracts on behalf of the assessee, unless his activities are limited to the purchase of goods or merchandise for the assessee;

10 (B) habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the assessee; or

15 (C) habitually secures orders in India, mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident;

(ii) the person acting in India on behalf of an assessee engaged in the business of insurance, through whom the assessee collects premia in the territory of India or insures risks situated therein;

20 (iii) a substantial equipment in India which is being used by, for or under any contract with the assessee;

(184) “person” includes—

- (a) an individual,
- (b) a Hindu undivided family,
- 25 (c) a company,
- (d) a co-operative society or any other society,
- (e) a firm,
- (f) a non-profit organisation,
- (g) an association of persons,
- 30 (h) a body of individuals,
- (i) a local authority,
- (j) every artificial juridical person, not falling within any of the preceding sub-clauses;

35 whether or not the society, firm or organisation, association, body, local authority or artificial juridical person was formed or established or incorporated with the object of deriving income;

(185) “person having a substantial interest in a concern”, with its grammatical variations, means—

40 (a) a person who is the beneficial owner (including the beneficial ownership held by one or more of his relatives, in case the person is an individual) of equity shares carrying not less than twenty per cent. of the voting power, at any time during the financial year, in a concern being a company; and

45 (b) a person who is, at any time during the financial year, beneficially entitled (including the income which is beneficially entitled to one or more of his relative, in case the person is an individual) to not less than twenty per cent. of

the income in any other concern being a Hindu undivided family, or a firm or an unincorporated body;

(186) “person of Indian origin” means any person who or either of whose parents or any of whose grand parents—

(i) was born in India, or 5

(ii) was born in India as defined in the Government of India Act, 1935, in case the person or the parent or the grand parent was born before the 15th day of August, 1947;

(187) “person responsible for making specified payment” means—

(a) an employer who makes the payment which is in the nature of salary; 10

(b) any person who makes the payment of the nature specified in column (2) of the Schedule or the Fourth Schedule;

(188) “person with disability” means a person referred to,—

(i) in clause (t) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or 15 1 of 1996.

(ii) in clause (j) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. 44 of 1999.

(189) “person with severe disability” means—

(i) a person with eighty per cent. or more of one or more disabilities, as referred to in sub-section (4) of section 56 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or 20 1 of 1996.

(ii) a person with severe disability referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999; 25 44 of 1999.

(190) “personal effect” in relation to a capital asset means any movable property including wearing apparel and furniture held for personal use by the assessee or any member of his family dependant on him, but excludes,—

(a) jewellery;

(b) archaeological collections; 30

(c) drawings;

(d) paintings;

(e) sculptures; and

(f) any work of art;

(191) “perquisite” means,— 35

(a) the amenity, facility, privilege or service, whether convertible into money or not, provided directly or indirectly to an employee by the employer, whether by way of reimbursement or otherwise, being—

(i) the value of any accommodation computed in such manner as may be prescribed; 40

(ii) any sum payable to effect an assurance on life or to effect a contract for an annuity;

(iii) the value of any sweat equity share allotted or transferred, as on the date on which the option is exercised by the employee; or

(iv) the value of any obligation which, but for payment by the 45 employer, would have been payable by the employee, computed in such manner as may be prescribed;

(b) the value of any amenity, facility, privilege or service, other than those referred to in sub-clause (a) computed in such manner as may be prescribed but does not include,—

5 (i) the value of any medical treatment provided to an employee or any member of his family in a hospital maintained by the employer;

(ii) any sum paid by an employer in respect of any expenditure actually incurred by an employee on medical treatment of himself or his family members in any hospital maintained by the Government or any local authority or any other hospital approved by the Government;

10 (iii) any sum paid by an employer in respect of any expenditure actually incurred by an employee on medical treatment of himself or his family members with regard to specified diseases, in any hospital approved by the Chief Commissioner in accordance with such guidelines as may be prescribed;

15 (iv) any premium paid or reimbursed by an employer to effect or to keep in force an insurance on the health of an employee under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority;

20 (v) any sum paid by an employer in respect of any expenditure actually incurred by an employee on medical treatment of himself or his family members [other than the expenditure on treatment referred to in items (i), (ii) and (iii)] to the extent it does not exceed fifty thousand rupees in a financial year;

25 (vi) any sum paid by an employer in respect of any expenditure actually incurred by an employee outside India on medical treatment of himself or his family members (including expenditure incurred on travel and stay abroad) if,—

(A) the expenditure does not exceed the amount permitted by the Reserve Bank of India; and

30 (B) the income from employment excluding the amount of expenditure referred to in this sub-clause of such employee does not exceed five lakh rupees in the financial year;

(192) “place of effective management” means—

35 (i) the place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or

(ii) in a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions:

40 (193) “plant” includes ships, aircrafts, vehicles, books, scientific apparatus and surgical equipment but does not include tea bushes, livestock, buildings or furniture and fittings;

43 of 1951. (194) “political party” means a political party registered and recognised under the Representation of the People Act, 1951;

45 (195) “predecessor” in relation to a business reorganisation means—

(a) the amalgamating company, in the case of amalgamation;

(b) the merging company in the case of business reorganisation referred to in sub-clause (b) of clause (41);

(c) the demerged company, in the case of demerger; or

(d) the unincorporated body or the proprietary concern, in the case of business reorganisation referred to in sub-clause (a) of clause (41);

(196) “preference shares” means preference shares within the meaning of section 85 of the Companies Act, 1956; 1 of 1956.

(197) “pre-paid taxes” means tax paid by way of, — 5

(a) tax deduction at source on payment received;

(b) tax collection at source on payment made;

(c) advance-tax;

(d) self-assessment tax; or

(e) foreign tax credit; 10

(f) credit for tax paid on book profit;

(198) “prescribed” means prescribed by rules made under this Code;

(199) “primary co-operative agricultural and rural development bank” means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities; 15

(200) “principal officer” in relation to a person, being a local authority or any other public body or a company or an unincorporated body, means—

(a) the secretary, treasurer, manager or agent of the person, or

(b) any person connected with the management or administration of the person upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof; 20

(201) “private discretionary trust” means any entity, whether incorporated or not, which fulfills the following conditions, namely:—

(a) the shares of its beneficiaries are indeterminate or unknown;

(b) it is not a non-profit organisation; and 25

(c) it is not registered under any law of the Central, State or Provincial Government for the regulation of the religious endowments;

(202) “profits in lieu of or in addition to any salary” includes—

(a) the amount of any compensation due to or received by an employee from his employer or former employer at or in connection with his voluntary retirement, the termination of his employment, or the modification of the terms and conditions relating thereto; 30

(b) any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy, if any part of the contribution to the policy is made by his employer or former employer; and 35

(c) any amount due to or received, directly or indirectly, by any assessee from any person—

(i) before his joining any employment with that person; or

(ii) after cessation of his employment with that person;

(203) “public company” shall have the same meaning as assigned to it in section 3 of the Companies Act, 1956; 40 1 of 1956.

(204) “public financial institution” shall have the same meaning assigned to it in section 4A of the Companies Act, 1956; 1 of 1956.

(205) “public sector company” means—

(a) any corporation established by or under any Central, State or Provincial Act, or

1 of 1956. 5

(b) a Government company as defined in section 617 of the Companies Act, 1956;

45 of 1860.

(206) “public servant” shall have the same meaning as assigned to it in section 21 of the Indian Penal Code;

10

(207) “rate of exchange” means the rate of exchange determined or recognised by the Central Government for the conversion of Indian rupee into foreign currency or *vice versa*;

15

(208) “rate of tax of the other country” means income-tax or wealth-tax, or as the case may be, and surcharge or cess thereon, if any, actually paid in the other country in accordance with the corresponding laws in force in the said country after deduction of all relief due, but before deduction of any relief due in the said country in respect of double taxation, divided by the whole amount of the income as assessed in the said country;

(209) “rate in force” , in relation to a financial year means the rate of income-tax or wealth-tax, as the case may be, specified for the relevant purpose—

(a) in this Code; or

20

(b) in the relevant agreement entered into by the Central Government under section 291;

(210) “re-assessment” means any assessment of tax bases in pursuance of a notice issued under section 159, whether or not—

25

(a) a return of tax bases has been filed before, or after, the issue of the said notice; or

(b) an assessment of the tax bases has been made before the issue of the said notice;

42 of 1956.

30

(211) “recognised stock exchange” means a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose;

74 of 1952.

35

(212) “recognised commodity exchanges” means a registered association as defined in clause (jj) of section 2 of the Forward Contracts (Regulation) Act, 1952;

(213) “registered valuer” means a person registered as such by the Board for determining the value of any asset in accordance with the procedure as may be prescribed;

(214) “relative”, in relation to an individual, means—

(a) spouse of the individual;

(b) brother or sister of the individual;

40

(c) brother or sister of the spouse of the individual;

(d) brother or sister of either of the parents of the individual;

(e) any lineal ascendant or descendant of the individual;

(f) any lineal ascendant or descendant of the spouse of the individual;

(g) spouse of the persons referred to in sub-clauses (b) to (f); or

(h) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual;

(215) “remission or cessation of any liability” includes the remission or cessation of any liability—

(a) by a unilateral act by the assessee by way of writing off such liability in his account or creating a reserve (by whatever name called); or 5

(b) by virtue of there being no transaction with the creditor during the period of five years from the end of the financial year in which the last transaction took place;

(216) “Reserve Bank of India” means the Bank constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934; 10 2 of 1934.

(217) “resident” means a person who is resident in India within the meaning of section 4;

(218) “resident deductee” means a person who is resident and receives any amount liable to deduction of tax at source under Chapter XIII; 15

(219) “resulting company” means—

(a) one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger, and the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company; or 20

(b) any authority, body, local authority or a company established, constituted or formed as a result of demerger;

(220) “royalty” means consideration (including any lump-sum consideration but excluding any consideration which would be the income of the recipient chargeable under the head “Capital gains”) for— 25

(a) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, trade mark, secret formula, process, or similar property;

(b) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula, process, trade mark, or similar property; 30

(c) the use of any patent, invention, model, design, secret formula, process, trade mark, or similar property;

(d) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill; 35

(e) the use or right to use of any industrial, commercial or scientific equipment including ship or aircraft but excluding the amount, referred to in item numbers 17 and 18 of the Table in the Fourteenth Schedule, which is subjected to tax in accordance with the provisions of that Schedule;

(f) the use or right to use of transmission by satellite, cable, optic fiber or similar technology; 40

(g) the transfer of all or any rights (including the granting of a licence) in respect of —

(i) any copyright of literary, artistic or scientific work;

(ii) cinematographic films or work on films, tapes or any other means of reproduction; or 45

(iii) live coverage of any event;

(h) the rendering of any services in connection with the activities referred to in sub-clauses (a) to (g);

(221) “rural area” means any area not being an urban area;

5 (222) “safe harbour”, in relation to computation of arm’s length price under section 117, means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee;

(223) “salary” includes,—

(a) wages;

10 (b) remuneration;

(c) perquisites;

(d) profits in lieu of or in addition to any salary;

(e) any advance or arrear of salary;

(f) any allowance or benefit granted to an employee—

15 (i) to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or where he ordinarily resides;

(ii) to compensate him for the increased cost of living;

20 (iii) to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

(iv) to remunerate or compensate him for performing duties of a special nature relating to his office or employment of profit; or

(v) which is in the nature of house rent allowance;

25 (g) any allowance, other than the allowances referred to in sub-clause (f), concession or assistance;

(h) any payment received by an employee in respect of any period of leave not availed by him;

(i) any contribution made by an employer, in the financial year, to the account of an employee under a pension fund;

30 (j) any contribution made by an employer, in the financial year, to the account of an employee in any other fund;

(k) any amount of interest credited, in the financial year, on the balance to the credit of an employee in a fund referred to in clause (j);

(l) any annuity, pension or any commutation thereof;

35 (m) any gratuity;

(n) any fees or commission;

(224) “Schedule” means a Schedule to this Code;

2 of 1934. (225) “scheduled bank” means any bank listed in the Second Schedule to the Reserve Bank of India Act, 1934;

40 (226) “Scheduled Castes” and “Scheduled Tribes” shall have the meaning respectively assigned to them in clauses (24) and (25) of article 366 of the Constitution;

(227) “scientific research and development” means systemic investigation and research in a field of technology, natural or applied science (including agriculture, animal husbandary or fisheries) if—

- (a) it is carried out by the assessee by means of experiment or analysis;
 (b) it is in the nature of— 5

(i) basic research, namely, work undertaken for the advancement of scientific knowledge without a specific practical application in view;

(ii) applied research, namely, work undertaken for the advancement of scientific knowledge with a specific practical application in view; or

(iii) experimental development, namely, work undertaken for the purpose of achieving technological advancement for the purpose of creating new, or improving existing materials, devices, products or processes, including incremental improvements thereto; and 10

(c) it is not in the nature of—

(i) market research or sales promotion; 15

(ii) quality control or routine testing of materials, devices, products or processes;

(iii) research in social sciences or humanities;

(iv) prospecting, exploring or drilling for, or producing, minerals, petroleum or natural gas; 20

(v) the commercial production of a new or improved material, device or product or the commercial use of a new or improved process;

(vi) style changes; or

(vii) routine data collection;

(228) “security” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956; 25 42 of 1956.

(229) “Securities and Exchange Board of India” means the Board established under section 3 of the Securities and Exchange Board of India Act, 1992; 15 of 1992.

(230) “self-assessment tax” means the tax paid after the financial year but before filing the return of tax bases; 30

(231) “senior citizen” means an individual resident in India who attains the age of sixty-five years or more at any time during the financial year;

(232) “service” for the purposes of non-compete agreement means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, merchant banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging; 35

(233) “Sikkimese” means,— 40

(a) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (in this clause referred to as the “Register of Sikkim Subjects”), immediately before the 26th day of April, 1975;

(b) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No.26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

5 (c) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the name of such individual's father or husband or paternal grandfather or brother from the same father has been recorded in that register;

10 (234) "slump sale" means the sale of any undertaking or division of a business for a lump-sum consideration without values being assigned to the individual assets and liabilities in such sale, other than the assignment of values to the assets or liabilities for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees;

21 of 1860. (235) "society" means a society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India;

15 (236) "sold" includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force but does not include a transfer, in a scheme of business reorganisation, of any asset by the predecessor to the successor;

(237) "special modes of acquisition" means—

- 20 (a) acquisition of converted property by a Hindu Undivided Family; or
(b) acquisition by any person in any of the following manner,—
(i) upon distribution of any asset on the total or partial partition of a Hindu undivided family;
(ii) by way of a gift;
(iii) under a will;
25 (iv) by way of succession, inheritance or devolution;
(v) upon distribution of any asset on the dissolution of an unincorporated body;
(vi) upon distribution of any asset on the liquidation of a company;
(vii) upon a revocable or an irrevocable settlement to a trust; or
30 (viii) under a transaction referred to in clause (d) to clause (h) of sub-section (1) of section 47;

(238) "special source", in its grammatical variation, shall have the meaning assigned to it in section 15.

35 (239) "specified association" means any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and notified as such by the Central Government;

(240) "specified derivative transaction" means any transaction in derivatives, if—

40 (a) it is carried out electronically on screen-based systems of a recognised stock exchange;

(b) it is carried out by a bank or mutual fund or any other person, through a financial intermediary; and

45 (c) it is supported by a time stamped contract note issued by the financial intermediary to every client indicating in the contract note—

(i) the unique client identity number allotted under any law for the time being in force; and

(ii) the permanent account number allotted under this Code;

(241) “specified knowledge-based industry or service” means—

(a) information technology software; 5

(b) information technology service;

(c) entertainment service;

(d) pharmaceutical industry;

(e) bio-technology industry; and

(f) any other industry or service, as may be notified by the Central Government; 10

(242) “specified territory” means any area outside India and notified as such by the Central Government;

(243) “speculative business” means speculative transactions carried on in the nature of a business; 15

(244) “speculative transaction” means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips other than the following transactions; namely,—

(a) a specified derivative transaction; 20

(b) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchandising business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured, or merchandise sold by him;

(c) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; and 25

(d) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member; 30

(245) “speed boat” means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometers per hour in still water and so designed that when running at such speed, its bow will rise;

(246) “stamp duty value” means— 35

(a) the value adopted, or assessed, by any authority of the Central Government or a State Government for the purposes of payment of stamp duty in respect of an immovable property; or

(b) the value which the stamp valuation authority would have, notwithstanding anything in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of payment of stamp duty; 40

(247) “State Bank of India” means the State Bank of India constituted under the State Bank of India Act, 1955; 23 of 1955.

- 63 of 1951. (248) “State financial corporation” means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951;
- 1 of 1956. 5 (249) “State industrial investment corporation” means a Government company within the meaning of section 617 of the Companies Act, 1956, engaged In the business of providing long-term finance for industrial projects;
- (250) “State Pooled Finance Entity” means such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government;
- 10 1 of 1956. (251) “subsidiary” shall have the same meaning as assigned to it in section 4 of the Companies Act, 1956 and includes subsidiary incorporated outside India;
- (252) “successor” in a “business reorganisation” means—
- (a) the amalgamated company or amalgamated co-operative, in the case of amalgamation;
- 15 (b) the merged company in the case of business reorganisation referred to in sub-clause (b) of clause (41);
- (c) the resulting company, in the case of demerger;
- (253) “successor in business” means—
- (a) a successor in a “business reorganisation”;
- 20 (b) a firm which succeeds another firm carrying on a business; and
- (c) a person who succeeds any other person in a business;
- (254) “sweat equity share” means—
- (a) any security underlying any employees stock option granted under any plan, or scheme, of the employer; or
- 25 (b) any security issued by a company to its employee or director, at a discount or for consideration other than cash;
- (255) “tax” means any tax chargeable under the provisions of this Code and includes surcharge or cess, if any;
- 30 (256) “tax account number” means a number allotted under this Code to a person who is liable to deduct tax at source or collect tax at source under Sub-chapter A or Sub-chapter B of Chapter XIII;
- (257) “tax arrear” means any amount of tax, interest, penalty, fine or any other sum, due from an assessee under this Code;
- (258) “tax bases” means—
- 35 (a) income or total income, as the case may be, in relation to income-tax;
- (b) net wealth in relation to wealth-tax;
- (c) dividend distributed in relation to dividend distribution tax or income distributed in relation to tax on distributed income;
- (d) branch profits in relation to branch profits tax;
- 40 (e) the income or total income, net wealth, or dividend or income distributed referred to in sub-clauses (a) to (c) of any other person in respect of which the assessee is assessable under this Code;

(259) “Tax Recovery Officer” means any Income-tax Officer who may be authorised by the Chief Commissioner or the Commissioner, by general or special order in writing—

(a) to exercise the powers of a Tax Recovery Officer; and

(b) to exercise or perform such powers and functions, which are conferred on or assigned to an Assessing Officer, as may be prescribed; 5

(260) “test of continuity of business” stands satisfied, in case of a successor, if he—

(a) holds at least three-fourths of the book value of fixed assets of the predecessor acquired through business reorganisation, continuously for a minimum period of five financial years immediately succeeding the financial year in which the business reorganisation takes place; 10

(b) continues the business of the predecessor for a minimum period of five financial years immediately succeeding the financial year in which the business reorganisation takes place; and 15

(c) fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor or to ensure that the business reorganisation is for genuine business purpose;

(261) “threshold limit” means the maximum amount which is not liable to income-tax; 20

(262) “tonnage income scheme” means a scheme for computation of profits of business of operating qualifying ships under the provisions of the Tenth Schedule;

(263) “total income” of a financial year means the total income computed under section 63 for that financial year;

(264) “total income from special sources” of a financial year means the net result of the aggregation under sub-section (4) of section 62 for that financial year; 25

(265) “total turnover” in relation to a business means the gross sum received or receivable by the assessee, directly or indirectly, in respect of his world-wide sale of goods or supply of services, as the case may be, of the business including any tax, duty, cess or fee (by whatever name called) collected or collectible in respect of the sale or supply; 30

(266) “trade debt” means a debt—

(a) which has been taken into account in computing the income of the assessee in any financial year; or

(b) which is money lent in the ordinary course of banking or money lending which is carried on by the assessee; 35

(267) “transfer”, in relation to a capital asset, includes—

(a) the sale, exchange or relinquishment of the asset;

(b) the extinguishment of any rights in it;

(c) its compulsory acquisition under any law for the time being in force; 40

(d) its conversion into, or its treatment as, stock-in-trade of a business;

(e) the buy-back of any shares or other specified securities referred to in clause (a) of the *Explanation* to section 77A of the Companies Act, 1956, by the issuer of such shares or securities; 1 of 1956.

(f) any contribution of the asset, whether by way of capital or otherwise, to a company or an unincorporated body, in which the transferor is, or becomes, a shareholder or participant, as the case may be;

5 (g) the distribution of the asset on account of dissolution of an unincorporated body;

(h) the distribution of the asset on account of liquidation or dissolution of a company;

4 of 1882. 10 (i) any transaction allowing the possession of an immovable property, to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882;

(j) any transaction which enables the enjoyment of the asset, being any immovable property, whether by way of becoming a participant in an unincorporated body or acquiring shares in a company or by way of any agreement, arrangement or in any other manner;

15 (k) the maturity or redemption of a zero coupon bond;

(l) slump sale;

(m) any damage to the insured asset or its destruction as a result of—

(i) flood, typhoon, hurricane, cyclone, earthquake or any other convulsion of nature;

20 (ii) riot or civil disturbance;

(iii) accidental fire or explosion; or

(iv) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war);

25 (n) transfer of securities by a person having beneficial interest in the securities held by a depository as registered owner;

(o) distribution of money or the asset to a participant in an unincorporated body on account of his retirement from the body; and

(p) any disposition, settlement, trust, covenant, agreement or arrangement.

30 (268) “Transfer Pricing Officer” means an Additional Commissioner, Joint Commissioner, Deputy Commissioner or Assistant Commissioner, authorised by the Board to perform all or any of the functions for determining the arm’s length price in respect of an international transaction and for levying any penalty connected thereto, in respect of any person or class of persons;

35 (269) “transportation charge” includes—

(a) any amount paid whether in or out of India to the assessee, or to any person on his behalf, on account of the carriage of passengers, livestock, mail (including courier) or goods from any place or any port in India;

40 (b) any amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail (including courier) or goods, from any place or any port outside India;

(c) any amount paid to, or received or deemed to be received in India by, the assessee or any person on his behalf by way of demurrage charges or handling charges or such other charges; or

45 (d) any amount paid to, or received or deemed to be received by, the assessee or any person on his behalf for charter, whether or not with crew,

including an arrangement as slot charter, space charter, joint charter or any similar arrangement, of ships, aircraft or any other mode of transport, in relation to sub-clauses (a) and (b) above;

(270) “trust” shall have the meaning assigned to it in clause (e) of section 103;

(271) “unabsorbed current capital loss” means the amount determined under sub-section (4) of section 60. 5

(272) “unabsorbed current horse race loss” means the amount determined under sub-section (10) of section 60;

(273) “unabsorbed current loss from ordinary sources” means the amount determined under sub-section (3) of section 61; 10

(274) “unabsorbed current loss from the special source” means the amount determined under sub-section (3) of section 62;

(275) “unabsorbed current speculative loss” means the amount determined under sub-section (8) of section 60;

(276) “unabsorbed preceeding year capital loss” means the unabsorbed current capital loss, for the financial year immediately preceeding the relevant financial year; 15

(277) “unabsorbed preceeding year horse race loss” means the unabsorbed current horse race loss for the financial year immediately preceeding the relevant financial year; 20

(278) “unabsorbed preceeding year loss from ordinary sources” means the unabsorbed current loss from ordinary sources, for the financial year immediately preceeding the relevant financial year;

(279) “unabsorbed preceeding year loss from the special source” means the unabsorbed current loss from the special source, of the financial year immediately preceeding the relevant financial year; 25

(280) “unabsorbed preceeding year speculative loss” means the unabsorbed current speculative loss for the financial year immediately preceeding the relevant financial year;

(281) “undertaking” in relation to demerger includes— 30

(a) any part of an undertaking;

(b) a unit or division of an undertaking;

(c) a business activity taken as a whole; or

(d) individual assets or liabilities or any combination thereof which constitutes a business activity; 35

(282) “unincorporated body” means—

(a) a firm;

(b) an association of persons; or

(c) a body of individuals;

(283) “university” means a university established or incorporated by or under a Central, State or Provincial Act and includes an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956; 3 of 1956. 40

(284) “urban area” means—

(a) an area within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area commit- 45

tee, town committee or by any other name) or a cantonment board and which has a population of more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the financial year; or

5 (b) an area within such distance from the local limits of any municipality or cantonment board referred to in sub-clause (a), as the Central Government may having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification;

10 (285) “urban development authority” means any authority constituted in India by, or under, any law enacted for the purpose of—

(a) dealing with and satisfying the need for housing accommodation; or

(b) planning, development or improvement of cities, towns and villages;

(286) “valuation date” in relation to wealth-tax means the 31st day of March of the relevant financial year;

15 (287) “valuation officer” means a person appointed as a Valuation Officer by the Central Government and includes a regional valuation officer, a district valuation officer and an assistant valuation officer;

(288) “value of inventory of the business” as on the—

20 (a) close of the financial year means the value of stock of finished goods, work-in-progress, raw material, stores and spares or any other inventory remaining in stock, as on the close of the said financial year and the value is computed in accordance with the method of accounting regularly employed by the assessee; and

(b) beginning of the financial year shall be—

25 (i) nil, if the business has commenced during the financial year; and

(ii) the value of inventory of the business, as on the close of the immediately preceding financial year, in any other case;

30 (289) “value of sweat equity shares” shall be the value of the sweat equity shares on the date on which the option is exercised by the assessee, determined in accordance with the method as may be prescribed, as reduced by the amount actually paid by, or recovered from, the assessee in respect of such shares;

(290) “venture capital company” means a company—

15 of 1992. (a) which has been granted a certificate of registration as a venture capital company under the Securities and Exchange Board of India Act, 1992; and

35 (b) which fulfils all other conditions as may be prescribed in this behalf;

(291) “venture capital fund” means a fund—

15 of 1992. (a) which has been granted a certificate of registration as a venture capital fund under the Securities and Exchange Board of India Act, 1992; and

(b) which fulfils all other conditions as may be prescribed in this behalf;

40 (292) “venture capital undertaking” means a domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the business of—

(a) nano-technology;

45 (b) information technology relating to hardware and software development;

- (c) seed research and development;
- (d) bio-technology;
- (e) research and development of new chemical entities in the pharmaceutical sector;
- (f) production of bio-fuels; 5
- (g) dairy and poultry;
- (h) building and operating composite hotel cum convention centre with seating capacity of more than three thousand;
- (i) development of infrastructural facility; or
- (j) any other business as may be prescribed; 10
- (293) “widely held company” means—
- (a) a company owned by the Government or the Reserve Bank of India;
- (b) a company in which not less than forty per cent. of the paid-up share capital is held (whether alone or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank; 15
- (c) a company registered under section 25 of the Companies Act, 1956; 1 of 1956.
- (d) a mutual benefit finance company;
- (e) a co-operative sector company;
- (f) a public company;
- (g) a corporation established by or under a Central, State or Provincial Act; 20
- (h) a company in which not less than fifty per cent. of the paid up equity share capital is held throughout the relevant financial year, by the companies (whether alone or taken together) to which this clause applies; or
- (i) a company which is not a private company as defined in section 3 of the Companies Act, 1956 and the shares in such company, carrying not less than fifty per cent. of the voting power, have been allotted and were throughout the relevant financial year held— 25
- (I) by the companies referred to in clauses (a) to (h) (whether alone or taken together); or 30
- (II) by a subsidiary of a company referred to in clauses (a) to (h), if the whole of the paid-up share capital of such subsidiary company has been held by the parent company or by its nominees throughout the financial year;
- (294) “working participant” means an individual who is actively engaged in conducting the affairs of the business or profession of the unincorporated body of which he is a participant; 35
- (295) “written down value” shall have the meaning assigned to it in section 45;
- (296) “written off” in relation to a debt means recording an appropriate entry in the account of the debtor so as to reduce the amount of the debt without any recovery thereof; 40
- (297) “zero coupon bond” means a bond—
- (a) issued by any company, fund or scheduled bank in accordance with a scheme notified by the Central Government;

(b) in respect of which no payment and benefit is received or receivable before maturity or redemption from the company, fund or scheduled bank; and

(c) which the Central Government may, by notification, specify in this behalf.

5 **315.** In this Code, unless otherwise stated,—

Construction.

(a) a reference to any income, or to the result of any computation, shall be construed as a reference to both the negative and positive variation of the income or the result, as the case may be;

10 (b) any direction for aggregation of two or more items, which are expressed as amounts, shall be construed also to include a direction for aggregation of negative and positive amounts in all their combinations;

(c) the value of any variable in a formula shall be deemed to be nil, if the value of such variable is indeterminable or unascertainable.

CHAPTER XX

15

MISCELLANEOUS

316. (1) The Board may, subject to the control of the Central Government, by notification, make rules for the whole or any part of India for carrying out the purposes of this Code. Power to make rules.

20 (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the ascertainment and determination of any class of income;

(b) the manner in which and the procedure by which the income shall be arrived at, in the case of—

(i) agriculture income;

25 (ii) a person residing outside India;

(iii) a person whose total income includes income referred to in section 9;

(c) the determination of the amount of expenditure allowable under this Code in such manner, extent and on such basis and conditions, as appears to the Board to be proper and reasonable;

30 (d) the methods by which an estimate of any income liable to tax, or expenditure liable to deduction, may be made, if such income or expenditure cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Board is unreasonable;

35 (e) the form and manner in which any document, application, claim, return or information may be made or furnished and the fees that may be levied in respect of any document, application or claim;

(f) the class or classes of persons who shall be required to furnish any document, application, claim, return or information in electronic form;

40 (g) the form and manner in which a document, application, claim, return or information may be furnished electronically;

(h) the document, statement, receipt, certificate or report which, regardless of anything to the contrary contained in this Code, may not be furnished along with the return but shall be produced before the Assessing Officer on demand;

- (i) the computer resource or the electronic record to which a document, application, claim, return or information may be transmitted electronically;
- (j) the manner in which any document, application, claim, return or information required to be filed under this Code may be verified;
- (k) the authority, agency or organisation who may receive any application, claim, return or information on behalf of the Board or the Department;
- (l) the procedure to be followed in calculating interest payable by assesseees or interest payable by Government to assesseees under any provision of this Code, including the rounding off of the period for which such interest is to be calculated in cases where such period includes a fraction of a month, and specifying the circumstances in which and the extent to which petty amounts of interest payable by assesseees may be ignored;
- (m) the form and manner in which any appeal or cross-objection may be filed under this Code and the manner in which intimation of any such order as is referred to in clause (d) of sub-section (3) of section 184 may be served;
- (n) the circumstances, the conditions and the manner in which, the Commissioner (Appeals) may permit an appellant to produce evidence which he did not produce or which he was not allowed to produce before the Assessing Officer;
- (o) the fee payable in respect of any appeal, application, reference or ruling;
- (p) the maintenance of a register of persons referred to in section 304, other than legal practitioners or accountants, practicing before income-tax authorities and for the constitution of and the procedure to be followed by the authority referred to in sub-section (4) of that section;
- (q) the issue of certificate verifying the payment of tax by assesseees;
- (r) the authority to be prescribed for any of the purposes of this Code;
- (s) the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Code; and
- (t) any other matter which by this Code is to be, or may be, prescribed.

(3) Any order made, proceeding initiated or conducted, or liability or obligation discharged, in accordance with the rules framed under this section shall be deemed to be duly made, initiated, conducted or discharged, in accordance with the provisions of this Code.

(4) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Code, to the rules or any of them and, unless the contrary is permitted, no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.

Laying of rules, schemes and notifications before Parliament.

317. Every rule and scheme made and notification issued under this Code shall be laid, as soon as may be after it is made or issued before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, scheme or notification or both Houses agree that the rule, scheme or notification should not be made or issued, the rule, scheme or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, scheme or notification.

43 of 1961.
27 of 1957.
43 of 1961.
27 of 1957.

318. (1) The Income-tax Act, 1961 and the Wealth-tax Act, 1957 are hereby repealed.

Repeals and
savings.

(2) Notwithstanding the repeal of the Income-tax Act, 1961 and the Wealth-tax Act, 1957 (hereinafter referred to as the repealed Income-tax Act or the repealed Wealth-tax Act, respectively),—

5 (a) where a return of income or wealth has been filed before the commencement of this Code by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Code had not been enacted;

10 (b) where a return of income is filed after the commencement of this Code, otherwise than in pursuance of a notice under section 148 of the repealed Income-tax Act, by any person for the financial year ending on the 31st day of March, 2012, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Code;

15 (c) where a return of wealth is filed after the commencement of this Code, otherwise than in pursuance of a notice under section 17 of the repealed Wealth-tax Act, by any person for the financial year ending on the 31st day of March, 2012, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Code;

20 (d) any proceeding pending on the commencement of this Code before any income-tax authority, wealth-tax authority, the Appellate Tribunal, the Authority for Advance Ruling and Dispute Resolution, the Settlement Commission or any court, by way of appeal, reference, application or revision, shall be continued and disposed under the repealed Income-tax Act, or as the case may be, the repealed Wealth-tax Act, as if this Code had not been enacted;

25 (e) where in respect of any assessment year after the year ending on the 31st day of March, 2001—

30 (i) a notice under section 148 of the repealed Income-tax Act or under section 17 of the repealed Wealth-tax Act had been issued before the commencement of this Code, the proceedings in pursuance of the notice may be continued and disposed of as if this Code had not been enacted;

35 (ii) any income or wealth liable to tax has escaped assessment within the meaning of that expression in section 159 and no proceedings under section 147 of the repealed Income-tax Act or under section 17 of the repealed Wealth-tax Act in respect of any such income or wealth, as the case may be, are pending at the commencement of this Code, a notice under section 159 may be issued with respect to that financial year and all the provisions of this Code shall apply accordingly;

40 (f) any proceeding for the imposition of a penalty in respect of any assessment completed before the first day of April, 2012, may be initiated and any such penalty may be imposed under the repealed Income-tax Act, or as the case may be, the repealed Wealth-tax Act as if this Code had not been enacted;

45 (g) any proceeding for the imposition of a penalty in respect of any assessment for the financial year ending on the 31st day of March, 2011, or any earlier year, which is completed on or after the 1st day of April, 2011, may be initiated and any such penalty may be imposed under this Code;

50 (h) any election or declaration made, or option exercised, by an assessee under any provision of the repealed Income-tax Act or as the case may be, the repealed Wealth-tax Act and in force immediately before the commencement of this Code shall be deemed to have been an election or declaration made, or option exercised, under the corresponding provision of this Code;

(i) where, in respect of any assessment completed before the commencement of this Code, a refund falls due after such commencement, or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions of this Code relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply; 5

(j) any sum payable under the repealed Income-tax Act or as the case may be, the repealed Wealth-tax Act may be recovered under this Code, but without prejudice to any action already taken for the recovery of such sum under such repealed Acts;

(k) any agreement entered into under section 90 or section 90A of the repealed Income-tax Act or under section 44A of the repealed Wealth-tax Act shall, so far as it is not inconsistent with section 291 of this Code, be deemed to have been entered into under section 291 of this Code and shall continue in force accordingly; 10

(l) any appointment made under the provisions of the repealed Income-tax Act, or as the case may be, the repealed Wealth tax Act shall be deemed to have been made under the corresponding provisions of this Code and shall continue to remain in force accordingly; 15

(m) any order made under any provision of the repealed Income-tax Act or as the case may be, the repealed Wealth-Tax Act. shall, so far as it is not inconsistent with the corresponding provisions of this Code, be deemed to have been made under the corresponding provisions aforesaid and shall continue in force accordingly; 20

(n) where the period prescribed for any application, appeal, reference or revision under the repealed Income-tax Act or as the case may be, the repealed Wealth-tax Act had expired on or before the commencement of this Code, nothing in this Code shall be construed as enabling any such application, appeal, reference or revision to be made under this Code by reason only of the fact that a longer period therefor is prescribed or provision is made for extension of time in suitable cases by the appropriate authority; 25

(o) the deduction under section 80-IA, section 80-IB (other than sub-section (9), section 80-IC, section 80-ID, section 80-IE or section 80JJA or section 80JJAA of the repealed Income-tax Act shall continue to be allowed under this Code, if the assessee is eligible for such deduction for the assessment year beginning on the 1st day of April, 2012 subject to the conditions— 30

(i) that the amount of profits eligible for deduction under the provisions of aforesaid sections are calculated in accordance with the provisions of this Code other than the provisions in clauses (d) and (e) of paragraph (5) of the Thirteenth Schedule relating to capital expenditure, if applicable; 35

(ii) that the period for which the deduction is allowed under the provisions of aforesaid sections shall not include a period for which the deduction was otherwise not allowable under the repealed Income-tax Act;

(iii) that the amount related to capital expenditure if any excluded in (i) above shall not be allowed as deduction under this Code in computing the gross total income; and 40

(iv) that the assessee otherwise continues to satisfy the conditions as specified in the respective sections in the financial year;

(p) the deduction under section 80-IAB of the repealed Income-tax Act shall continue to be allowed under this Code, if the assessee, being a developer engaged in the business of developing, operating and maintaining a Special Economic Zone notified on or before 31st day of March, 2012 under the Special Economic Zones Act, 2005, subject to the conditions— 45

(i) that the amount of profits eligible for deduction under the provisions of the aforesaid section are calculated in accordance with the provisions of this Code other than the provisions in clauses (d) and (e) of paragraph (4) of the Twelfth Schedule relating to capital expenditure;

5 (ii) that the period for which the deduction is allowed under the provisions of the aforesaid section shall not include a period for which the deduction was otherwise not allowable under the repealed Income-tax Act;

(iii) that the amount related to capital expenditure if any excluded in (i) above shall not be allowed as deduction under this Code in computing the gross total income; and

(iv) that the assessee otherwise continues to satisfy the conditions as specified in the respective section in the financial year;

(q) the deduction under section 80LA of the repealed Income-tax Act shall continue to be allowed under this Code, if the assessee commences its business operation in the Offshore Banking Unit, or unit of an International Financial Services Centre, in the Special Economic Zone on or before the 31st day of March, 2014, subject to the conditions—

(i) that the amount of profits eligible for deduction under the provisions of the aforesaid section are calculated in accordance with the provisions of this Code other than the provisions in clauses (d) and (e) of paragraph (4) of the Thirteenth Schedule relating to capital expenditure;

(ii) that the period for which the deduction is allowed under the provisions of the aforesaid section shall not include a period for which the deduction was otherwise not allowable under the repealed Income-tax Act;

(iii) that the amount related to capital expenditure if any excluded in (i) above shall not be allowed as deduction under this Code in computing the gross total income; and

(iv) that the assessee otherwise continue to satisfy the conditions as specified in the respective section in the financial year;

(r) the deduction under section 10AA of the repealed Income-tax Act shall continue to be allowed under this Code, if the assessee, being an entrepreneur as referred to in clause (j) of section 2 of the Special Economic Zones Act, 2005, begins to manufacture or produce articles or things or provide any service in the unit in the Special Economic Zone on or before the 31st day of March, 2014, subject to the conditions—

(i) that the amount of profits eligible for deduction under the provisions of the aforesaid section are calculated in accordance with the provisions of this Code other than the provisions in clauses (d) and (e) of paragraph (4) of the Twelfth Schedule relating to capital expenditure;

(ii) that the period for which the deduction is allowed under the provisions of the aforesaid section shall not include a period for which the deduction was otherwise not allowable under the repealed Income-tax Act;

(iii) the amount related to capital expenditure if any excluded in (i) above shall not be allowed as deduction under this Code in computing the gross total income; and

(iv) that the assessee otherwise continue to satisfy the conditions as specified in the respective section in the financial year;

(s) the deduction under sub-section (9) of section 80-IB of the repealed Income-tax Act shall continue to be allowed under this Code, if the undertaking referred to in the said sub-section also fulfills any of the following, namely:—

(A) it is engaged in commercial production of mineral oil in any blocks licensed under a single contract, which is awarded under the New Exploration Licensing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.DL, dated 10th February, 1999 (hereinafter referred as the

NELP) or has been awarded in pursuance of any law for the time being in force or has been awarded by the Central or a State Government in any other manner, before the commencement of this Code;

(B) it is engaged in refining of mineral oil and begins such refining on or after the 1st day of October, 1998 but not later than the 31st day of March, 2012; 5

(C) it is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts under the NELP and begins commercial production of natural gas on or after the 1st day of April, 2009;

(D) it is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after the 1st day of April, 2009, 10

subject to the conditions—

(i) that the amount of profits eligible for deduction under the provisions of the aforesaid section are calculated in accordance with the provisions of this Code other than the provisions in clauses (d) and (f) of paragraph 3 of the Eleventh Schedule relating to capital expenditure; 15

(ii) that the period for which the deduction is allowed under the provisions of the aforesaid section shall not include a period for which the deduction was otherwise not allowable under the repealed Income-tax Act; 20

(iii) that the amount related to capital expenditure if any excluded in (i) above shall not be allowed as deduction under this Code in computing the gross total income; and

(iv) that the assessee otherwise continue to satisfy the conditions as specified in the respective section in the financial year. 25

(3) In this section, “assessment year” shall have the same meaning as assigned to it in the repealed Income-tax Act, 1961 or the repealed Wealth-tax Act, 1957 as the case may be as they stood prior to their repeal. 43 of 1961. 27 of 1957.

Power to remove difficulties.

319. (1) If any difficulty arises— 30

(i) in protecting the interests of the assessee;

(ii) in preventing the loss of revenue;

(iii) in applying the provisions of the Income-tax Act, 1961 and the rules, orders or notifications issued thereunder as it stood before the commencement of this Code; 43 of 1961.

(iv) in clarifying or declaring the true intent of the rules, orders or notifications in their application under this Code; or 35

(v) in giving effect to the provisions of this Code while repealing the Income-tax Act, 1961; or 43 of 1961.

(vi) in generally giving effect to the provisions of this Code,

the Central Government may, by order, make such provisions not inconsistent with the provisions of this Code, as it may appear to it to be necessary or expedient for the purpose of removing the difficulty. 40

(2) In particular, and without prejudice to the generality of the foregoing power, any such order may provide for the adaptations and modifications subject to which the repealed Income-tax Act, 1961 shall apply in relation to the assessments for the financial year ending on the 31st day of March, 2011, or any earlier year. 45 43 of 1961.

(3) No order under sub-section (1) shall be made after the expiry of a period of three years from the commencement of this Code.

(4) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament. 50

THE FIRST SCHEDULE

[See sections 2(4), 15(1), 62(1), 211(3), 230(11), 314(120)(K) and (158)]

RATES OF INCOME-TAX

PART I

5 The liability to income tax, of any person, in respect of his total income of a financial year, which does not include income from any special source, shall be the amount of income-tax calculated at the rate specified, and in the manner provided, in the following Paragraph A to Paragraph F:

Paragraph A

10 (I) In the case of every individual, other than the individual referred to in item (II) of this Paragraph, Hindu undivided family or artificial juridical person, not being a case to which any other Paragraph of this Part applies,—

Rates of income-tax

15	(1) where the total income does not exceed Rs. 2,00,000	Nil;
	(2) where the total income exceeds Rs. 2,00,000 but does not exceed Rs. 5,00,000	10 per cent. of the amount by which the total income exceeds Rs.2,00,000;
20	(3) where the total income exceeds Rs.5,00,000 but does not exceed Rs.10,00,000	Rs.30,000 plus 20 per cent. of the amount by which the total income exceeds Rs.5,00,000 ;
	(4) where the total income exceeds Rs.10,00,000	Rs.1,30,000 plus 30 per cent. of the amount by which the total income exceeds Rs.10,00,000;

25 (II) In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the financial year—

Rates of income-tax

	(1) where the total income does not exceed Rs. 2,50,000	Nil;
30	(2) where the total income exceeds Rs.2,50,000 but does not exceed Rs.5,00,000;	10 per cent. of the amount by which the total income exceeds Rs. 2,50,000
35	(3) where the total income exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs. 25,000 plus 20 per cent. of the amount by which the total income exceeds Rs. 5,00,000;
	(4) where the total income exceeds Rs.10,00,000	Rs. 1,25,000 plus 30 per cent. of the amount by which the total income exceeds Rs. 10,00,000;

Paragraph B

40 (I) In the case of every co-operative society—

Rates of income-tax

(1) where the total income does not exceed Rs.10,000	10 per cent. of the total income;
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(2) where the total income exceeds Rs.10,000 but does not exceed Rs. 20,000	Rs.1,000 <i>plus</i> 20 per cent. of the amount by which the total income exceeds Rs. 10,000;	
(3) where the total income exceeds Rs. 20,000	Rs. 3,000 <i>plus</i> 30 per cent of the amount by which the total income exceeds Rs. 20,000.	5

(II) In the case of every other society—

Rate of income-tax

On the whole of the total income	30 per cent.	
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Paragraph C 10

In the case of every non-profit organisation,—

Rate of income-tax

(i) when the total income does not exceed Rs. 1,00,000	Nil;	
(ii) where the total income exceeds Rs. 1,00,000	15 per cent. of the amount by which the total income exceeds Rs. 1,00,000	15

Paragraph D

In the case of every unincorporated body,—

Rate of income-tax

On the whole of the total income	30 per cent.	20
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Paragraph E

In the case of a company,—

Rate of income-tax

On the whole of the total income	30 per cent.	
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PART II 25

In the cases to which Paragraph A of Part 1 applies, where the person has, in the financial year, any net agricultural income exceeding five thousand rupees, in addition to total income from ordinary sources and the total income exceeds the threshold limit, then,—

(a) the net agricultural income shall be taken into account, in the manner provided in clause (b) [that is to say, as if the net agricultural income were comprised in the total income after the threshold limit but without being liable to tax], only for the purpose of charging income-tax in respect of the total income; and 30

(b) the income-tax chargeable shall be calculated as follows:

(i) the total income and the net agricultural income shall be aggregated and the amount of income-tax shall be determined in respect of the aggregate income at the rates specified in the said Paragraph A, as if such aggregate income were the total income; 35

(ii) the net agricultural income shall be increased by the amount of threshold limit, and the amount of income-tax shall be determined in respect of the net agricultural income as so increased at the rates specified in the said Paragraph A, as if the net agricultural income as so increased were the total income; 40

(iii) the amount of income-tax determined in accordance with sub-clause (i) shall be reduced by the amount of income-tax determined in accordance with sub-clause (ii) and the sum so arrived at shall be the income-tax in respect of the total income.

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PART III

Where, if the total income of a person specified in column (2) of the Table given below includes income from any special source specified in the corresponding entry in column (3) of the said Table, the liability to income-tax of the person shall be the aggregate of—

10 (a) the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table on the income specified in the corresponding entry in column (3); and

(b) the amount of income-tax calculated in accordance with the provisions of Part I and Part II in respect of the balance of his total income, that is, the “total income from ordinary sources”:

15

TABLE

Serial Number	Person	Nature of income	Rate of tax
(1)	(2)	(3)	(4)
20	Non-resident	(a) On investment income by way of— (i) interest	20 per cent.
25		(ii) dividends on which distribution tax has not been paid under section 109. (iii) Profit distributed by a fund on which tax on distributed income has not been paid under section 110	20 per cent.
		(b) On income by way of royalty or fees for technical services	20 per cent.
30	(2) Non-resident sports person, who is not a citizen of India	(c) On income by way of insurance including reinsurance.	20 per cent.
35		On income by way of— (i) participation in India in any game [other than a game the winnings wherefrom are taxable under item (ii) or item (iii) of serial number 4] or sport;	10 per cent.
		(ii) advertisement; or (iii) contribution of articles relating to any game or sport in newspapers, magazines or journals in India.	10 per cent.
40	(3) Non-resident sports association or institution	On income by way of guarantee money in relation to any game or sports played in India.	10 per cent.
45	(4) Any assessee whether resident or non-resident	Income by way of winnings from— (i) any lottery or crossword puzzle;	30 per cent.
		(ii) race, including horse race (not being the income from the activity of owning and maintaining race horses); or	
50		(iii) card game or any other game or gambling or betting	

THE SECOND SCHEDULE

[See Sections 104(1), (6), 109(2), 110(3), 111(2), 112(2), 230(11) and 314(225)]

RATES OF OTHER TAXES

A.—Tax on book profit

1. The income-tax referred to in sub-section (1) of section 103 shall be calculated at the rate specified hereunder:—

Rate of tax

On the amount of book profit 20 per cent.

B.—Tax on distributed profits of a domestic company

2. The tax referred to in sub-section (2) of section 109 shall be calculated at the rate specified hereunder:—

Rate of tax

On the amount of dividend declared, distributed or paid by a domestic company 15 per cent.

C.—Tax on distributed income 15

3. The tax referred to in sub-section (3) of section 110 shall be calculated at the rates specified hereunder:—

Rates of tax

On the amount of income distributed by
 (i) a mutual fund to the unit holders of equity oriented fund; or 05 per cent. 20
 (ii) life insurer to the policy holders of an approved equity oriented life insurance scheme 05 per cent.

D.—Tax on branch profits

4. The tax referred to in sub-section (2) of section 111 shall be calculated at the rate specified hereunder:—

Rate of tax

On the branch profits 15 per cent.

E.—Tax on net wealth

5. The tax referred to in sub-section (2) of section 112 shall be calculated at the rates specified and in the manner provided hereunder:—

Rates of tax

(1) where the net wealth as on the valuation date does not exceed one crore rupees NIL
 (2) where the net wealth, as on the valuation date exceeds rupees one crore 1 per cent. of the amount by which the net wealth exceeds one crore rupees 35

THE THIRD SCHEDULE

[see sections 195(2) and 314(187)(b)]

RATES FOR DEDUCTION OF TAX AT SOURCE

(Rates for deduction of tax at source in the case of resident deductee)

5	Serial number	Nature of payment (Specified payment)	Rate
10	(1)	(2)	(3)
	1.	Income from employment	The average rate of income-tax on estimated income from employment during the financial year, computed on the basis of the rates specified in Part 1 of the First Schedule
15	2.	Payment in respect of — (a) works contract; (b) service contract; (c) broadcasting and telecasting; (d) supply of labour for carrying out any works, or service contract; (e) advertising; or (f) carriage of goods and passengers by any mode of transport other than by railways.	2 per cent.
20	3.	Interest.	10 per cent.
25	4.	Dividend other than dividend in respect of which dividend distribution tax is paid	10 per cent.
	5.	Income distributed by mutual fund on which income distribution tax is not paid,-	10 per cent.
30		(i) where the deductee is an Individual or a Hindu undivided family; (ii) any other deductee	20 per cent.
35	6.	Payment made by a life-insurer in respect of a life insurance policy other than the policy referred to in clause (d) or clause (e) of sub-section (3) of section 59—	
		(i) where the deductee is an Individual or a Hindu undivided family;	10 per cent.
		(ii) any other deductee	20 per cent.
40	7.	Commission, brokerage, remuneration, or prize (by whatever name called) for rendering any services	10 per cent.
	8.	Fees for professional or technical services	10 per cent.
	9.	Payment for royalty or non-compete fee	10 per cent.
45	10.	Payment of compensation on compulsory acquisition of immovable property other than agricultural land.	10 per cent.
	11.	Rent—	
		(i) for the use of machinery or plant or equipment;	2 per cent. 10 per cent.

(1)	(2)	(3)
	(ii) for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings	10 per cent.
12.	Winnings from any lottery or crossword puzzle or card game or other game of any sort	30 per cent.
13.	Winnings from any horse race.	30 per cent.

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THE FOURTH SCHEDULE

[See sections 195(3) and (4), 314(187)(b)]

(Rates for deduction of tax at source in the case of non-resident deductee)

Serial number	Nature of payment (Specified payment)	Rate
(1)	(2)	(3)
1.	Income from employment	The average rate of income-tax on estimated income from employment during the financial year, computed on the basis of the rates specified in Part 1 of the First Schedule
2.	Payment by way of — (i) interest; or (ii) dividends on which dividend distribution tax has not been paid under section 109; or (iii) profit distributed by a fund on which tax on distributed income has not been paid under section 110.	20 per cent.
3.	Payment by way of royalty or fees for technical services.	20 per cent.
4.	Winnings from lotteries, crossword puzzles, card games or any other game or gambling or betting.	30 per cent.
5.	Winnings from horse races (not related to the activity of owning and maintaining race horses).	30 per cent.
6.	Payment to a non-resident sportsperson (not being a citizen of India) by way of— (i) participation in India in any game or sport (other than winnings referred to at serial numbers 4 and 5); (ii) advertisement; or (iii) contribution of articles relating to any game or sport in newspapers, magazines or journals in India	10 per cent.
7.	Payment by way of guarantee money to a non-resident sports association or institution in relation to any game or sports played in India	10 per cent.
8.	Any other sum chargeable to tax.	30 per cent.

THE FIFTH SCHEDULE

[See sections 139(4), 219(1), (5), 220(14), 16, 238, 279(1) and 297(1)]

PROCEDURE FOR RECOVERY OF TAX

PART I

GENERAL PROVISIONS

5

Issue of notice.

1. (1) The Tax Recovery Officer shall, upon assumption of jurisdiction under section 219, cause to be served upon the defaulter a notice requiring the defaulter to pay the amount specified in the certificate within a period of fifteen days from the date of service of the notice.

(2) The notice under sub-paragraph (1) shall also intimate to the defaulter the steps which shall be taken to realise the amount under this Schedule, if he defaults to make payment within the time specified therein or within such further time as the Tax Recovery Officer may in his discretion, grant. 10

When certificate may be executed.

2. (1) No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice required under paragraph. 15

(2) The Tax Recovery Officer may attach the whole or any part of the movable property of the defaulter, as would be liable to attachment in execution of a decree of a civil court, within the said period of fifteen days if—

(a) he is satisfied, for reasons to be recorded in writing, that the defaulter is likely to conceal, remove or dispose of the whole or any part of the movable property; and 20

(b) the realisation of the amount of the certificate would in consequence be delayed or obstructed.

(3) The defaulter whose property has been so attached may furnish security to the satisfaction of the Tax Recovery Officer and on such acceptance of the security by the Tax Recovery Officer, the attachment shall be cancelled from the date on which the security is accepted. 25

Mode of recovery.

3. (1) If the amount mentioned in the notice is not paid within the time specified therein, or within such further time as the Tax Recovery Officer may grant in his discretion, the Tax Recovery Officer shall proceed to realise the amount by one or more of the following modes, namely:— 30

(a) by attachment and sale of the defaulter's movable property;

(b) by attachment and sale of the defaulter's immovable property;

(c) by arrest of the defaulter and his detention in prison in accordance with the provisions of the Code of Criminal Procedure, 1973; 35 2 of 1974.

(d) by appointing a receiver for the management of the defaulter's movable and immovable properties.

(2) The defaulter's movable or immovable property, referred to in sub-paragraph (1), shall include any property transferred directly, or indirectly, otherwise than for adequate consideration by the defaulter to— 40

(a) his spouse; or

(b) minor child.

(3) In respect of any arrears due from the defaulter for the period prior to the date of attainment of majority by the minor child, the property shall continue to be included in the defaulter's movable or immovable property even after the date. 45

Interest, costs and charges recoverable.

4. There shall be recoverable, in the proceedings in execution of every certificate—

(a) such interest upon the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with section 213, and

(b) all charges incurred in respect of—

(i) the service of notice upon the defaulter to pay the arrears, and of warrants and other processes, and

(ii) all other proceedings taken for realising the arrears.

5 5. (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified. Purchaser's title.

 (2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

 6. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Schedule, on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.

 (2) Nothing in paragraph (1) shall bar a suit to obtain a declaration that the name of any purchaser certified thereunder was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

 7. (1) Whenever assets are realised by sale, or otherwise, in execution of a certificate, the proceeds shall be disposed of in the following manner, namely:— Disposal of proceeds of execution.

 (a) they shall first be adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;

 (b) if there remains a balance after the adjustment referred to in clause (a), the same shall be utilised for satisfaction of any other amount recoverable from the assessee under this Code which may be due on the date on which the assets were realised; and

 (c) the balance, if any, remaining after the adjustments under clauses (a) and (b) shall be paid to the defaulter.

 (2) If the defaulter disputes any adjustment under clause (b) of sub-paragraph (1), the Tax Recovery Officer shall determine the dispute.

 8. (1) Except as otherwise expressly provided in this Code, every question arising between the Tax Recovery Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate, or relating to the confirmation or setting aside by an order under this Code of a sale held in execution of such certificate, shall be determined, by the order of the Tax Recovery Officer before whom such question arises and not by suit in courts. General bar to jurisdiction of civil courts, save where fraud alleged.

 (2) Notwithstanding sub-paragraph (1), a suit may be brought in a civil court in respect of any question referred to in that sub-paragraph upon the ground of fraud.

5 of 1908. 9. (1) Any property exempted, under the Code of Civil Procedure, 1908, from attachment and sale in execution of a decree of a civil court, shall be exempt from attachment and sale under this Schedule. Property exempt from attachment.

 (2) The Tax Recovery Officer's decision as to what property is so entitled to exemption other than the property exempt under sub-paragraph (1) shall be conclusive.

 10. (1) Where any claim is preferred to or any objection is made, to the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. Investigation by Tax Recovery Officer.

(2) No investigation under sub-paragraph (1) shall be made, where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(3) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale, may postpone it pending the investigation of the claim or objection, upon such terms as to security or otherwise as he thinks fit. 5

(4) The claimant or objector must adduce evidence—

(a) in the case of an immovable property at the date of the service of the notice issued under this Schedule to pay the arrears, or

(b) in the case of a movable property, at the date of the attachment, to show that he had some interest in, or was possessed of, the property in question— 10

(5) The Tax Recovery Officer shall make an order releasing the property wholly or to such extent as he thinks fit, from attachment or sale, if he is satisfied or investigation that for the reason stated in the claim or objection, such property—

(a) was not, at the said date, in the possession of the defaulter or of some person in trust for him; 15

(b) was not in the occupancy of a tenant or other person paying rent to the defaulter; or

(c) being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person. 20

(6) The Tax Recovery Officer shall disallow the claim, for reasons to be recorded in writing, if he is satisfied that the property was—

(a) at the said date, in the possession of the defaulter as his own property and not on account of any other person; 25

(b) in the possession of some other person in trust for the defaulter; or

(c) in the occupancy of a tenant or other person paying rent to the defaulter.

(7) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish his right to the property in disputes; but, subject to the outcome of such suit the order of the Tax Recovery Officer shall be conclusive. 30

Removal of attachment on satisfaction, or cancellation of certificate.

11. Where—

(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer, or 35

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and, in the case of immovable property, the withdrawal shall, if the defaulter so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner provided in this Schedule.

Officer entitled to attach and sell.

12. The attachment and sale of movable and immovable property may be made by such persons as the Tax Recovery Officer may from time to time direct. 40

Defaulting purchaser answerable for loss on resale.

13. (1) Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Tax Recovery Officer by the officer holding the sale, and shall, at the instance of either the Tax Recovery Officer or the defaulter, be recoverable from the defaulting purchaser under the procedure provided in this Schedule. 45

(2) No application under sub-paragraph (1) shall not be entertained, if it is filed after the end of fifteenth day from the date of resale.

14. (1) The Tax Recovery Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may, in his discretion, adjourn the sale, after recording his reasons for such adjournment. Adjournment or stoppage of sale.

(2) If the sale is made in, or within the precincts of, the office of the Tax Recovery Officer, no such adjournment shall be made without the leave of the Tax Recovery Officer.

(3) Where a sale of immovable property is adjourned under sub-paragraph (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(4) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such arrears and costs has been paid to the Tax Recovery Officer who ordered the sale.

15. (1) Where a notice has been served on a defaulter under paragraph 1, the defaulter, or his representative in interest, shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money. Private alienation to be void in certain cases.

(2) Where an attachment has been made under this Schedule, any private transfer, or delivery, of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

16. No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold. Prohibition against bidding or purchase by officer.

17. No sale under this Schedule shall take place on —

(a) a Sunday;

(b) other general holiday recognised by the State Government ; or

(c) any day which has been notified by the State Government to be a local holiday for the area in which the sale is to take place. Prohibition against sale on holidays.

18. Any officer authorised to attach or sell any property or to arrest the defaulter or charged with any duty to be performed under this Schedule, may apply to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and the authority to whom such application is made shall depute a sufficient number of police personnel for furnishing such assistance. Assistance by police.

19. A Tax Recovery Officer may, with the previous approval of the Joint Commissioner, entrust any of his functions as the Tax Recovery Officer to any other officer lower than him in rank (not being lower in rank than an Inspector of Income-tax) and such officer shall, in relation to the functions so entrusted to him, be deemed to be a Tax Recovery Officer. Entrustment of certain functions by Tax Recovery Officer.

PART II

ATTACHMENT AND SALE OF MOVABLE PROPERTY

Attachment

20. Except as otherwise provided in this Schedule, when any movable property is to be attached, the officer shall be furnished by the Tax Recovery Officer (or other officer empowered by him in that behalf) a warrant in writing and signed with his name specifying the name of the defaulter and the amount to be realised. Warrant.

Service of copy of warrant.	21. The officer shall cause a copy of the warrant to be served on the defaulter.	
Attachment.	22. If, after service of the copy of the warrant, the amount is not paid forthwith, the officer shall proceed to attach the movable property of the defaulter.	
Property in defaulter's possession.	23. (1) Where the property to be attached is movable property (other than agricultural produce) in the possession of the defaulter, the attachment shall be made by actual seizure, and the officer shall keep the property in his own custody or the custody of one of his subordinates and shall be responsible for due custody thereof.	5
	(2) The officer referred in sub-paragraph (1) may sell the property seized at once, if—	
	(a) the property seized is subject to speedy and natural decay; or	
	(b) the expense of keeping the seized property in custody is likely to exceed its value.	10
Agricultural produce.	24. (1) Where the property to be attached is agricultural produce the attachment shall be made by affixing a copy of the warrant of attachment—	
	(a) where such produce is growing crop, on the land on which such crop has grown; or	15
	(b) where such produce has been cut or gathered, on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited, in such manner as may be considered necessary.	
	(2) A copy of warrant of attachment, where the property to be attached is agricultural produce, shall also be affixed on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or with the leave of the Tax Recovery Officer, on the outer door or on some other conspicuous part of the house in which he—	20
	(a) carries on business or personally works for gain; or	
	(b) is known to have last resided or carried on business or personally worked for gain.	25
	(3) Upon affixing the copy of warrant under sub-paragraphs (1) and (2), the produce shall be deemed to have passed into the possession of the Tax Recovery Officer.	
Provisions as to agricultural produce under attachment.	25. (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as he may deem sufficient; and he shall have power to defray the cost of such arrangements.	30
	(2) The defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it, subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order.	35
	(3) If the defaulter fails to do all or any of the acts referred to in sub-paragraph (2), any person appointed by the Tax Recovery Officer in this behalf may, subject to the like conditions, do all or any of such acts, and the costs incurred by such person shall be recoverable from the defaulter as if they were included in the certificate.	
	(4) Any agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.	40
	(5) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.	45
	(6) A growing crop which from its nature does not admit of being stored shall not be attached under this paragraph at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.	5045

26. (1) In the case of a debt not secured by a negotiable instrument, a share in a corporation or other movable property not in the possession of the defaulter except property deposited in, or in the custody of, any court, the attachment shall be made by a written order prohibiting,

Debts and shares.

5 (a) in the case of the debt the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Tax Recovery Officer;

(b) in the case of the share the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

10 (c) in the case of the other movable property (except as aforesaid) the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and in the case of the other movable property (except as aforesaid), to the person in possession of the same.

15 (3) A debtor prohibited under clause (a) of sub-paragraph (1) may pay the amount of his debt to the Tax Recovery Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

20 27. (1) The attachment of a decree of a civil court for the payment of money, or for sale in enforcement of a mortgage or charge, shall be made by the issue to the civil court of a notice requesting the civil court to stay the execution of the decree unless and until—

Attachment of decree.

(a) the Tax Recovery Officer cancels the notice; or

(b) the Tax Recovery Officer, or the defaulter, applies to the court receiving such notice to execute the decree.

25 (2) Where a civil court receives an application under clause (b) of sub-paragraph (1), it shall, on the application of the Tax Recovery Officer, or the defaulter, and subject to the provisions of the Code of Civil Procedure, 1908, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

30 (3) The Tax Recovery Officer shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

28. Where the property to be attached consists of the share, or interest, of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

Share in movable property.

35 29. Attachment of the salary or allowances of servants of the Government, or a local authority, may be made in the manner provided under rule 48 of Order 21 of the First Schedule to the Code of Civil Procedure, 1908, and the provisions of the said rule shall, for the purposes of this paragraph, apply subject to such modifications as may be necessary.

5 of 1908.

Salary of Government servants.

40 30. Where the property is a negotiable instrument not deposited in a court or in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Tax Recovery Officer and held subject to his orders.

Attachment of negotiable instrument.

45 31. (1) Where the property to be attached is in the custody of any court or public officer, the attachment shall be made by a notice to such court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued.

Attachment of property in custody of court or public officer.

50 (2) Where the property is in the custody of a court, any question of title or priority arising between the Tax Recovery Officer and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by the court.

Attachment of partnership property.	32. (1) Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate.	
	(2) The Tax Recovery Officer may, by the order referred to in sub-paragraph (1) or any subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.	5
	(3) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.	10
Inventory.	33. In the case of attachment of movable property by actual seizure, the officer shall, after attachment of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and shall forward the same to the Tax Recovery Officer and a copy of the inventory shall be delivered by the officer to the defaulter.	15
Attachment not to be excessive.	34. The attachment by seizure shall not be excessive, that is to say, the property attached shall be as nearly as possible proportionate to the amount specified in the warrant.	
Seizure between sunrise and sunset.	35. Attachment by seizure shall be made after sunrise and before sunset and not otherwise.	
Power to break open doors.	36. The officer may break open any inner or outer door or window of any building and enter any building in order to seize any movable property, if the officer has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and the officer has notified his authority and intention of breaking open if admission is not given provided that before breaking open, he shall give all reasonable opportunity to women to withdraw.	20 25
Sale.	37. The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.	
Issue of proclamation.	38. When any sale of movable property is ordered by the Tax Recovery Officer, the Tax Recovery Officer shall issue a proclamation, in the language in use in the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.	30
Proclamation how made.	39. (1) Such proclamation shall be made by beat of drum or other customary mode— (a) in the case of property attached by actual seizure— (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and (ii) at such other places as the Tax Recovery Officer may direct; (b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.	35
	(2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.	40
Sale after fifteen days.	40. Except where the property is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the office of the Tax Recovery Officer.	45

41. (1) Where the property to be sold is agricultural produce, the sale shall be held—
- (a) if such produce is a growing crop, on or near the land on which such crop has grown, or
- (b) if such produce has been cut or gathered, at or near the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited.
- (2) The Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of the opinion that the produce is thereby likely to sell at a greater value.
- (3) The sale shall be postponed, where, on the produce being put up for sale—
- (a) a fair price, in the estimation of the person holding the sale, is not offered for it, and
- (b) the owner of the produce, or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day.
- (4) When the sale has been postponed under sub-paragraph (3), it shall be then completed on the date postponed irrespective of any price offered for the produce.
42. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut, or gathered, and is ready for storing.
- (2) Where the crop from its nature does not admit of being stored or can be sold at a greater value in an unripe stage, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.
43. The property shall be sold by public auction in one, or more, lots as the officer may consider advisable, and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.
44. (1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs and in default of payment, the property shall forthwith be resold.
- (2) On payment of the purchase-money, the officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser, and the sale shall become absolute.
- (3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner, and two or more persons, of whom one is such co-owner, respectively, bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.
45. No irregularity in publishing, or conducting, the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a civil court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.
46. The Tax Recovery Officer may, notwithstanding anything to the contrary contained in this Schedule, authorise the sale of any property, which is a negotiable instrument or a share in a corporation, through a broker instead of directing the sale to be made by public auction.

Sale of agricultural produce.

Special provisions relating to growing crops.

Sale to be by auction.

Sale by public auction.

Irregularity not to vitiate sale, but any person injured may sue.

Negotiable instruments and shares in a corporation.

Order for payment of coin or currency notes to the Assessing Officer. 47. Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coins or notes shall be credited to the Central Government and the amount so credited shall be dealt with in the manner specified in paragraph 7.

PART III

5

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

ATTACHMENT

Attachment. 48. The Attachment of the immovable property of the defaulter shall be made by an order prohibiting the defaulter from transferring, or charging, the property in any way and prohibiting all persons from taking any benefit under such transfer or charge. 10

Service of notice of attachment. 49. A copy of the order of attachment shall be served on the defaulter.

Proclamation of attachment. 50. The order of attachment shall be proclaimed at some place on, or adjacent to, the property attached by beat of drum, or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer. 15

Attachment to relate back from the date of service of notice. 51. Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served upon the defaulter.

SALE

Sale and proclamation of sale. 52. (1) The Tax Recovery Officer may direct that any immovable property which has been attached, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold. 20

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation of the intended sale to be made in the language in use in the district. 25

Contents of proclamation. 53. A proclamation of sale of immovable property shall be drawn up after notice to the defaulter, and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold;

(b) the revenue, if any, assessed upon the property or any part thereof; 30

(c) the amount for the recovery of which the sale is ordered;

(d) the reserve price, if any, below which the property may not be sold; and

(e) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

Mode of making proclamation. 54. (1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer. 35

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale. 40

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

55. No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later. Time of sale.
56. (1) The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer. Sale to be by auction.
- (2) No sale under this paragraph shall be made, if the amount bid by the highest bidder is less than the reserve price, if any, specified under clause (d) of paragraph 53.
57. (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent. on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold. Deposit by purchaser and resale in default.
- (2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.
58. In default of payment within the period mentioned in paragraph 57, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold. Procedure in default of payment.
59. (1) Where the sale of a property, for which a reserve price has been specified under clause (d) of paragraph 53, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for an Assessing Officer, if so authorised by the Chief Commissioner or this Commissioner in this behalf, to bid for the property on behalf of the Central Government at any subsequent sale. Authority to bid.
- (2) All persons bidding at the sale shall be required to declare, if they are bidding on their own behalf or on behalf of their principles.
- (3) The bid shall be rejected if the person bidding on behalf of his principal fails to deposit the authority.
- (4) Where the Assessing Officer referred to in sub-paragraph (1) is declared to be the purchaser of the property at any subsequent sale, nothing contained in paragraph 57 shall apply to the case and the amount of the purchase price shall be adjusted towards the amount specified in the certificate.
60. (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within a period of thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing— Application to set aside sale of immovable property on deposit.
- (a) the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of one and one-fourth per cent. for every month calculated from the date of the proclamation of sale to the date when the deposit is made; and
- (b) for payment to the purchaser, as penalty, a sum equal to five per cent. of the purchase money, but not less than one rupee.
- (2) Where a person makes an application under paragraph 61 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this paragraph.
61. (1) Where immovable property has been sold in execution of a certificate by such Income tax Officer as may be authorised by the Chief Commissioner or the Commissioner in this behalf, the defaulter or any person whose interests are affected by the sale, may at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground— Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

(a) that notice was not served on the defaulter to pay the arrears as required by this Schedule; or

(b) of a material irregularity in publishing, or conducting, the sale.

(2) No sale shall be set aside on any ground referred to in sub-paragraph (1) unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity. 5

(3) An application made by a defaulter under this paragraph shall be disallowed unless the applicant deposits the amount recoverable from him in the execution of the certificate.

Setting aside sale where defaulter has no saleable interest. 62. At any time within a period of thirty days of the sale, the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold. 10

Confirmation of sale. 63. (1) Where no application is made for setting aside the sale under paragraphs 60 and 61 or where such an application is made and disallowed by the Tax Recovery Officer, the Tax Recovery Officer shall (if the full amount of the purchase money has been paid) make an order confirming the sale and thereupon, the sale shall become absolute. 15

(2) Where application is made and allowed, and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within a period of thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale. 20

(3) No order under sub-paragraph (2) shall be made unless notice of the application has been given to the persons affected thereby.

Return of purchase money in certain cases. 64. Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty, if any, deposited for payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser. 25

Sale certificate. 65. Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate specifying the property sold, and the name of the person who at the time of sale is declared to be the purchaser and such certificate shall state the date on which the sale became absolute. 30

Postponement of sale to enable defaulter to raise amount due under certificate. 66. (1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms, and for such period as he thinks proper, to enable him to raise the amount. 35

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him, within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale. 40

(3) All moneys payable under the mortgage, lease or sale referred to in sub-paragraph (2) shall be paid to the Tax Recovery Officer and not to the defaulter.

(4) No mortgage, lease or sale under this paragraph shall become absolute until it has been confirmed by the Tax Recovery Officer.

Fresh proclamation before resale. 67. Every resale of immovable property, in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore provided for the sale. 45

68. Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively, bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer. Bid of co-sharer to have preference.

69. (1) Without prejudice to the provisions contained in this Part, an Assessing Officer, duly authorised by the Chief Commissioner or the Commissioner in this behalf, may accept in satisfaction of the whole or any part of the amount due from the defaulter the property, the sale of which has been postponed for the reason mentioned in sub-paragraph (1) of paragraph 59, at such price as may be agreed upon between the Assessing Officer and the defaulter. Acceptance of property in satisfaction of amount due from the defaulter.

16 of 1908. (2) Where any property is accepted under sub-paragraph (1), the defaulter shall deliver possession of such property to the Assessing Officer and on the date the possession of the property is delivered to the Assessing Officer, the property shall vest in the Central Government and the Central Government shall, where necessary, intimate the concerned Registering Officer appointed under the Registration Act, 1908, accordingly.

15 (3) Where the price of the property agreed upon under sub-paragraph (1) exceeds the amount due from the defaulter, such excess shall be paid by the Assessing Officer to the defaulter within a period of three months from the date of delivery of possession of the property.

20 (4) Where the Assessing Officer fails to pay the excess amount referred to in sub-paragraph (3) within the period referred therein, the Central Government shall, for the period commencing on the expiry of such period and ending with the date of payment of the amount remaining unpaid, pay simple interest at one-half per cent for every month or part of a month to the defaulter on such amount.

25 70. (1) No sale of immovable property shall be made under this Part after the expiry of the period of six years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become final in terms of the provision of sub-Chapter D of Chapter XII. Time limit for sale of attached immovable property.

30 (2) The period of limitation referred to in sub-paragraph (1) shall stand extended by one year, if the immovable property is required to be re-sold—

- (a) due to the amount of highest bid being less than the reserve price;
- (b) under the circumstances mentioned in paragraph 57 or paragraph 58; or
- (c) due to the sale being set aside under paragraph 61.

35 (3) In computing the period of limitation under sub-paragraph (1), the following period shall be excluded—

(a) the period during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court;

(b) the period during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

40 (c) the period commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided.

45 (4) Where immediately after the exclusion of the period referred in sub-paragraph (3), the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(5) Where the sale of immovable property is not made in accordance with the provisions of sub-paragraph (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this paragraph.

PART IV

PROCEDURE FOR DISTRAINT

Procedure for
distrain.

71. Where any distraint and sale of movable property are to be effected by any Assessing Officer or Tax Recovery Officer authorised for the purpose, such distraint and sale shall be made, as far as may be, in the same manner as attachment and sale of any movable property attachable by actual seizure, and the provisions of this Schedule relating to attachment and sale shall, so far as may be, apply in respect of such distraint and sale. 5

PART V

APPOINTMENT OF RECEIVER

Appointment
of receiver
for business.

72. (1) Where the property of a defaulter consists of a business, the Tax Recovery Officer may attach the business and appoint a person as receiver to manage the business. 10

(2) The attachment of a business under this paragraph shall be made by an order prohibiting the defaulter from transferring or charging the business in any way and prohibiting all persons from taking any benefit under such transfer or charge, and intimating that the business has been attached under this paragraph. 15

(3) A copy of the order of attachment shall be served on the defaulter, and another copy shall be affixed on a conspicuous part of the premises in which the business is carried on and on the notice board of the office of the Tax Recovery Officer.

Appointment
of receiver for
immovable
property.

73. Where immovable property is attached, the Tax Recovery Officer may, instead of directing a sale of the property, appoint a person as receiver to manage such property. 20

Powers of
receiver.

74. (1) Where any business or other property is attached and taken under management under paragraphs 70 and 73, the receiver shall, subject to the control of the Tax Recovery Officer, have such powers as may be necessary for the proper management of the property and the realisation of the profits, or rents and profits, thereof.

(2) The profits or rents and profits of such business or other property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter. 25

Withdrawal of
management.

75. The attachment and management under this Part may be withdrawn at any time at the discretion of the Tax Recovery Officer, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid. 30

PART VI

ARREST AND DETENTION OF THE DEFAULTER

Notice to
show cause.

76. (1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison. 35

(2) The provisions of sub-paragraph (1) shall not apply if the Tax Recovery Officer, for reasons recorded in writing, is satisfied—

(a) that the defaulter has, with the object or effect of obstructing the execution of the certificate, after the drawing up of the certificate by the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property; or 40

(b) that the defaulter has, or has had since the drawing up of the certificate by the Tax Recovery Officer, the means to pay the arrears or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(3) Notwithstanding anything in sub-paragraph (1), a warrant for the arrest of the defaulter may, be issued by the Tax Recovery Officer, if he is satisfied, by affidavit or otherwise, that the defaulter is likely to abscond, or leave the local limits of the jurisdiction 45

of the Tax Recovery Officer, with the object, or effect, of delaying the execution of the certificate.

(4) The Tax Recovery Officer may issue a warrant for the arrest of the defaulter if appearance is not made in obedience to a notice issued and served under sub-paragraph (1).

(5) A warrant of arrest issued by a Tax Recovery Officer under sub-paragraph (3) or sub-paragraph (4) may also be executed by any other Tax Recovery Officer within whose jurisdiction the defaulter may for the time being be found.

(6) Every person arrested in pursuance of a warrant of arrest under this paragraph shall be brought before the Tax Recovery Officer issuing the warrant as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for the journey).

(7) The Tax Recovery Officer shall at once release the defaulter if he pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him.

(8) In this paragraph, the *karta* of a Hindu undivided family shall be deemed to be the defaulter if the defaulter is the Hindu undivided family.

77. The Tax Recovery Officer shall give the defaulter an opportunity of showing cause why he should not be committed to the civil prison, when the defaulter appears before the Tax Recovery Officer in pursuant to the a notice under paragraph 76 or is brought before the Tax Recovery Officer under the said paragraph 76. Hearing.

78. Pending the conclusion of the inquiry, the Tax Recovery Officer may, in his discretion, order the defaulter to be detained in the custody of such officer as the Tax Recovery Officer may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required. Custody pending hearing.

79. (1) Upon the conclusion of the inquiry, the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall in that event cause him to be arrested if he is not already under arrest. Order of detention.

(2) In order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention—

(a) leaves the defaulter in the custody of the officer arresting him, or of any other officer, for a specified period not exceeding 15 days; or

(b) release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(3) The Tax Recovery Officer shall direct the release of the defaulter, who is under arrest, if he does not make an order of detention under sub-paragraph (1).

80. (1) Every person detained in the civil prison in execution of a certificate may be so detained— Detention in and release from prison.

(a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees, for a period of six months; and

(b) in any other case, for a period of six weeks.

(2) The person so detained shall be released from detention—

(a) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or

(b) on the request of the Tax Recovery Officer on any ground other than the grounds mentioned in paragraphs 81 and 82.

(3) A defaulter released from detention under this paragraph shall not, merely by reason of his release be discharged from his liability for the arrears but shall not liable to be

rearrested under the certificate in execution of which he was detained in the civil prison.

Release.

81. (1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that—

(a) he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer; and 5

(b) he has not committed any act of bad faith.

(2) The Tax Recovery Officer may order the rearrest of the defaulter in execution of the certificate, if he has ground for believing the disclosure made by the defaulter under subparagraph (1) to have been untrue.

(3) The period of the detention of the defaulter in the civil prison shall not in the aggregate exceed the period authorised under paragraph 80. 10

Release on ground of illness.

82. (1) The Tax Recovery Officer may, at any time after a warrant for the arrest of a defaulter has been issued, cancel the warrant on the ground of serious illness of the defaulter.

(2) The Tax Recovery Officer may, in a case where a defaulter has been arrested, release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison. 15

(3) A defaulter, who has been committed to the civil prison, may be released therefrom by the Tax Recovery Officer on the ground of the existence of any infectious or contagious disease, or on the ground of his suffering from any serious illness.

(4) A defaulter released under this paragraph may be rearrested, but the period of his detention in the civil prison shall not in the aggregate exceed the period authorised under paragraph 80. 20

Entry into dwelling house.

83. For the purpose of making an arrest under this Schedule—

(a) no dwelling house shall be entered after sunset and before sunrise;

(b) no outer door of a dwelling house shall be broken open unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there; 25 30

(c) no room, which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

Prohibition against arrest of women or minors, etc.

84. The Tax Recovery Officer shall not order the arrest and detention in the civil prison of— 35

(a) a woman; or

(b) any person who, in his opinion, is a minor or of unsound mind.

PART VII

MISCELLANEOUS 40

Officers deemed to be acting judicially.

85. Every Chief Commissioner, the Commissioner, Tax Recovery Officer or other officer shall while acting in the discharge of his functions under this Schedule, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850. 18 of 1850.

86. Every Chief Commissioner, Commissioner, Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents. Power to take evidence.
- 5 87. No certificate shall cease to be in force by reason of the death of the defaulter. Continuance of certificate.
88. The proceedings under this Schedule, except arrest and detention, may be continued against the legal representative of the defaulter, and the provisions of this Schedule shall apply as if the legal representative were the defaulter, if the defaulter dies, at any time, after the certificate is drawn up by the Tax Recovery Officer. Procedure on death of defaulter.
- 10 89. (1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Chief Commissioner or Commissioner. Appeals.
- (2) Every appeal under this paragraph may be presented within a period of thirty days from the date of the order appealed against.
- 15 (3) Pending the decision of any appeal, execution of the certificate may be stayed if the appellate authority so directs, but not otherwise.
- (4) Where a Chief Commissioner or Commissioner is authorised to exercise powers as such in respect of any area, then, notwithstanding anything in sub-paragraph (1), all appeals against the orders passed before the date of such authorisation by any Tax Recovery Officer authorised to exercise powers as such in respect of that area, or an area which is included in that area, shall lie to such Chief Commissioner or Commissioner.
- 20 90. Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the Chief Commissioner, Commissioner, Tax Recovery Officer or other officer who made the order, or by his successor in office, on account of any mistake apparent from the record. Review.
- 25 91. A person may be proceeded against under this Schedule, if he has become surety for the amount due by a defaulter, as if such person were the defaulter. Recovery from surety.
92. (1) The sum payable for the subsistence of a defaulter, who is arrested or detained in the civil prison, from the time of arrest until he is released shall be borne by the Tax Recovery Officer. Subsistence allowance.
- 30 (2) The sum shall be calculated on the scale fixed by the State Government for the subsistence of judgment-debtors arrested in execution of a decree of a civil court.
- (3) The sums payable under this paragraph shall be deemed to be the costs in the proceeding but the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.
- 35 93. The Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under this Schedule. Forms.
94. (1) The Board may make rules, consistent with the provisions of this Code, for regulating the procedure to be followed by Chief Commissioners, Commissioners, Tax Recovery Officers and other officers acting under this Schedule. Power to make rules.
- 40 (2) In particular, and without prejudice to the generality of the power conferred by sub-paragraph (1), such rules may provide for all, or any of the following matters, namely:—
- (a) the area within which Chief Commissioners, Commissioners or Tax Recovery Officers may exercise jurisdiction;
- 45 (b) the manner in which any property sold under this Schedule may be delivered;
- (c) the execution of a document or the endorsement of a negotiable instrument or a share in a corporation, by or on behalf of the Tax Recovery Officer, where such

execution, or endorsement, is required to transfer such negotiable instrument, or share, to a person who has purchased it under a sale under this Schedule;

(d) the procedure for dealing with resistance, or obstruction, offered by any person to a purchaser of any immovable property sold under this Schedule, in obtaining possession of the property;

5

(e) the fees to be charged for any process issued under this Schedule;

(f) the scale of charges to be recovered in respect of any other proceeding taken under this Schedule;

(g) recovery of poundage fee;

(h) the maintenance and custody, while under attachment, of livestock or other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock or property, and the disposal of proceeds of such sale;

10

(i) the mode of attachment of business.

Saving regarding charge.

95. Nothing in this Schedule shall affect any provision of this Code whereunder the tax is a first charge upon any asset.

15

Interpretations in this Schedule.

96. In this Schedule, unless the context otherwise requires,—

(a) “certificate”, except in paragraphs 6, 44, 65 and sub-paragraph (2) of paragraph 66, in respect of any assessee means the certificate referred to in sub-section (1) of section 219;

(b) “defaulter” means the assessee mentioned in the certificate;

20

(c) “execution” in relation to a certificate means recovery of arrears in pursuance of the certificate;

(d) “movable property” includes growing crops;

(e) “officer” means a person authorised to make an attachment or sale under this Schedule;

25

(f) “paragraph” means a paragraph contained in this Schedule; and

(g) “share in a corporation” includes stock, debenture-stock, debentures or bonds.

35

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THE SIXTH SCHEDULE

(See sections 10 and 18 (1) (a))

Income not included in the total income

1. Agricultural income.

5 2. Subject to the provisions of sub-section (1) of section 9, any sum received by an individual as a member of a Hindu undivided family if,—

(a) the sum has been paid out of the income of the family; or

(b) in the case of any impartible estate, the sum has been paid out of the income of the impartible estate belonging to the family.

10 3. Any sum received by a person, being a participant in an unincorporated body, towards his share as per the agreement of association, in the total income of such body which is separately assessed.

4. The amount of family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para-military forces) of
15 the Union, if the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed.

5. Any income arising to a foreign company, as the Central Government may, by notification, specify in this behalf, by way of royalty or fees for technical services received in pursuance of an agreement entered into with the Government for providing services in or
20 outside India in projects connected with security of India.

6. Any income of the European Economic Community, (established by the treaty of Rome of 25th March, 1957) derived in India by way of interest, dividends or capital gains from investments made out of its funds under such scheme as the Central Government may, by notification specify in this behalf.

25 7. Any amount of interest payable—

(a) on securities held by the Issue Department of the Central Bank of Ceylon constituted under the Ceylon Monetary Law Act, 1949;

(b) to a bank incorporated in a country outside India and authorised to perform central banking functions in that country, on deposits by it with any scheduled bank,
30 with the approval of the Reserve Bank of India;

(c) to the Nordic Investment Bank being a multilateral financial institution constituted by the Governments of Denmark, Finland, Iceland, Norway and Sweden, on a loan advanced by it to a project approved by the Central Government in terms of the Memorandum of Understanding entered into by the Central Government with that
35 Bank on the 25th day of November, 1986;

(d) to European Investment Bank, on a loan granted by it in pursuance of the framework-agreement for financial co-operation entered into on the 25th day of November, 1993 by the Central Government with that Bank.

8. Income accruing to a person, if —

40 (a) the person is a member of a Scheduled Tribe as defined in clause (25) of article 366 of the Constitution; and

(b) the person resides in—

(i) the States of Arunachal Pradesh, Manipur, Mizoram, Nagaland and Tripura,

45 (ii) any area specified in Part I or Part II of the Table appended to paragraph 20 of the Sixth Schedule to the Constitution,

(iii) the areas covered by notification No. TAD/R/35/50/109, dated the 23rd February, 1951, issued by the Governor of Assam under the proviso to

sub-paragraph (3) of Paragraph 20 of the Sixth Schedule to the Constitution as it stood immediately before the commencement of the North-Eastern Areas (Re-organisation) Act, 1971, or 81 of 1971.

(iv) the Ladakh region of the State of Jammu and Kashmir and the income of such person is in the nature of dividend or interest on securities or from any source in the States or areas specified in clause (b). 5

9. Income accruing from any source in the State of Sikkim or by way of dividend or interest on securities to a Sikkimese, other than a Sikkimese woman who, on or after the 1st day of April, 2008, marries an individual who is not a Sikkimese.

10. Any income, the nature and extent, accruing to a body or authority which is notified by the Central Government in this behalf if such body or authority— 10

(a) has been established or constituted or appointed under—

(i) a treaty or an agreement entered into by the Central Government with two or more countries; or

(ii) a convention signed by the Central Government; and

(b) is not established, constituted or appointed for the purposes of profit; and 15

11. The amount of accumulated balance in the account of an employee participating in an approved provident fund and any accretion thereto, to the extent provided in paragraph 8 of Part I of the Nineteenth Schedule. 19 of 1925.

12. Any payment from a provident fund to which the Provident Funds Act, 1925, applies or from any other provident fund set up by the Central Government and notified by it in this behalf. 20

13. Any payment from an approved superannuation fund made—

(a) in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement; or

(b) on the death of a beneficiary. 25

14. The amount of remuneration received by an individual who is not a citizen of India, if the following conditions are fulfilled, namely:—

(a) such individual is an official, by whatever name called, of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State, or as a member of the staff of any of these officials, for service in such capacity; 30

(b) the remuneration of the corresponding officials or, as the case may be, members of the staff, if any, of the Government resident for similar purposes in the country concerned enjoys a similar exemption in that country; and

(c) the members of the staff are subjects of the country represented and are not engaged in any business or profession or employment in India otherwise than as members of such staff. 35

15. The amount received by an individual who is not a citizen of India, by way of remuneration as an employee of a foreign enterprise for services rendered by him during his stay in India, if the following conditions are fulfilled, namely:—

(a) the foreign enterprise is not engaged in any trade or business in India; 40

(b) his stay in India does not exceed in the aggregate a period of ninety days in such financial year; and

(c) such remuneration is not liable to be deducted from the income of the employer chargeable under this Code.

16. The amount received by, or due to, any individual being a non-resident, who is not 45

a citizen of India, by way of remuneration, if the following conditions are fulfilled, namely:—

(a) such remuneration is for services rendered in connection with the employment on a foreign ship; and

5 (b) his total stay in India does not exceed in the aggregate a period of ninety days in the financial year.

17. The amount of remuneration received by an individual who is not a citizen of India, if the following conditions are fulfilled, namely:—

(a) he is an employee of the Government of a foreign State during his stay in India; and

10 (b) his stay in India is in connection with his training in any establishment or office of, or in any undertaking owned by,—

(i) the Government;

15 (ii) any company in which the entire paid-up share capital is held by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments;

(iii) any company which is a subsidiary of a company referred to in item (ii);

(iv) any corporation established by or under a Central, State or Provincial Act; or

14 of 1860. 20 (v) any society registered under the Societies Registration Act, 1860, or under any other corresponding law for the time being in force and wholly financed by the Central Government, or any State Government or State Governments, or partly by the Central Government and partly by one or more State Governments.

25 18. Any amount received by an assessee under the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 in excess of the amount, if any, allowed as a deduction in
21 of 1985. any financial year on account of any loss or damage caused to him by such disaster.

19. Any dividend declared, distributed or paid to a company or a non-resident, in respect of which dividend distribution tax has been paid under section 109.

30 20. Any income received from an equity oriented fund in respect of which tax on distribution of income has been paid under section 110.

21. Any amount of interest received on Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

35 22. Any income of a political party which is computed under the heads “Income from house property” or “Capital gains” or “Income from residuary sources” or any income by way of voluntary contributions received by it from any person, if—

(a) the political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

40 (b) the political party keeps and maintains a record of such contributions in excess of twenty thousand rupees, along with the name and address of the contributors;

(c) the accounts of such political party are audited by an accountant; and

45 (d) the treasurer of such political party or any other person authorised by that political party in this behalf submits a report under sub-section (3) of section 29C of
43 of 1951. the Representation of the People Act, 1951 for the financial year.

23. Any amount of interest on deposits in a Non-Resident (External) Account in any bank in India accruing to an individual, if he—
- (a) is outside India in terms of clause (w) of section 2 of the Foreign Exchange Management Act, 1999; or 42 of 1999.
- (b) has been permitted by the Reserve Bank of India to maintain the aforesaid account. 5
24. Any amount of interest payable by a scheduled bank, other than a co-operative bank, to a non-resident, on deposits in foreign currency where the acceptance of such deposits by the bank is approved by the Reserve Bank of India.
25. Any amount received by way of— 10
- (a) daily allowance by any person by reason of his membership of Parliament or of any State Legislature or of any Committee thereof;
- (b) an allowance by any person by reason of his membership of Parliament under the Members of Parliament (Constituency Allowance) Rules, 1986;
- (c) constituency allowance by any person by reason of his membership of any State Legislature under the Act or rules made by the State concerned. 15
26. Any amount received, whether in cash or in kind—
- (a) in pursuance of any award instituted by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or 20
- (b) as a reward from the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf.
27. Any amount received by way of—
- (a) pension by an individual, who had been in the service of the Central Government or State Government and has been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or such other gallantry award as the Central Government may, by notification, specify in this behalf; 25
- (b) family pension by any member of the family of the individual referred to in clause (a).
28. Any sum received as compensation, from the multilateral fund of the Montreal Protocol on non-use of Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into by the Government of India. 30
29. Any income accruing to an individual outside India, in a financial year from a source other than a business controlled in or a profession set up in India, if the individual— 35
- (a) has been a non-resident in India in nine out of ten financial years preceding that financial year; or
- (b) has during the seven financial years preceding that financial year been in India for less than seven hundred and thirty days.
30. Any amount received from the Central Government, a State Government or a local authority by an individual or his legal heir, by way of compensation on account of any disaster, in excess of the amount, if any, allowed as a deduction in any financial year on account of any loss or damage caused by such disaster, to him or his legal heir. 40
31. Any amount of interest on bonds—
- (a) issued by a local authority or by a State Pooled Finance Entity or a public sector company; and 45
- (b) specified by the Central Government by notification.

32. Any amount of capital gain arising on account of the transfer of—

(a) agricultural land situated in a rural area;

(b) any personal effects; or

5 (c) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 notified by the Central Government.

33. Gross rent in respect of any one palace in the occupation of a Ruler, if the annual value of the palace was exempt from income-tax before the commencement of the Constitution (Twenty-sixth Amendment) Act, 1971, by virtue of the provisions of the Merged States (Taxation Concessions) Order, 1949, or the Part B States (Taxation Concessions) Order,
10 1950, or, as the case may be, the Jammu and Kashmir (Taxation Concessions) Order, 1958.

34. Any income and amount thereof notified by the Central Government accruing to any person from any international sporting event held in India, if such event—

(a) is approved by the international body regulating the international sport relating to such event; and

15 (b) has participation of more than two countries; and

(c) is notified by the Central Government,

for the purposes of this paragraph.

35. Any income of a venture capital company or a venture capital fund from investment in a venture capital undertaking.

20 36. Any income of a union or an association of such unions, which is computed under the head “Income from house property” or “Income from residuary sources” if—

16 of 1926. (a) such union is registered under the Trade Unions Act, 1926; and

(b) it is formed primarily for the purpose of regulating the relations between workmen and employer or amongst workmen.

25 37. Any income received by an individual as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage referred to in clause (v) of sub-section (1) of section 45.

38. Any allowance or perquisite paid or allowed outside India by the Government to a citizen of India for rendering service outside India.

30 39. Any payment from New Pension System Trust to an employee having an account with the Trust under the New Pension Scheme notified by the Central Government.

40 40. Any payment in commutation of pension received under any scheme of any employer, to the extent it does not exceed –

(a) in a case where employee receives any gratuity, the commuted value of one-third of the pension which he is normally entitled to receive; and

35 (b) in any other case the commuted value of one-half of such pension.

41. Any payment received by the employee, from one or more employers, as the cash equivalent of the leave salary in respect of the period of earned leave at his credit at the time of his retirement, to the extent the aggregate of such amount does not exceed the limit as may be prescribed.

40 42. Any payment received by the employee, from one or more employers, by way of gratuity—

(i) on his retirement; or

(ii) on his becoming incapacitated prior to such retirement; or

(iii) on termination of his employment; or

45 (iv) any gratuity received by the family on the death of the employee,

to the extent the aggregate of such amount does not exceed the limit as may be prescribed.

43. Any amount received by the employee, from one or more employers, in connection with termination of his service voluntary retirement or separation under any scheme framed for this purpose in accordance with such rules as may be prescribed, to the extent the aggregate of such amount does not exceed the limit as may be prescribed.

44. Any amount of compensation received by a workman under the Industrial Disputes Act, 1947 or under any other law for the time being in force or under any award or contract of service, at the time of his retrenchment in accordance with the provisions of clause (b) of section 25F of the said Act or five lakh rupees, whichever is less. 5 14 of 1947.

45. Any amount of scholarship received by a student to meet the cost of education.

46. Any sum received by any person from an insurer in respect of a life insurance policy upon death of the insured person. 10

47. Income of a co-operative society from such activities and to such extent as may be prescribed.

THE SEVENTH SCHEDULE

(See sections 11 and 90)

Persons, entity or funds not liable to income-tax

- 7 of 1942. 1. The Coffee Board constituted under section 4 of the Coffee Act, 1942.
- 24 of 1947. 5 2. The Rubber Board constituted under sub-section (I) of section 4 of the Rubber Board Act, 1947.
- 29 of 1953. 3. The Tea Board established under section 4 of the Tea Act, 1953.
- 4 of 1975. 4. The Tobacco Board constituted under the Tobacco Board Act, 1975.
- 13 of 1972. 10 5. The Marine Products Export Development Authority established under section 4 of the Marine Products Export Development Authority Act, 1972.
- 2 of 1986. 6. The Agricultural and Processed Food Products Export Development Authority established under section 4 of the Agricultural and Processed Food Products Export Development Authority Act, 1985.
- 10 of 1986. 15 7. The Spices Board constituted under sub-section (I) of section 3 of the Spices Board Act, 1986.
- 45 of 1953. 8. The Coir Board established under section 4 of the Coir Industry Act, 1953.
9. The Prime Minister's National Relief Fund.
10. The Prime Minister's Fund (Promotion of Folk Art).
11. The Prime Minister's Aid to Students Fund.
- 20 12. The National Foundation for Communal Harmony.
13. The Insurance Regulatory and Development Authority.
- 15 of 1992. 1992. 14. A Mutual Fund registered under the Securities and Exchange Board of India Act, 1992.
- 19 of 1925. 15. Any Provident Fund to which the Provident Funds Act, 1925 applies.
- 25 16. New Pension System Trust.
17. Any approved provident fund.
18. Any approved superannuation fund.
19. Any approved gratuity fund.
20. The Deposit-linked Insurance Fund established under—
- 46 of 1948. 30 (a) the Coal Mines Provident Funds and Miscellaneous Provisions Act, 1948;
- 19 of 1952. (b) the Employees' Provident Funds and Miscellaneous Provisions Act, 1952;
- 34 of 1948. 21. The Employees' State Insurance Fund set-up under the Employees' State Insurance Act, 1948.
22. Any electoral trust so approved by the Board in accordance with the scheme made 35 in this regard by the Central Government, if ninety-five per cent. of the aggregate of all voluntary contributions received by it during the financial year and the surplus, if any, brought forward from any preceding financial year is distributed to political parties.
23. A corporation established by a Central, State or Provincial Act or any other body, institution or association (being a body, institution or association wholly financed by 40 Government) where such corporation or other body or institution or association has been established or formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes or of any two or all of them.
24. Any corporation established by the Central or State Government for promoting the interests of the members of a minority community notified as such by the Central 45 Government.

25. Any statutory corporation established for the welfare and economic upliftment of ex-servicemen, being the citizens of India.
26. Any co-operative society formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or both if —
- (a) the membership of the co-operative society consists of only other co-operative societies formed for similar purposes; and 5
- (b) the finances of the society are provided by the Government and such other societies.
27. Panchayat as referred to in clause (d) of article 243 of the Constitution.
28. Municipality as referred to in clause (e) of article 243P of the Constitution. 10
29. Municipal Committee and District Board, legally entitled to, or entrusted by the Government with the control or management of a Municipal or local fund.
30. Cantonment Board as defined in section 3 of the Cantonments Act, 2006. 41 of 2006.
31. Any Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants. 15
32. Any fund set up, on or after, the 1st day of August, 1996, by an insurer under a pension scheme,—
- (a) to which contribution is made by any person for the purpose of receiving pension from such fund; and
- (b) which is approved by the Controller of Insurance or the Insurance Regulatory and Development Authority. 20
33. An authority or Board, by whatever name called, established in a State by or under any State or Provincial Act for the development of khadi or village industries in the State.
34. Any body or authority (whether or not a body corporate or a corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, namely:— 25
- (a) public religious or charitable trusts; or
- (b) endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship); or
- (c) societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860, or any other law for the time being in force. 30
21 of 1860.
35. Any association, authority, body, institution or trust registered under the Central, State or Provincial Act for the regulation of public religious endowments.
36. The South Asia Association for Regional Cooperation “SAARC” Fund for Regional Projects set-up by the Colombo Declaration issued on the 21st day of December, 1991 under the Charter of (SAARC) dated the 8th Day of December, 1985. 35
37. The Central Electricity Regulatory Commission constituted under sub-section (I) of section 76 of the Electricity Act, 2003. 36 of 2003.
38. Any Agricultural Produce Marketing Committee or Board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce. 40
39. Any non-profit organisation, being a public religious trust or institution, if—
- (a) it is registered under section 98 of this Code;
- (b) it is registered under a State Act, if any;
- (c) it applies its income wholly for public religious purposes; 45

(d) it is established for the benefit of the general public;

(e) it maintains books of account and obtains an audit report from an accountant if its gross receipts in any financial year exceed five lakh rupees;

5 (f) its funds or assets are invested or held, at any time during the financial year in the modes specified in section 95; and

(g) its funds or assets are not used or applied or deemed to have been used or applied, directly or indirectly, for the benefit of any interested person.

40. A non-profit organisation of public importance as notified by the Central Government under sub-section (2) of section 90.

THE EIGHTH SCHEDULE

[See section 32(2)]

COMPUTATION OF PROFITS OF THE INSURANCE BUSINESS

1. The profits of the business of life insurance shall be the profit determined in the Shareholders' Account (Non-Technical Account) in accordance with the Insurance Act, 1938. 5
36 of 2003.
2. The profits referred to in paragraph 1 shall be—
 - (a) increased by the aggregate of the amounts referred to in sub-section (2) of section 33 to the extent such amounts are not included in the profits referred to in that paragraph and the amounts referred to in sub-section (4) of section 35 and sub-section (2) of section 36 to the extent such amounts have been claimed as deductions while computing the said profits; and 10
 - (b) decreased by the amount allowable as deduction under clause (xxx) of sub-section (2) of section 35 and finance charges allowable as deduction under sub-section (1) of section 36 to the extent such amount has been included under clause (a). 15
3. The profits of the business of insurance other than life insurance shall be the profits disclosed in the annual accounts, copies of which are required to be furnished under the Insurance Act, 1938, to the Controller of Insurance. 4 of 1938.
4. The profits referred to in paragraph 3 shall be— 20
 - (a) increased by the aggregate of,—
 - (i) the amounts referred to in sub-section (2) of section 33 to the extent such amounts are not included in the profits referred to in that paragraph; and
 - (ii) the amounts referred to in sub-section (4) of section 35 and sub-section (2) of section 36 to the extent such amounts have been claimed as a deduction in computing the profits referred to in that paragraph; 25
 - (b) decreased by—
 - (i) the amount allowable as deductions under clause (xxx) of sub-section (2) of section 35 to the extent such amount has been included under sub-clause (i) of clause (a); 30
 - (ii) the amount of finance charges allowable as deduction under sub-section (1) of section 36 to the extent such amount has been included under sub-clause (ii) of clause (a); and
 - (iii) such amount carried over to a reserve for unexpired risks as may be prescribed. 35
5. The profits of the branches in India of a person not resident in India and carrying on any business of insurance, may, in the absence of more reliable data, be deemed to be that proportion of the world income of such person which corresponds to the proportion which his premium income derived from India bears to his total premium income.
6. The profits of the business of insurance determined under paragraphs 1 to 5 shall be aggregated and the profits so aggregated shall be the profit from the business of insurance. 40
7. The profit from the business of insurance shall be aggregated with unabsorbed preceding year loss from the business of insurance, if any, and the net result of such aggregation shall be the current profit from the business of insurance for the financial year. 45
8. The current profit from the business of insurance shall be treated as *nil*, if the net result of aggregation in paragraph 7 is negative and the absolute value of the net result of the aggregation shall be the amount of unabsorbed current loss of the business of insurance for the financial year.

9. The profits computed under paragraphs 1 to 5 shall be presumed to have been computed—

5 (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections (1) to (3) of section 35, sub-section (1) of section 36 and sections 37 to 40 (both inclusive);

(b) after giving full effect to any deduction allowable under Sub-Chapter IV of Chapter III in relation to the profits of the business of insurance.

10. The written down value of any business asset used in the business of insurance shall be computed as if the assessee has claimed and has been actually allowed the deduction 10 in respect of depreciation under section 38, initial depreciation under section 39 and terminal allowance under section 40.

11. The amount of common costs (including depreciation) attributable to the business of insurance shall be determined in such manner as may be prescribed.

12. The successor in a business reorganisation of the business of insurance shall be 15 allowed a deduction in respect of the unabsorbed current loss of the business of insurance determined in the case of the predecessor for—

(a) the financial year immediately preceding the financial year in which the business reorganisation has taken place if the re-organisation is on the first day of the financial year; and

20 (b) the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business re-organisation, in any other case.

13. In this Schedule—

4 of 1938. 25 (a) “business of life insurance” means life insurance business as defined in clause (II) of section 2 of the Insurance Act, 1938;

(b) “business of insurance” means—

(i) the business of life insurance; and

(ii) the business of any insurance, not being life insurance;

(c) “common costs” means cost or expenditure incurred in the course of carrying on the business of insurance and any other business; and

30 (d) world income in relation to the business of insurance of a person not resident in India shall be computed in the manner laid down in this Code for the computation of the profits of the business of insurance carried on in India.

THE NINTH SCHEDULE

[See section 15(2)]

COMPUTATION OF INCOME FROM SPECIAL SOURCES

1. The income from any special source shall be computed in accordance with the provisions of this Schedule. 5
2. The income from any special sources shall be the aggregate of—
 - (a) any amount by way of accrual or receipt, as the case may be;
 - (b) any amount accrued or received as reimbursement of any expenditure incurred by the person; and
 - (c) any tax borne by the person by whom the income is payable. 10
3. No deduction or allowance or set-off of any loss shall be allowed in computation of income from the special sources.
4. The income computed under paragraph 2 shall be presumed to have been computed after giving full effect to every loss, allowance or deduction under this Code.
5. The written down value of any business asset used for the purposes of earning income from any special source shall be computed as if the person has claimed and has been actually allowed the deduction in respect of depreciation under section 38, initial depreciation under section 39 and terminal allowance under section 40. 15
6. The amount of common costs (including depreciation) attributable to the special source and presumed to have been allowed under paragraph 4 shall be determined in such manner as may be prescribed. 20

THE TENTH SCHEDULE
[See sections 32 (2) and 314 (262)]

COMPUTATION OF PROFITS OF BUSINESS OF OPERATING A QUALIFYING SHIP

1. The profits of the business of operating a qualifying ship for a financial year,—

5 (a) shall be computed in accordance with the provisions of this Schedule, at the option of the assessee; and

 (b) on exercise of the option, shall be determined in accordance with the formula—

$$A + B - C$$

10 Where

A = the total tonnage income of the financial year;

B = the aggregate of the amounts referred to in sub-section (2) of section 33; and

15 C = the amount of negative profit computed under this Schedule in respect of the business of operating a qualifying ship, for the financial year immediately preceding the relevant financial year.

2. The tonnage income of the financial year in respect of each qualifying ship shall be the daily tonnage income of the ship multiplied by the number of days during which the ship is operated by the company as a qualifying ship.

20 **3.** The daily tonnage income of a qualifying ship having tonnage referred to in column (1) of the Table given below shall be the amount specified in the corresponding entry in column (2) of the said Table:

TABLE

Serial Number	Qualifying ship having net tonnage	Amount of daily tonnage income
(1)	(2)	(3)
1.	up to 1,000 tons	Rs. 46 for each 100 tons
2.	exceeding 1,000 tons but not more than 10,000 tons	Rs. 460 <i>plus</i> Rs. 35 for each 100 tons exceeding 1,000 tons
30	3. exceeding 10,000 tons but not more than 25,000 tons	Rs. 3,610 <i>plus</i> Rs. 28 for each 100 tons exceeding 10,000 tons
	4. exceeding 25,000 tons	Rs. 7,810 <i>plus</i> Rs. 19 for each 100 tons exceeding 25,000 tons.

4. The profits of the business of operating a qualifying ship shall be treated as 'nil' for the financial year if the profits determined under paragraph 1 is negative.

35 **5.** The profits computed under this Schedule shall be presumed to have been computed—

 (a) after giving full effect to every loss, allowance or deduction referred to in sections 35 to 40 (both inclusive);

40 (b) after giving full effect to any deduction allowable under Sub-Chapter IV of Chapter III in relation to the profits of the business of operating a qualifying ship.

6. The written down value of any business asset used in the business of operating a qualifying ship shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 38, initial depreciation under section 39 and terminal allowance under section 40.

7. The amount of common costs (including depreciation) attributable to the business of operating a qualifying ship and any other business shall be determined in such manner as may be prescribed.

8. The successor in a business reorganisation of the business of operating a qualifying ship shall be allowed a deduction in respect of the negative profit determined in the case of the predecessor for— 5

(a) the financial year immediately preceding the financial year in which the business reorganisation has taken place if the reorganisation is on the first day of the financial year; and

(b) the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation, in any other case. 10

9. A company shall continue to be regarded as an operator of a qualifying ship even in the case of temporary cessation of operation of the ship.

10. A company shall not be regarded as the operator in respect of a ship if the ship has been chartered out by it on bareboat charter-cum-demise terms.

11. A ship shall not be considered as qualifying ship if it temporarily ceases to be a qualifying ship. 15

12. The book profit or loss derived from the core shipping activities of a qualifying shipping company shall be excluded from the book profit of the company for the purposes of section 104.

13. The provisions of this Schedule shall not apply to a qualifying shipping company if it is party to any transaction or arrangement which amounts to an abuse of the tonnage income scheme as provided in this Schedule. 20

14. The Board may make rules for the purposes of computation of income from the business of operating a qualifying ship in respect of the following, namely:—

(a) method and time for opting into the tonnage income scheme and the period for, and circumstances under, which the option shall remain in force; 25

(b) circumstances under which a company may be excluded from the tonnage income scheme;

(c) such other conditions for applicability of tonnage income scheme having regard to the need for generating internal accruals for acquiring new ships and training of crews; 30

(d) limits for charter in of tonnage;

(e) prevention of abuse of the tonnage income scheme, having regard to the need to ensure that no transaction or arrangement results, or but for the rules prescribed hereunder, would have resulted in a tax advantage being obtained for— 35

(i) a person other than a qualifying shipping company; or

(ii) a qualifying shipping company in respect of its activities other than its business of operating a qualifying ship;

(f) valuation of goods or services where these are transferred between the business of operating a qualifying ship and any other business carried on by a qualifying shipping company; 40

(g) determination of arm's length price of the business transactions if the arrangement of transactions results in abuse of the tonnage income scheme.

15. In this Schedule, unless the context otherwise requires,—

(a) “bareboat charter” means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;

5 (b) “bareboat charter-cum-demise” means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered;

(c) “business of operating qualifying ships” means the core shipping activities and the permitted incidental shipping activities;

10 (d) “core shipping activities” means—

(i) the activities relating to operation of a qualifying ship;

(ii) the activities in connection with, or for the execution of, a service contract under which a qualifying shipping company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period by a qualifying ship;

(iii) on-board or on-shore activities of qualifying ship comprising of fares and food and beverages consumed on board; and

(iv) slot charters, space charters, joint charters, feeder services, or container box leasing, of a qualifying ship;

20 (e) “permitted incidental shipping activity” means any activity relating to chartering out of a qualifying ship on bareboat charter terms, maritime consultancy, loading or unloading of cargo, ship management or maritime education or recruitment if the aggregate accruals or receipts from all such activity does not exceed one-fourth per cent. of the turnover from the core shipping activities;

25 (f) “qualifying shipping company” means a company, which fulfils all the following conditions, namely:—

(i) it is an Indian company;

(ii) the place of effective management of the company is in India;

(iii) it owns at least one qualifying ship; and

30 (iv) the main object of the company is to carry on the business of operating ships;

(g) “qualifying ship” means a ship, which fulfils the following conditions, namely:—

(i) it is a seagoing ship or vessel of fifteen net tonnage or more;

35 44 of 1958. (ii) it is a ship registered or licensed under, or for the purposes of the Merchant Shipping Act, 1958;

44 of 1958. (iii) a certificate indicating the net tonnage of the ship has been issued under, or for the purposes of, the Merchant Shipping Act, 1958 and is in force;

40 (iv) it is owned or chartered in by the qualifying shipping company wholly, or partly in an arrangement such as slot charter, space charter, or joint charter; and

(v) the ship is not—

(A) a seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;

45 44 of 1958. (B) a fishing vessel as defined in clause (12) of section 3 of the Merchant Shipping Act, 1958;

(C) a factory ship including a vessel providing processing services in respect of the processing of the fishing produce;

(D) a pleasure craft, being a ship primarily used for the purposes of sport or recreation;

(E) harbour and river ferries; 5

(F) offshore installations; and

(G) used as a fishing vessel for a period of more than thirty days during a financial year;

(h) “seagoing ship” means a ship certified as such by the competent authority of any country; 10

(i) “tonnage” shall mean—

(i) the tonnage specified on a certificate issued under, or for the purposes of, the Merchant Shipping Act, 1958; and 44 of 1958.

(ii) the deemed tonnage in a case where an arrangement has been entered into by the qualifying company for purchase of slots, slot charter or sharing of a qualifying ship, calculated in such manner as may be prescribed; 15

(j) “tonnage income scheme” means a scheme for computation of profits of the business of operating qualifying ships under paragraph 1 of this Schedule;

(k) “total tonnage income” shall mean the aggregate of tonnage income from operating of all the qualifying ships. 20

THE ELEVENTH SCHEDULE
[See sections 32(2) 44(8), 314(161) and 318(2)(s)(i)]

COMPUTATION OF PROFITS OF THE BUSINESS OF
MINERAL OIL OR NATURAL GAS

5 1. The profits of the business of mineral oil or natural gas shall be the gross income from the business carried on by the assessee at any time during the financial year as reduced by the amount of business expenditure incurred by the assessee, wholly and exclusively, for the purposes of the business during the year.

2. The gross income referred to in paragraph 1 shall be the aggregate of,—

10 (a) the accruals or receipts derived by the assessee from,—

 (i) the business of mineral oil or natural gas;

 (ii) the leasing or transfer of whole of, or part of, or any interest in, any—

 (A) mineral oil or natural gas rights; and

 (B) asset used in the business of mineral oil or natural gas; and

15 (iii) the demolition, destruction, discarding or transferring of any business capital asset (other than land, goodwill or financial instrument) in respect of which deduction has been allowed, or allowable, under paragraph 3 in any financial year; and

 (b) the amounts referred to in sub-section (2) of section 33.

20 3. The amount of business expenditure referred to in paragraph 1 shall be the aggregate of the amount of,—

 (a) operating expenditure referred to in section 35, incurred by the assessee;

 (b) finance charges referred to in section 36, incurred by the assessee;

25 (c) expenditure on any license charges, rental fees or other charges, if actually paid;

 (d) capital expenditure incurred by the assessee;

 (e) expenditure on infructuous or abortive exploration of any area;

 (f) expenditure referred to in clauses (a) to (e) incurred before the commencement of the business.

30 (g) payment to Site Restoration Accumulate maintained in State Bank of India in accordance with the Schemes may be prescribed.

4. The profits computed under paragraph 1 shall be presumed to have been computed,—

35 (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections 35 to 40 (both inclusive);

 (b) after giving full effect to any deduction allowable under Sub-Chapter-IV of Chapter III in relation to the profits of the business of mineral oil or natural gas.

40 5. The written down value of any business asset used in the business of mineral oil or natural gas shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 38, initial depreciation under section 39 and terminal allowance under section 40.

6. The amount of common costs including depreciation attributable to the business of mineral oil or natural gas and any other business shall be determined in such manner as may be prescribed.

7. The provisions of this Schedule shall apply to the business referred to in paragraph 1, which fulfils the following conditions, namely:—

(a) it is not set-up by splitting up, or the reconstruction, of a business already in existence;

(b) it is not set up by the transfer to the business of machinery or plant previously used for any purpose. 5

8. In this Schedule, unless the context otherwise requires,—

(a) “business of mineral oil or natural gas” means any business consisting of the prospecting for or extraction or production of mineral oil or natural gas;

(b) “mineral oil” means crude oil, being petroleum in its natural state before it is refined or otherwise treated but from which water and foreign substances have been extracted; 10

(c) “natural gas” means any sub-soil combustible gaseous fossil fuel;

(d) “oil and gas right” means any reconnaissance permit, technical cooperation permit, exploration right, or production right assigned under the Oilfields (Regulation and Development) Act, 1948, or any right or interest therein; 15
53 of 1948.

(e) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if—

(i) the machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India; 20

(ii) the machinery or plant is imported into India from any country outside India; and

(iii) no deduction on account of depreciation in respect of the machinery or plant has been allowed or is allowable under the provisions of this Code, or the Income-tax Act, 1961 as it stood before the commencement of this Code, in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee; 25
43 of 1961.

(f) the condition specified in clause (b) of paragraph 7 shall be deemed to have been complied with if the total value of the machinery or plant or any part thereof, previously used for any purpose and transferred to the business referred to in paragraph 1, does not exceed twenty per cent. of the total value of the machinery or plant used in the business; 30

(g) the capital expenditure referred to in clause (d) of paragraph 3 shall not include any expenditure incurred on the acquisition of any land including long-term lease, goodwill or financial instrument. 35

THE TWELFTH SCHEDULE
[See sections 32(2) 44(8) and 318(2)(P) (i)]

5 COMPUTATION OF PROFITS OF THE BUSINESS OF DEVELOPING OF A SPECIAL ECONOMIC ZONE
MANUFACTURE OR PRODUCTION OF ARTICLE OR THINGS OR PROVIDING OF ANY SERVICE
BY A UNIT ESTABLISHED IN A SPECIAL ECONOMIC ZONE

1. The provisions of this Schedule shall apply to the business specified herein below—

(a) the business of developing a special economic zone; and

10 (b) a unit established in a special economic zone engaged in the business of manufacture or production of article or things or providing of any service.

2. The profits of the specified business under paragraph 1 shall be the gross income from such business carried on by the assessee at any time during the financial year as reduced by the amount of business expenditure incurred by the assessee, wholly and exclu-
15 sively, for the purposes of the business during the year.

3. The gross income referred to in paragraph 2 shall be the aggregate of—

(a) the accruals or receipts derived by the assessee from the specified business;

(b) the accruals or receipts derived by the assessee from the demolition, destruction, discarding or transferring of any business capital asset (other than land,
20 goodwill or financial instrument) in respect of which deduction has been allowed, or allowable, under paragraph 4 in any financial year; and

(c) the amounts referred to in sub-section (2) of section 33.

4. The amount of business expenditure referred to in paragraph 2 shall be the aggregate of the amount of—

25 (a) operating expenditure referred to in section 35, incurred by the assessee;

(b) finance charges referred to in section 36, incurred by the assessee;

(c) expenditure on any licence charges, rental fees or other charges, if actually paid;

(d) capital expenditure incurred by the assessee;

30 (e) expenditure referred to in clauses (a) to (d) incurred before the commencement of specified business.

5. The profits computed under paragraph 2 shall be presumed to have been computed—

35 (a) after giving full effect to every loss, allowance or deduction referred to in sub-sections (1) to (3) of section 35, sub-section (1) of section 36 and sections 37 to 40 (both inclusive);

(b) after giving full effect to any deduction allowable under Sub-Chapter-IV of Chapter III in relation to the profits of the specified business.

40 6. The written down value of any business asset used in the specified business shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 38, initial depreciation under section 39 and terminal allowance under section 40.

7. The amount of common costs (including depreciation) attributable to the specified business shall be determined in such manner as may be prescribed.

8. The provisions of this Schedule shall apply to a specified business, which fulfils the following conditions, namely:—

(a) it is not set-up by splitting up, or the reconstruction, of a business already in existence; and

(b) it is not set-up by the transfer to the specified business, of machinery or plant previously used for any purpose. 5

9. In this Schedule, unless the context otherwise requires,—

(a) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if— 10

(i) the machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;

(ii) the machinery or plant is imported into India from any country outside India; and

(iii) no deduction on account of depreciation in respect of the machinery or plant has been allowed or is allowable under the provisions of this Code, or the Income-tax Act, 1961 as it stood before the commencement of this Code, in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee; 15 43 of 1961.

(b) the condition specified in clause (b) of paragraph 8 shall be deemed to have been complied with if the total value of the machinery or plant or any part thereof, previously used for any purpose and transferred to the specified business does not exceed twenty per cent. of the total value of the machinery or plant used in the said business; 20

(c) the capital expenditure referred to in clause (d) of paragraph 4 shall not include any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument. 25

THE THIRTEENTH SCHEDULE
[See sections 32(2) 44(8) and 318(o)(i), (q)(i), (r)(i)]

COMPUTATION OF PROFITS OF A SPECIFIED BUSINESS

1. The provisions of this Schedule shall apply to the following specified businesses
5 which fulfill such conditions as may be prescribed by the Central Government:—

(a) business of generation, transmission or distribution of power;

(b) business of developing, or operating and maintaining, any infrastructure
facility;

10 (c) business of operating and maintaining a hospital in any area, other than the
excluded area;

(d) business of processing, preservation and packaging of fruits and vegetables;

(e) business of laying and operating a cross country natural gas or crude or
petroleum oil pipeline network for distribution, including storage facilities being an
integral part of the network;

15 (f) business of setting up and operating a cold chain facility;

(g) business of setting up and operating a warehousing facility for storage of
agricultural produce;

20 (h) business of building and operating, anywhere in India, a new hotel of two-
star or above category as classified by the Central Government and commences op-
eration on or after the 1st day of April, 2010;

(i) business of building and operating, anywhere in India, a new hospital with at
least one hundred beds for patients and commences operation on or after the 1st day
of April, 2010;

25 (j) business of developing and building a housing project under a scheme for
slum re-development or rehabilitation framed by the Central Government or a State
Government, as the case may be, and notified by the Board in this behalf in accor-
dance with the guidelines as may be prescribed and commences operation on or after
the 1st day of April, 2010.

30 2. The profits of every specified business shall be computed separately under this
Schedule.

3. The profits of any specified business shall be the gross income from the business
carried on by the assessee at any time during the financial year as reduced by the amount of
business expenditure incurred by the assessee, wholly and exclusively, for the purposes of
the business during the year.

35 4. The gross income referred to in paragraph 1 shall be the aggregate of—

(a) the accruals or receipts derived by the assessee from the specified business;

40 (b) the accruals or receipts derived by the assessee from the transfer, discardment,
destruction or destruction of any business capital asset (other than land, goodwill or
financial instrument) in respect of which deduction has been allowed, or allowable,
under paragraph 5 in any financial year; and

(c) the amounts referred to in sub-section (2) of section 33.

5. The amount of business expenditure referred to in paragraph 1 shall be the aggre-
gate of the amount of—

(a) operating expenditure referred to in section 35, incurred by the assessee;

45 (b) finance charges referred to in section 36, incurred by the assessee;

(c) expenditure on any licence charges, rental fees or other charges, if actually paid;

(d) capital expenditure incurred by the assessee;

(e) expenditure referred to in clauses (a) to (d) incurred before the commencement of the business. 5

6. The profits computed under paragraph 1 shall be presumed to have been computed—

(a) after giving full effect to every loss, allowance or deduction referred to in sections 35 to 40 (both inclusive);

(b) after giving full effect to any deduction allowable under Sub-Chapter-IV of Chapter III in relation to the profits of the specified business. 10

7. The written down value of any business asset used in the specified business shall be computed as if the assessee has claimed and has been actually allowed the deduction in respect of depreciation under section 38, initial depreciation under section 39 and terminal allowance under section 40. 15

8. The amount of common costs including depreciation attributable to the specified business and any other business shall be determined in such manner as may be prescribed.

9. The provisions of this Schedule shall apply to the business referred to in paragraph 1, which fulfils the following conditions, namely:—

(a) it is not set-up by splitting up, or the reconstruction, of a business already in existence; 20

(b) it is not set-up by the transfer to the specified business of machinery or plant previously used for any purpose; and

(c) in a case where the business is of the nature referred to in clause (e) of paragraph 1, the business— 25

(i) is owned by a company formed and registered in India under the Companies Act, 1956 or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act; 1 of 1956.

(ii) has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in this behalf; 30
19 of 2006.

(iii) has made not less than such proportion of its total pipeline capacity as specified by the regulations made by the Petroleum and Natural Gas Regulatory Board established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 available for use on common carrier basis by any person other than the assessee or an associated person; and 35
19 of 2006.

(iv) fulfils any other condition as may be prescribed.

10. In this Schedule, unless the context otherwise requires— 40

(a) an “associated person” in relation to the assessee, means a person—

(i) who participates, directly or indirectly, or through one or more intermediaries in the management or control or capital of the assessee;

(ii) who holds, directly or indirectly, shares carrying not less than twenty-six per cent. of the voting power in the capital of the assessee; 45

(iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or

5 (iv) who guarantees not less than ten per cent. of the total borrowings of the assessee;

(b) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if—

10 (i) the machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;

(ii) the machinery or plant is imported into India from any country outside India; and

43 of 1961. 15 (iii) no deduction on account of depreciation in respect of the machinery or plant has been allowed or is allowable under the provisions of this Code, or the Income-tax Act, 1961 as it stood before the commencement of this Code, in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;

20 (c) the condition specified in clause (b) of paragraph 9 shall be deemed to have been complied with if the total value of the machinery or plant or any part thereof, previously used for any purpose and transferred to the specified business, does not exceed twenty per cent. of the total value of the machinery or plant used in the business;

25 (d) the capital expenditure referred to in clause (d) of paragraph 5 shall not include any expenditure incurred on the acquisition of any land including long term lease, goodwill or financial instrument.

(e) 'excluded area' means the areas of—

- (i) Greater Mumbai urban agglomeration;
- (ii) Delhi urban agglomeration;
- (iii) Kolkata urban agglomeration;
- 30 (iv) Chennai urban agglomeration;
- (v) Hyderabad urban agglomeration;
- (vi) Bangalore urban agglomeration;
- (vii) Ahmedabad urban agglomeration;
- (viii) the District of Faridabad;
- 35 (ix) the District of Gurgaon;
- (x) the District of Gautam Budh Nagar;
- (xi) the District of Ghaziabad;
- (xii) the District of Gandhinagar; and
- (xiii) the City of Secunderabad;

40 (f) "urban agglomeration" means the area included in the relevant urban agglomeration on the basis of the 2001 census.

THE FOURTEENTH SCHEDULE

[See section 32 (2), 86(4), 170(4), (a), 314(220) (e)]

DETERMINATION OF INCOME ON A PRESUMPTIVE BASIS

1. The income from the business specified in column (2) of the Table given below, carried on by the assessee at any time during the financial year, shall, be the amount specified in column 3 thereof, subject to the conditions specified in column (4) therein: 5

TABLE

Serial Number	Nature of Business	Amount of income	Conditions	
(1)	(2)	(3)	(4)	
1.	Buisness of plying, hiring or leasing of heavy goods or light goods vehicle.	The aggregate amount of income from all the heavy goods vehicles and light goods vehicle owned by the assessee, calculated at the rate of –	The total number of heavy goods and light goods vehicles owned by the assessee in the financial year should be ten or less.	15
		(i) five thousand rupees from each heavy goods vehicle for every month or part of a month during which the vehicle is owned by the assessee in the financial year; or		20
		(ii) four thousand five hundred rupees from each light goods vehicle for every month or part of a month during which the vehicle is owned by the assessee in the financial year.		25
				30
2.	Any business (other than a profession and the business referred to in serial number 1).	Eight per cent. of the total turnover, or gross receipts, of the assessee in the financial year from the business.	(i) the assessee is a resident; (ii) the assessee is an individual, a Hindu undivided family or a firm excluding a limited liability partnership; and (iii) the total turnover or gross receipts of the assessee in the financial year from the business is one crore rupees or less.	35
				40

5	(1)	(2)	(3)	(4)
10	3.	Business of civil construction in connection with a turnkey power project approved by the Central Government in this behalf.	The amount shall be a sum equal to ten per cent. of the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the civil construction.	The assessee is a foreign company.
15	4.	Business of erection of plant or machinery or testing or commissioning thereof, in connection with a turnkey power project approved by the Central Government in this behalf.	The amount shall be a sum equal to ten per cent. of the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of erection, testing or commissioning.	The assessee is a foreign company.
20	5.	Business of providing services or facilities in connection with the prospecting for, or extraction or production of, mineral oil or natural gas.	The amount shall be a sum equal to fourteen per cent. of aggregate of— (i) the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the provisions of services and facilities in connection with the prospecting for, or extraction or production of, mineral oils in India; and (ii) the amount received or deemed to be received in India, directly or indirectly, by or on behalf of the assessee on account of the provisions of services and facilities in connection with the prospecting for, or extraction or production of, mineral oils outside India.	The assessee is a non-resident.
25	6.	Business of supplying plant and machinery on hire, used or to be used, in the prospecting for, or extraction or production of, mineral oils or or natural gas.	The amount shall be a sum equal to fourteen per cent. of aggregate of— (i) the amount paid or payable (whether in or out of India), directly or indirectly, to the assessee or to any person on his behalf on account of the supply of plant	The assessee is a non-resident.
30				
35				
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(1)	(2)	(3)	(4)
		and machinery on hire, used or to be used, in the prospecting for, or extraction or production of, mineral oils in India; and	5
		(ii) the amount received or deemed to be received in India, directly or indirectly, by or on behalf of the assessee on account of the supply of plant and machinery on hire, used or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.	10
7.	Business of operation of ships (including an arrangement such as slot charter, space charter or joint charter).	Ten per cent. of transportation charges on account of the carriage of passengers, live-stock, mail or goods.	20
8.	Business of operation of aircraft (including an arrangement such as slot charter, space charter or joint charter).	Seven per cent. of the transportation charges on account of the carriage of passengers, live-stock, mail or goods.	25
<p>2. The amount of income determined under paragraph 1 shall be further increased by the excess of the amount of income, if any, actually earned by the assessee from the business over the amount specified in that paragraph.</p>			
<p>3. The income computed under paragraph 1 shall be presumed to have been computed after giving full effect to every loss, allowance or deduction under this Code.</p>			
<p>4. The written down value of any business asset used for the purposes of earning income from the business specified in column (2) of the Table in paragraph 1 shall be computed as if the person has claimed and has been actually allowed the deduction in respect of depreciation under section 38, initial depreciation under section 39 and terminal allowance under section 40.</p>			
<p>5. The amount of common costs (including depreciation) attributable to the business specified in column (2) of the Table in paragraph 1 and presumed to have been allowed under Paragraph 3 shall be determined in such manner as may be prescribed.</p>			
<p>6. The provisions of this Schedule shall not apply to—</p>			
<p>(a) any income which is derived from any special source;</p>			40
<p>(b) any income from ordinary sources in respect of the business referred to in column (2) of the Table in paragraph 1, at the option of the assessee, if—</p>			
<p>(i) the assessee keeps and maintains all the books of account and other documents referred to in section 87 in respect of the business irrespective of anything in that section;</p>			45
<p>(ii) the assessee gets his accounts audited and obtains a report of such audit as required under section 88 in respect of the business irrespective anything in that section;</p>			

(iii) the accounts are correct and complete to the satisfaction of the Assessing Officer;

(iv) the income can be properly deduced from the accounts; and

(v) the assessee produces the books of account and other documents
5 before the Assessing Officer, as and when called for.

THE FIFTEENTH SCHEDULE
[See section 38 (1), (4), (a), 39(1) (b), 40 (1) (b), 42 (1)]

DEPRECIATION

1. The allowance under section 37 in respect of depreciation of any block of assets, specified in column (3) of the Table given below, shall be calculated at the percentages, specified in corresponding entry in column (4) of the said Table, on the adjusted value or written down value of such block of assets, as the case may be, as are used for the purposes of the business of the assessee at any time during the financial year. 5

TABLE
RATES AT WHICH DEPRECIATION IS ADMISSIBLE 10

Serial number	Class of assets	Block of assets	Depreciation allowance as percentage of adjusted value or of written down value of block of assets.	
(1)	(2)	(3)	(4)	
1.	Building	(1) Buildings which are used mainly for residential purposes.	5	20
		(2) Buildings which are purely temporary erections such as wooden structures.	100	
		(3) Buildings used as, or for—	15	
		(i) hotel or boarding house,		25
		(ii) railway station,		
		(iii) airport,		
		(iv) sea port,		
		(v) bus terminal		
		(vi) hospital, or		30
		(vii) convention centre	10	
		(4) Any other building.		
2.	Furniture and fittings	Furniture and fittings including electrical fittings.	10	
3.	Vehicles	(1) Motor buses, motor lorries and motor cars, used in a business of running them on hire.	30	35
		(2) Any other motor bus, motor lorry or motor car.	15	
4.	Aeroplanes	Aeroplanes including aeroengines.	40	40
5.	Rails	(1) Engines, coaches and wagons.	40	
		(2) Rolling stock.	15	
6.	Ships	(1) Ocean-going vessels.	20	
		(2) Speed boats ordinarily operating on inland waters.	20	45
		(3) Any other vessel ordinarily operating on inland waters.	20	

(1)	(2)	(3)	(4)
7.	Books	(1) Annual publications used for carrying on a profession.	100
5		(2) Any other book used for carrying on a profession.	60
		(3) Book used for carrying on a business of running lending libraries .	100
		(4) Any other book .	25
8.	Machinery and Plant	(1) Moulds used in rubber and plastic goods factories.	30
10		(2) Air pollution control equipment.	100
		(3) Water pollution control equipment.	100
		(4) Solid waste control equipment.	100
		(5) Life saving medical equipment.	40
15		(6) Containers made of glass, or plastic, used as refills.	50
		(7) Computers including computer software.	60
		(8) Energy saving devices.	80
		(9) Renewable energy devices.	80
20		(10) Machinery and plant, used in semiconductor industry.	30
		(11) Wooden parts used in artificial silk manufacturing machinery.	100
25		(12) Bulbs of studio lights used for cinematograph films.	100
		(13) Wooden match frames used in match factories.	100
30		(14) Tubs, winding ropes, haulage ropes, sand stowing pipes and safety lamps used in mines and quarries.	100
		(15) Salt pans, reservoirs and condensers, made of earthy, sandy or clayey material or any other similar material, used in salt works.	100
35		(16) Rollers used in flour mills or sugar works.	80
		(17) Rolling mill rolls used in iron and steel industry.	80
		(18) Gas cylinders including valves and regulators.	60
40		(19) Glass manufacturing concerns direct fire glass melting furnaces.	60
		(20) Returnable packages used in field operations (above ground) distribution by petroleum or natural gas concerns.	60
45		(21) Plant used in field operations (below ground) by petroleum or natural gas concerns.	60
		(22) Machinery and plant acquired and installed in a water supply project or water treatment system and which is put to use for the pupose of business of providing infrastructure facility.	100
50		(23) Any other machinery or plant.	15

(1)	(2)	(3)	(4)
9.	Scientific re- search assets	All assets, other than land, used for scientific research.	100
10.	Family planning asset	All assets used by a company for the purpose of promoting family planning.	25
11.	Animals	Animals.	0
12.	Intangible assets	(1) Any right, by way of licence or franchise, to operate a business or to use a know-how, patent, copyright, trademark or any other business or commercial right of similar nature.	25
		(2) Asset or project constructed, erected or set up by the assessee if,— (a) benefit or advantage arises to the assessee over a fixed period not exceeding ten years; and (b) asset is not owned by the assessee.	10
		(3) Asset or project constructed, erected or set up by the assessee if,— (a) benefit or advantage arises to the assessee over a fixed period exceeding ten years; and (b) asset is not owned by the assessee.	15
		(4) Asset or project constructed, erected or set up by the assessee if,— (a) benefit or advantage arises to the assessee over a fixed period exceeding ten years; and (b) asset is not owned by the assessee.	20
		2. No depreciation shall be allowed in respect of any machinery or plant, if the actual cost thereof is allowed as a deduction in one or more years.	25
		3. The depreciation shall be one hundred per cent. of the adjusted written down value of the block of assets referred to in the class of assets at serial number 12 of the Table, if the adjusted value or written down value of the block of assets is one lakh rupees or less.	
		4. In respect of any structure, or work, by way of renovation or improvement in, or in relation to, a building used for the purposes of business of the person, the percentage to be applied shall be the percentage specified in any sub-item of the block of assets in serial number 1 of the said Table, as may be appropriate to the class of building in, or in relation to, which the renovation or improvement is effected.	30
		5. In respect of any structure constructed, or work done, by way of extension of any building used for the purposes of business of the person, the percentage to be applied shall be the percentage specified in any sub-item of the block of assets in serial number 1 of the said Table above, as would be appropriate, as if the structure, or work, constituted a separate building.	35
		6. In this Schedule—	
		(a) “buildings” include roads, bridges, culverts, wells and tubewells;	40
		(b) “building mainly used for residential purpose” means a building where the built-up floor area thereof used for residential purposes is not less than sixty-six and two-third per cent. of its total built-up floor area and shall include any such building in the factory premises;	
		(c) “water treatment system” includes water treatment system for desalination, demineralisation and purification of water as well as pipes needed for delivery from the source of supply of raw water to the plant and from the plant to the storage facility;	45

(d) “electrical fittings” include electrical wiring, switches, sockets and other fittings and fans;

(e) “computer software” means any computer programme recorded on any disc, tape, perforated media or other information storage device;

5 (f) “speed boat” means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometers per hour in still water and so designed that when running at a speed, its bow will rise from the water;

10 (g) “ocean-going ships” include dredgers, tugs, barges, survey launches, other similar ships used mainly for dredging purposes and fishing vessels with wooden hull;

(h) “air pollution control equipment” means—

(i) electrostatic precipitation systems;

(ii) felt-filter systems;

(iii) dust collector systems;

15 (iv) scrubber-counter current, venture, packed bed, cyclonic scrubbers; and

(v) ash handling system and evacuation system;

(i) “water pollution control equipment” means—

(i) mechanical screen systems;

(ii) aerated detritus chambers (including air compressor);

20 (iii) mechanically skimmed oil and grease removal systems;

(iv) chemical feed systems and flash mixing equipment;

(v) mechanical flocculators and mechanical reactors;

(vi) diffused air, mechanically aerated activated sludge systems;

(vii) aerated lagoon systems;

25 (viii) biofilters;

(ix) methane-recovery anaerobic digester systems;

(x) air floatation systems;

(xi) air, steam stripping systems;

(xii) urea hydrolysis systems;

30 (xiii) marine outfall systems;

(xiv) centrifuge for dewatering sludge;

(xv) rotating biological contractor or bio-disc;

(xvi) ion exchange resin column; and

(xvii) activated carbon column;

35 (j) “Solidwaste control equipments” means—

(i) caustic, lime, chrome, mineral, cryolite recovery systems; and

(ii) solidwaste recycling and resource recovery systems;

(k) “life saving medical equipment” means—

40 (i) D.C1015205303540254550. defibrillators for internal use and pace makers;

(ii) haemodialysors;

- (iii) heart lung machine;
- (iv) cobalt therapy unit;
- (v) colour doppler;
- (vi) SPECT gamma camera;
- (vii) vascular angiography system including digital subtraction angiography; 5
- (viii) ventilator used with anaesthesia apparatus;
- (ix) magnetic resonance imaging system;
- (x) surgical laser;
- (xi) ventilators other than those used with anaesthesia; 10
- (xii) gamma knife;
- (xiii) bone marrow transplant equipment including silastic long standing intravenous catheters for chemotherapy;
- (xiv) fibre optic endoscopes including, paediatric resectoscope/audit resectoscope, peritoneoscopes, arthroscope, microlaryngoscope, fibreoptic flexible nasal pharyngo bronchoscope, fibreoptic flexible laryngo bronchoscope, video laryngo bronchoscope and video oesophago gastroscope, stroboscope, fibreoptic flexible oesophago gastroscope; or 15
- (xv) laparoscope (single incision);
- (l) “energy saving device” means— 20
 - (i) specialised boilers and furnaces, being—
 - (A) Ignifluid/fluidized bed boilers;
 - (B) flameless furnaces and continuous pusher type furnaces;
 - (C) fluidized bed type heat treatment furnaces; or
 - (D) high efficiency boilers (thermal efficiency higher than 75 per cent. in case of coal fired and 80 per cent. in case of oil/gas fired boilers); 25
 - (ii) instrumentation and monitoring system for monitoring energy flows, being—
 - (A) automatic electrical load monitoring systems;
 - (B) digital heat loss meters; 30
 - (C) micro-processor based control systems;
 - (D) infra-red thermography;
 - (E) meters for measuring heat losses, furnace oil flow, steam flow, electric energy and power factor meters;
 - (F) maximum demand indicator and clamp on power meters; 35
 - (G) exhaust gases analyzer; or
 - (H) fuel oil pump test bench;
 - (iii) waste heat recovery equipment, being—
 - (A) economisers and feed water heaters;
 - (B) recuperators and air pre-heaters; 40

- (C) heat pumps; or
- (D) thermal energy wheel for high and low temperature waste heat recovery;
- (iv) co-generation systems, being—
- 5 (A) back pressure pass out, controlled extraction, extraction-cum-condensing turbines for co-generation along with pressure boilers;
- (B) vapour absorption refrigeration systems;
- (C) organic rankine cycle power systems; or
- (D) low inlet pressure small steam turbines;
- 10 (v) electrical equipment, being—
- (A) shunt capacitors and synchronous condenser systems;
- (B) automatic power cut off devices (relays) mounted on individual motors;
- (C) automatic voltage controller;
- 15 (D) power factor controller for AC motors;
- (E) solid state devices for controlling motor speeds;
- (F) thermally energy-efficient stenters (which require 800 or less kilocalories of heat to evaporate one kilogram of water);
- (G) series compensation equipment;
- 20 (H) Flexible AC Transmission (FACT) devices - Thyristor controlled series compensation equipment;
- (I) time of Day (ToD) energy meters;
- (J) equipment to establish transmission highways for National Power Grid to facilitate transfer of surplus power of one region to the deficient region;
- 25 (K) remote terminal units/intelligent electronic devices, computer hardware/ software, router/bridges, other required equipment and associated communication systems for supervisory control and data acquisition systems, energy management systems and distribution management systems for power transmission systems; or
- 30 (L) special energy meters for Availability Based Tariff (ABT);
- (vi) burners, being —
- (A) 0 to 10 per cent. excess air burners;
- (B) emulsion burners; or
- 35 (C) burners using air with high pre-heat temperature (above 300°C);
- and
- (vii) other energy saving device, being —
- (A) wet air oxidation equipment for recovery of chemicals and heat;
- (B) mechanical vapour recompressors;
- 40 (C) thin film evaporators;
- (D) automatic micro-processor based load demand controllers;

- (E) coal based producer gas plants;
- (F) fluid drives and fluid couplings;
- (G) turbo charges/super-charges;or
- (H) sealed radiation sources for radiation processing plants;
- (m) “renewal energy device” means— 5
- (i) flat plate solar collectors;
- (ii) concentrating and pipe type solar collectors;
- (iii) solar cookers;
- (iv) solar water heaters and systems;
- (v) air/gas/fluid heating systems; 10
- (vi) solar crop driers and systems;
- (vii) solar refrigeration, cold storages and air-conditioning systems;
- (viii) solar steels and desalination systems;
- (ix) solar power generating systems;
- (x) solar pumps based on solar-thermal and solar-photovoltaic con- 15
version;
- (xi) solar-photovoltaic modules and panels for water pumping and
other applications;
- (xii) Wind mills and any specially designed devices which run on
wind mills; 20
- (xiii) Any special devices including electric generators and pumps
running on wind energy;
- (xiv) biogas-plant and biogas-engines;
- (xv) electrically operated vehicles including battery powered or fuel-
cell powered vehicles; 25
- (xvi) agricultural and municipal waste conversion devices produc-
ing energy;
- (xvii) equipment for utilising ocean waste and thermal energy; or
- (xviii) machinery and plant used in the manufacture of any of the
above sub-items; 30
- (n) “machinery and plant used in semi-conductor industry” means machinery
and plant used in semi-conductor industry covering all integrated circuits (ICs) (ex-
cluding hybrid integrated circuits) ranging from small scale integration (SSI) to large
scale integration/very large scale integration (LSI/VLSI) as also discrete semi-con-
ductor devices such as diodes, transistors, thyristors, triacs, etc., other than clauses 35
(h), (i), (j), (l) and (m) referred above.

THE SIXTEENTH SCHEDULE

[See section 79(1) and (4)]

PART I

CONTRIBUTIONS OR DONATIONS ELIGIBLE FOR ONE HUNDRED SEVENTY-FIVE PER CENT.

5

DEDUCTION

Any research association or national laboratory or university, college or other institution if—

(a) it is engaged in carrying on scientific research and development; and

10 (b) such association, university, college or other institution is approved in this behalf subject to conditions and in accordance with such guidelines and manner as may be prescribed.

PART II

CONTRIBUTIONS OR DONATIONS ELIGIBLE FOR ONE HUNDRED TWENTY-FIVE PER CENT. DEDUCTION

Any research association or a university, college or other institution if—

15

(a) it is engaged in carrying on statistical research or research in social science; and

(b) such association, university, college or other institution is approved in this behalf subject to conditions and in accordance with such guidelines as may be prescribed.

20

PART III

DONATIONS ELIGIBLE FOR HUNDRED PER CENT. DEDUCTION

1. The National Defence Fund set up by the Central Government.

2. The Prime Minister's National Relief Fund.

3. The Prime Minister's Armenia Earthquake Relief Fund.

25

4. The Africa (Public Contributions-India) Fund.

5. The National Foundation for Communal Harmony.

6. Any University or educational institution of national eminence as may be approved by the prescribed authority in this behalf.

30

7. Any Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district for the purposes of improvement of primary education in villages and towns in such district and for literacy and post-literacy activities.

8. The National Blood Transfusion Council or any State Blood Transfusion Council which has as its sole object, the control, supervision, regulation or encouragement in India of the services related to operation and requirements of blood banks.

35

9. Any fund set up by a State Government to provide medical relief to the poor.

10. The Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependants.

11. The National Illness Assistance Fund.

40

12. The Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory, as the case may be, where such Fund is—

(a) the only Fund of its kind established in the State or the Union territory, as the case may be;

(b) under the overall control of the State or the Union territory, as the case may be;

(c) administered in such manner as may be specified by the State Government or the Lieutenant Governor, as the case may be. 5

13. The National Sports Fund set up by the Central Government.

14. The National Cultural Fund set up by the Central Government.

15. The Fund for Technology Development and Application set up by the Central Government. 10

16. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities constituted under sub-section (I) of section 3 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. 44 of 1999.

17. The Government or any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purpose of promoting family planning. 15

18. The Indian Olympic Association or to any other association or institution established in India, as the Central Government may, having regard to the prescribed guidelines, by notification, specify in this behalf for— 20

(a) the development of infrastructure for sports and games; or

(b) the sponsorship of sports and games, in India and where the sum is paid by an assessee, being a company.

19. A rural development fund set up and notified by the Central Government.

20. The National Urban Poverty Eradication Fund set up and notified by the Central Government. 25

PARTIV

DONATIONS ELIGIBLE FOR FIFTY PER CENT. DEDUCTION

1. The Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964. 30

2. The Prime Minister's Drought Relief Fund.

3. The National Children's Fund.

4. The Indira Gandhi Memorial Trust, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of February, 1985.

5. The Rajiv Gandhi Foundation, the deed of declaration in respect whereof was registered at New Delhi on the 21st day of June, 1991. 35

6. Any other fund or any institution or any organisation which is approved under section 98;

7. The Government or any local authority, to be utilised for any charitable purpose other than the purpose of promoting family planning. 40

8. Any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both.

9. Any corporation established by the Central Government or any State Government for promoting the interests of a minority community.

10. A temple, mosque, gurdwara, church or any other place as is notified by the Central Government to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout a State or States, to be utilised for the renovation or repair of such temple, mosque, gurdwara, church or other place.

NOTE:— (a) For the purposes of item 7 of Part III, “town” means a town which has a population not exceeding one lakh according to the last preceding census of which the relevant figures have been published before the first day of the financial year;

10 (b) For the purposes of item 8 of Part III, —

21 of 1860. (i) “National Blood Transfusion Council” means a society registered as such under the Societies Registration Act, 1860 under the administrative control of the Union Ministry of Health and Family Welfare;

15 21 of 1860. (ii) “State Blood Transfusion Council” means a society registered, in consultation with the National Blood Transfusion Council, under the Societies Registration Act, 1860 under the administrative control of the Department of Health of the respective State Government.

THE SEVENTEENTH SCHEDULE

[See section 53(2)]

DETERMINATION OF COST OF ACQUISITION IN CERTAIN CASES

Serial number	Nature of investment asset	Mode of acquisition	Cost of acquisition of the investment asset	
(1)	(2)	(3)	(4)	
1.	Shares in an amalgamated company, being an Indian company or a successor co-operative bank.	By way of transfer referred to in clause (k) or clause (l), as the case may be, of sub-section (I) of section 47.	The cost of acquisition to the assessee of the shares in the amalgamating company or predecessor co-operative bank.	5 10
2.	Transferable interest of partner referred to in section 42 of the Limited Liability Partnership Act, 2008 (6 of 2009).	By way of transfer referred to in clause (j) of sub-section (I) of section 47.	The cost of acquisition to the assessee of the shares in the company immediately before its conversion into limited liability partnership.	15 20
3.	Shares or debenture in a company.	By way of transfer referred to in clause (q) or clause (r) of sub-section (I) of section 47.	That part of the cost of bond, debenture, debenture-stock or deposit certificates in relation to which the investment asset is acquired by the assessee.	25
4.	Shares in the resulting company or co-operative bank.	By way of a transfer effected under a scheme of demerger.	The amount which bears to the cost of acquisition of shares held by the assessee in the demerged company or co-operative bank, the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company or co-operative bank immediately before such demerger.	30 35
5.	Original shares in the demerged company or a co-operative bank.	By way of transfer in any manner.	The cost of acquisition of the original shares held by the assessee in the demerged company immediately before the demerger as reduced by the amount as so arrived at under column (4) in respect of the entry at serial number 3 of this Table.	40 45

	(1)	(2)	(3)	(4)
	06.	Shares or any other security.	By way of purchase of the share or such other security.	The amount actually paid by the assessee for acquiring the asset.
5	07.	Any right to renounce the entitlement to subscribe to shares or any other security.	By way of purchase of the original share or other security.	Nil
10				
	08.	Any right to subscribe to additional shares or any other security on the basis of holding the original share or security.	By way of purchase of the original share or other security.	The amount actually paid by the assessee for acquiring the asset.
15				
	09.	Shares or any other security.	By way of allotment on the basis of holding any share or any other security without payment.	Nil
20				
	10.	Right in the nature of an entitlement to subscribe to shares or any other security.	By way of purchase of such right from another person.	The aggregate of the amount of purchase price paid by the assessee to the person renouncing the right and the amount paid by the assessee to the company or institution, as the case may be, for acquiring the investment asset.
25				
30				
	11.	Sweat equity shares.	By way of allotment or transfer, directly or indirectly, by an employer to his employee (including former employee).	The fair market value of the sweat equity share which has been taken into account while computing the value of perquisite for the purposes of section 22.
35				
	12.	Shares of a recognised stock exchange in India.	Under a scheme of demutualisation or corporatisation approved by the Securities and Exchange Board of India.	Cost of acquisition by the assessee of his original membership of the stock exchange.
40				
	13.	Trading or clearing rights of a recognised stock exchange in India acquired by a shareholder.	Under a scheme of demutualisation or corporatisation approved by the Securities and Exchange Board of India.	Nil
45				

(1)	(2)	(3)	(4)
14.	Shares or stocks of a company.	<p>(a) in pursuance of consolidation or division or sub-division of all or any of the share capital of the company into shares of larger amount or smaller amount, as the case may be, than its existing shares; or</p> <p>(b) by way of conversion of any shares of the company into stock of the same company, or re-conversion thereof; or</p> <p>(c) by way of conversion of one kind of shares of the company into another kind of shares of the same company.</p>	<p>Cost of acquisition of the shares or stock from which the investment asset is derived.</p> <p>5</p> <p>10</p> <p>15</p> <p>20</p>

THE EIGHTEENTH SCHEDULE

[See section 314(160)]

MINERALS AND GROUP OF ASSOCIATED MINERALS

PART I

Minerals

- 5
1. Aluminium ores.
 2. Apatite and phosphatic ores.
 3. Beryl.
 4. Chrome ore.
 - 10
 5. Coal and lignite.
 6. Columbite, Samarskite and other minerals of the "rare earths" group.
 7. Copper.
 8. Gold.
 9. Gypsum.
 - 15
 10. Iron ore.
 11. Lead.
 12. Manganese ore.
 13. Molybdenum.
 14. Nickel ores.
 - 20
 15. Platinum and other precious metals and their ores.
 16. Pitchblende and other uranium ores.
 17. Precious stones.
 18. Rutile.
 19. Silver.
 - 25
 20. Sulphur and its ores.
 21. Tin.
 22. Tungsten ores.
 23. Uraniferous allanite, monazite and other thorium minerals.
 24. Uranium bearing tailings left over from ores after extraction of copper and gold,
30 ilmenite and other titanium ores.
 25. Vanadium ores.
 26. Zinc.
 27. Zircon .

Part II

Groups of Associated Minerals

- 35
1. Apatite, Beryl, Cassiterite, Columbite, Emerald, Felspar, Lepidolite, Mica, Pitchblende, Quartz, Samarskite, Scheelite, Topaz, Tantalite, Tourmaline.
 2. Iron, Manganese, Titanium, Vanadium and Nickel Minerals.
 3. Lead, Zinc, Copper, Cadmium, Arsenic, Antimony, Bismuth, Cobalt, Nickel,
40 Molybenum, and Uranium minerals, and Gold and Silver, Arsinopyrite, Chalcopyrite, Pyrite, Pyphrotite and Pentalandite.
 4. Chromium, Osmiridium, Platinum, and Nickel minerals.
 5. Kyanite, Sillimanite, Corundum, Dumortieite and Topaz.
 6. Gold, Silver, Tellurium, Selenioum and Pyrite.
 - 45
 7. Barytes, Flourite, Chalcocite, Selenium, and minerals of Zinc, Lead and Silver.
 8. Tin and Tungsten minerals.
 9. Limestone, Dolomite and Magnesite.
 10. Ilmenite, Monazite, Zircon, Rutile, Garnet and Sillimanite.
 11. Sulphides of copper and iron.
 - 50
 12. Coal, Fireclay and Shale.
 13. Magnetite and Apatite.
 14. Magnesite and Chromite.
 15. Talc (Soapstone and Steatite) and Dolomite.
 16. Bauxite, Laterite, Aluminous Clays, Lithomorge, Titanium, Vanadum, Galtium and
55
 17. Columbiur minerals.

THE NINETEENTH SCHEDULE

[See section 314(18)]

PART—A

APPROVED PROVIDENT FUNDS

Application of part.	<p>1. A Provident fund shall be granted approval in accordance with the provisions of this Part.</p>	5
Accordinging approval of provident fund and its withdrawal.	<p>2. (1) The Commissioner may accord approval to any provident fund which, in his opinion, satisfies the conditions prescribed in paragraph 3 and the rules made by the Board in this behalf, and may, at any time withdraw such approval if, in his opinion, the provident fund contravenes any of those conditions.</p> <p>(2) An order according approval shall take effect on such date as the Commissioner may fix in accordance with any rules the Board may make in this behalf, such date not being later than the last day of the financial year in which the order is made.</p> <p>(3) An order withdrawing approval shall take effect from the date on which it is made.</p> <p>(4) An order according approval to a provident fund shall not, unless the Commissioner otherwise directs, be affected by the fact that the fund is subsequently amalgamated with another provident fund on the occurrence of an amalgamation of these undertakings in connection with which the two funds are maintained, or that it subsequently absorbs the whole or a part of another provident fund belonging to any undertaking which is wholly or in part transferred to or merged in the undertaking of the employer maintaining the first-mentioned fund.</p>	10
Conditions to be satisfied by approved provident funds.	<p>3. In order that a provident fund may receive and retain approval, it shall, subject to the provisions of paragraph 4, satisfy the conditions set out below and any other conditions which the Board may, by rules, specify—</p> <p>(a) all employees shall be employed in India, or shall be employed by an employer whose principal place of business is in India;</p> <p>(b) the contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund;</p> <p>(c) the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year;</p> <p>(d) the fund shall be vested in two or more trustees or in the Official Trustee under a trust which shall not be revocable, save with the consent of all the beneficiaries;</p> <p>(e) the fund shall consist of contributions as above specified, received by the trustees, of accumulations thereof, and of interest credited in respect of such contributions and accumulations, and of securities purchased therewith and of any capital gains arising from the transfer of capital assets of the fund, and of no other sums;</p> <p>(f) the fund shall be a fund of an establishment to which the provisions of sub-section (3) of section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 apply or of an establishment which has been notified by the Central Provident Fund Commissioner under sub-section (4) of section 1 of the said Act, and such establishment shall obtain exemption under section 17 of the said Act from the operation of all or any of the provisions of any scheme referred to in that section;</p> <p>(g) the employer shall not be entitled to recover any sum whatsoever from the</p>	15 20 25 30 35 40 19 to 1952. 45

fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund:

5 (h) the accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund;

(i) save as provided in clause (h) or in accordance with such conditions and restrictions as the Board may, by rules, specify, no portion of the balance to the credit of an employee shall be payable to him.

10 **4. (1)** Notwithstanding anything contained in clause (a) of paragraph 3, the Commissioner may, if he thinks fit, and subject to such conditions, if any, as he thinks proper to attach to the approval, accord approval to a fund maintained by an employer whose principal place of business is not in India, provided the proportion of employees employed outside India does not exceed ten per cent. Relaxation of conditions.

15 (2) Notwithstanding anything contained in clause (b) of paragraph 3, an employee who retains his employment while serving in the armed forces of the Union or when taken into or employed in the national service under any law for the time being in force, may, whether he receives from the employer any salary or not, contribute to the fund during his service in the armed forces of the union or while so taken into or employed in the national
20 service a sum not exceeding the amount he would have contributed had he continued to serve the employer.

(3) Notwithstanding anything contained in clause (e) or clause (h) of paragraph 3 —

(a) at the request made in writing by the employee who ceases to be an employee of the employer maintaining the fund, the trustees of the fund may consent to retain
25 the whole or any part of the accumulated balance due to the employee to be drawn by him at any time on demand;

(b) where the accumulated balance due to an employee who has ceased to be an employee is retained in the fund in accordance with clause (a), the fund may consist also of interest in respect of such accumulated balance.

30 (c) the fund may also consist of any amount transferred from the individual account of an employee in any approved provident fund maintained by his former employer and the interest in respect thereof.

(4) Subject to any rules which the Board may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of clause (c) of paragraph 3 —

35 (a) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salaries do not in each case exceed five hundred rupees per mensem; and

40 (b) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

45 (5) Notwithstanding anything contained in clause (i) of paragraph 3, in order to enable an employee to pay the amount of tax assessed on his total income as determined under subparagraph (4) of paragraph 10, he shall be entitled to withdraw from the balance to his credit in the approved provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance referred to in sub-paragraph (2) of paragraph 10 had not been included in his total income.

Employer's annual contributions, when deemed to be income received by employee.

5. That portion of the annual accretion in any financial year to the balance at the credit of an employee participating in an approved provident fund as consists of —

(a) contributions made by the employer in excess of twelve per cent. of the salary of the employee or one lakh rupees, whichever is less; and

(b) interest credited on the balance to the credit of the employee in so far as it is allowed at a rate exceeding the rate as may be fixed by the Central Government by notification in this behalf

shall be deemed to have been received by the employee in that financial year and shall be included in total income for that financial year, and shall be liable to income-tax.

Exemption for employee's contribution.

6. An employee participating in an approved provident fund shall, in respect of his own contributions to his individual account in the fund in the financial year, be entitled to a deduction in the computation of his total income of an amount determined in accordance with section 69.

Exclusion from total income of accumulated balance.

7. (1) The accumulated balance due and becoming payable to an employee participating in an approved provident fund shall be excluded from the computation of his total income—

(a) if he has rendered continuous service with his employer for a period of five years or more;

(b) if, though he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health, or by the contraction of discontinuance of the employee's business or other cause beyond the control of the employee; or

(c) if, on the cessation of his employment, the employee obtains employment with any other employer, to extend the accumulated balance due and becoming payable to him is transferred to his individual account in any approved provident fund maintained by such other employer.

(2) Where the accumulated balance due and becoming payable to an employee participating in an approved provident fund maintained by his employer includes any amount transferred from his individual account in any other approved provident fund or funds maintained by his former employer or employers, then, in computing the period of continuous service for the purposes of clause (a) or clause (b) of sub-paragraph (1), the period or the periods for which such employee rendered continuous service under his former employer or employers aforesaid shall be included.

Tax on accumulated balance.

8. Where the accumulated balance due to an employee participating in an approved provident fund is included in his total income owing to the provisions of paragraph 7 not being applicable, the Assessing Officer shall calculate the total of the various sums of tax which would have been payable by the employee in respect of his total income for each of the years concerned if the fund had not been an approved provident fund, and the amount by which such total exceeds the total of all sums paid by or on behalf of such employee by way of tax for such years shall be payable by the employee in addition to pay other tax for which he may be liable for the financial year in which the accumulated balance due to him becomes payable.

Deduction at source of tax payable on accumulated balance.

9. The trustees of an approved provident fund, or any person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, in cases where paragraph 8 applies, at the time an accumulated balance due to an employee is paid, deduct therefrom the amount payable under that paragraph and all the provisions of Chapter XI shall apply as if the accumulated balance were income chargeable under the head "Income from employment".

10. (1) Where approval is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day immediately preceding the day on which the approval takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Board may prescribe.

Treatment of balance in newly approved provident fund.

5 (2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the approved provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the approved provident fund on the date on which the approval of the fund takes effect, and sub-paragraph (4) of this paragraph and sub-
10 paragraph (5) of paragraph 4 shall apply thereto.

(3) Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the approved fund shall be excluded from the accounts of the approved fund and shall be liable to income-tax in accordance with the provisions of this Code, other than this Part.

15 (4) Subject to such rules as the Board may make in this behalf, the Assessing Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Part had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any sum, and such aggregate (if any) shall be deemed to be income received by the employee in the
20 financial year in which the approval of the fund takes effect and shall be included in the total income of the employee for that financial year, and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance.

25 (5) Nothing in this paragraph shall affect the rights of the persons administering an unapproved provident fund of dealing with it, or with the balance to the credit of any individual employee before approval is accorded, in any manner which may be lawful.

11. (1) The accounts of an approved provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such
30 particulars, as the board may prescribe.

Accounts of approved provident funds.

(2) The accounts shall be open to inspection at all reasonable times by income-tax authorities, and the trustees shall furnish to the Assessing Officer such abstracts thereof as the Board may prescribe.

12. (1) An employer objecting to an order of the Commissioner refusing to approved or
35 an order withdrawing approval from a provident fund may appeal, within a period of sixty days of such order, to the Board.

Appeals.

(2) The Appeal shall be in such forms, verified in the manner and accompanied by such fees as the Board may prescribe.

13. (1) Where an employer, who maintains a provident fund (whether approved or not)
40 for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustee in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

Treatment of fund transferred by employer to trustee.

(2) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so
45 transferred to the trustees (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall, if the employer has made effective arrangements to secure that tax shall be deducted at source from the amount of such share when paid to the employee, be deemed to be an expenditure by the employer within the meaning of section 35 incurred in the financial year in which the accumulated balance due to the employee is paid.

14. The provisions of provisions of paragraphs 2 to 13 shall not apply to a provident
50 fund established under a scheme framed under the following, namely:—

Funds deemed to be approved.

19 of 1925. (i) the Provident Funds Act, 1925;

23 of 1968. (ii) the Public Provident Fund Act, 1968;

19 of 1952. (iii) the Employees Provident Funds and Miscellaneous Provisions Act, 1952;

(iv) the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 and such provident fund shall be deemed to be an approved provident fund if it is notified by the Board in accordance with the guidelines framed by the Central Government in this behalf. 19 of 1925.

Provisions relating to rules.

15. The Board may, for the purposes of this Part, prescribe:— 5

(a) the statements and other information to be submitted along with an application for approval;

(b) limiting the contributions to an approved provident fund by employees of a company who are shareholders in the company;

(c) regulating the investment or deposit or the moneys of an approved provident fund; 10

(d) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved provident fund;

(e) determining the extent to and the manner in which exemption from payment of tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which approval has been withdrawn; and 15

(f) generally, to carry out the purposes of this Part and to secure such further control over the approval of provident funds and the administration of approved provident funds as it may deem requisite. 20

Interpretations in this Part.

16. In this Part, unless the context otherwise requires,—

(a) “employer” means any person who maintains a provident fund for the benefit of his or its employees, being—

(i) a Hindu undivided family, company, firm or other association of persons, or 25

(ii) an individual engaged in a business or profession the profits and gains whereof are assessable to income-tax under the head “Profits and gains of business or profession”;

(b) “employee” means an employee participating in a provident fund, but does not include a personal or domestic servant; 30

(c) “contribution” means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include credited interest;

(d) “balance to the credit of an employee” means the total amount to the credit of his individual account in provident fund at any time; 35

(e) “annual accretion” in relation to the balance to the credit of an employee, means the increase to such balance in any year, arising from contributions and interest;

(f) “accumulated balance due to an employee” means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; 40

(g) “regulations of a fund” means the special body of regulations governing the constitution and administration of a particular provident fund; and

(h) “salary” includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites. 45

PART-II

APPROVED SUPERANNUATION FUNDS

Approval of superannuation fund and its withdrawal.

1. (1) The Commissioner may accord approval to any superannuation fund or any part of a superannuation fund which, in his opinion, complies with the requirements of paragraph 2, and may at any time withdraw such approval, if in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval. 50

(2) The Commissioner shall communicate in writing to the trustee of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any superannuation fund or any part of a superannuation fund unless he has given the trustees or that fund an opportunity of being heard in the matter.

10 **2.** In order that a superannuation fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may by rule prescribe— Conditions for approval.

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent. of the employees shall be employed in India;

(b) the fund shall have for its sole purpose the provision of annuities for employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or for the widows, children or dependants of persons who are or have been such employees on the death of those persons;

(c) the employer in the trade or undertaking shall be a contributor to the fund; and

(d) all annuities, pensions and other benefits granted from the fund shall be payable only in India.

25 **3.** (1) An application for approval of a superannuation fund or part of a superannuation fund shall be made in writing by the trustees of the fund to the Assessing Officer by whom the employer is assessable, and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and, where the fund has been in existence during any year or years prior to the financial year in which the application for approval is made, also two copies of the accounts of the fund relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such account have been made up, but the Commissioner may require such further information to be supplied as he thinks proper. Application for approval.

(2) If any alternation in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Assessing Officer mentioned in sub-paragraph (1), and in default of such communication any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

40 **4.** Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purpose of income-tax to be the income of the employer of the financial year in which it is so repaid. Contribution by employer, when deemed to be income of employer.

5. Where any contributions made by an employer, including interest on contributions, if any, are paid to any employee during his lifetime, in circumstances other than those referred to in paragraph 13 of the Sixth Schedule, tax on the amounts so paid shall be deducted at the average rate of tax at which the employee was liable to tax during the preceding three years or during the period, if less than three years, when he was a member of the fund, and shall be paid by the trustees to the credit of the Central Government within the time and such manner as the Board may direct. Deduction of tax on contributions paid to an employee.

Deduction from pay of and contributions on behalf of employee to be included in return.	6. Where an employer deducts from the emoluments paid to an employee or pays on his behalf any contributions of that employee to an approved superannuation fund, he shall include all such deductions or payments in the return which he is required to furnish under section 198.	
Appeals.	7. (1) An employer objecting to an order of the Commissioner refusing to accord approval to a superannuation fund of an order withdrawing such approval may appeal, within a period of sixty days of such order, to the Board.	5
	(2) The appeal shall be in such form verified in the manner and accompanied by such fees as the Board may prescribe.	
Liability of trustees on cessation of approval.	8. If a fund or a part of a fund for any reason ceases to be an approved superannuation fund, the trustees of the fund shall nevertheless remain liable to tax on any sum paid on account of returned contributions (including interest on contributions, if any), in so far as the sum so paid is in respect of contributions made before the fund or part of the fund ceased to be an approved superannuation fund under the provisions of this Part.	10
Particulars to be furnished in respect of superannuation funds.	9. The trustees of an approved superannuation fund and any employer who contributes to an approved superannuation fund shall, when required by notice from the Assessing Officer, within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, furnish such return, statement, particulars or information, as the Assessing Officer may require.	15
Provision relating to rules.	10. (1) The Board may, for the purposes of this Part, prescribe—	20
	(a) the statements and other information to be submitted along with an application for approval;	
	(b) the returns, statements, particulars, or information which the Assessing Officer may require from the trustees of an approved superannuation fund or from the employer;	25
	(c) limiting the ordinary annual contribution and any other contributions to an approved superannuation fund by an employer;	
	(d) regulating the investment or deposit of the moneys of an approved superannuation fund;	
	(e) providing for the assessment by way of penalty of any consideration received by an employee for any assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund;	30
	(f) determining the extent to, and the manner in, which exemption from payment of tax may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn;	35
	(g) providing for the withdrawal for approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder; and	
	(h) generally, to carry out the purposes of this Part and to secure such further control over the approval of superannuation funds and the administration of approved superannuation funds as it may deem requisite.	40
Interpretations in this Part.	11. In this Part, unless the context otherwise requires, “employer”, “employee”, “contribution” and “salary” shall have, in relation to superannuation funds, the meaning respectively assigned to them in paragraph 15 of Part I in relation to provident funds.	

PART III

APPROVED GRATUITY FUNDS

1. (1) The Commissioner may accord approval to any gratuity fund which, in his opinion, complies with the requirements of paragraph 2, and may at any time withdraw such approval if, in his opinion, the circumstances of the fund or part cease to warrant the continuance of the approval. Approval of gratuity fund and its withdrawal.

(2) The Commissioner shall communicate in writing to the trustee of the fund the grant of approval with the date on which the approval is to take effect, and, where the approval is granted subject to conditions, those conditions.

(3) The Commissioner shall communicate in writing to the trustees of the fund any withdrawal of approval with the reasons for such withdrawal and the date on which the withdrawal is to take effect.

(4) The Commissioner shall neither refuse nor withdraw approval to any gratuity fund unless he has given the trustees or that fund an opportunity of being heard in the matter.

2. In order that a gratuity fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may prescribe— Conditions for approval.

(a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent. of the employees shall be employed in India;

(b) the fund shall have for its sole purpose the provision of gratuity to employees in the trade or undertaking, on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or on termination of their employment after a minimum period of service specified in the rules of the fund, or to the widow, children or dependants of such employees on their death;

(c) the employer in the trade or undertaking shall be a contributor to the fund; and

(d) all benefits granted by the fund shall be payable only in India.

3. (1) An application for approval of a gratuity fund shall be made in writing by the trustees of the fund to the Assessing Officer by whom the employer is assessable and shall be accompanied by a copy of the instrument under which the fund is established and by two copies of the rules and, where the fund has been in existence during any year or years prior to the financial year in which the application for approval is made, also two copies of the accounts of the fund relating to such prior year or years (not being more than three years immediately preceding the year in which the said application is made) for which such account have been made up, but the Commissioner may require such further information to be supplied as he thinks proper. Application for approval.

(2) If any alternation in the rules, constitution, objects or conditions of the fund is made at any time after the date of the application for approval, the trustees of the fund shall forthwith communicate such alteration to the Assessing Officer mentioned in sub-paragraph (1), and in default of such communication any approval given shall, unless the Commissioner otherwise orders, be deemed to have been withdrawn from the date on which the alteration took effect.

4. Where any gratuity is paid to an employee during his lifetime, the gratuity shall be treated as salary paid to the employee for the purpose of this Code. Gratuity deemed to be salary.

5. If a gratuity fund for any reason ceases to be an approved gratuity fund, the trustees of the fund shall nevertheless remain liable to tax on any gratuity paid to any employee. Liability of trustees on cessation of approval.

- Contributions by employer, when deemed to be income of employer.
- 6.** Where any contributions by an employer (including the interest thereon, if any) are repaid to the employer, the amount so repaid shall be deemed for the purposes of income-tax to be the income of the employer of the financial year in which they are so repaid.
- Appeals.
- 7.** (1) An employer objecting to an order of the Commissioner refusing to accord approval to a gratuity fund or an order withdrawing such approval may appeal, within a period of sixty days of such order, to the Board; 5
- (2) The appeal shall be in such form, verified in the manner and accompanied by such fee as the Board may prescribe.
- Particulars to be furnished in respect of gratuity funds.
- 8.** The trustees of an approved gratuity fund and any employer who contributes to an approved gratuity fund shall, when required by notice from the Assessing Officer, furnish within such period, not being less than twenty-one days from the date of the notice, as may be specified in the notice, such return, statement, particulars or information, as the Assessing Officer may require. 10
- Provisions relating to rules.
- 9.** (1) The Board may, for the purposes of this Part, prescribe—
- (a) the statements and other information to be submitted along with an application for approval; 15
- (b) limiting the ordinary annual and other contributions of an employer to the fund;
- (c) regulating the investment or deposit of the moneys of an approved gratuity fund; 20
- (d) providing for the assessment by way of penalty of any consideration received by an employee for any assignment of, or creation of a charge upon, his beneficial interest in an approved gratuity fund;
- (e) providing for the withdrawal for approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder; 25
- (f) generally, to carry out the purposes of this Part and to secure such further control over the approval of gratuity funds and the administration of gratuity funds as it may deem requisite.
- Interpretation under this Part.
- 10.** In this Part, unless the context otherwise requires, “employer”, “employee”, “contribution” and “salary” shall have, in relation to gratuity funds, the meaning respectively assigned to them in paragraph 15 of Part I in relation to provident funds. 30

THE TWENTIETH SCHEDULE

[See sections 58(2)(u)113(2)(k) and 291(9)(c)]

COMPUTATION OF INCOME ATTRIBUTABLE TO A CONTROLLED FOREIGN COMPANY

1. The total income of a resident assessee for a financial year shall include an income
5 which is attributable to a Controlled Foreign Company as computed in accordance with
paragraph 3.

2. The attributable income referred to in paragraph 1 shall be included in the total
income of the assessee for the financial year, the year in which the accounting period of the
company ends.

10 3. The amount of attributable income shall be computed in accordance with the
formula—

$$A \times \frac{B}{100} \times \frac{C}{D}$$

15 Where A = specified income of the Controlled Foreign Company as computed under
paragraph 4;

B = percentage of—

- (i) value of capital,
- (ii) voting share or interest,

20 whichever is higher, held by the assessee, directly or indirectly, in the Controlled Foreign
Company;

C = number of days out of D, the voting shares or capital or interest has been held by
the assessee in the Controlled Foreign Company;

25 D = number of days the company remained as a Controlled Foreign Company during
the accounting period;

4. The specified income of the Controlled Foreign Company shall be computed in
accordance with the formula—

$$(A + B - C - D) \times \frac{E}{F}$$

30 Where A = net profit as per profit and loss account of the Controlled Foreign
Company for the accounting period prepared in accordance with the International Financial
Reporting Standards issued by the International Accounting Standards Board, Generally
Accepted Accounting Principles, International Accounting Standards or accounting stan-
10 to 1956. dards notified under the Companies Act, 1956, as the case may be;

35 B = amounts set aside to provisions made for meeting liabilities or diminution in value
of assets, other than ascertained liabilities;

C = amount or amounts of interim dividend paid out of profits of the accounting
period, if such dividend is not debited to profit and loss account;

40 D = the loss to the extent it has not been previously taken into account under this
paragraph in respect of an earlier accounting period, where there is a net loss of the Con-
trolled Foreign Company for such accounting period;

E = number of days during which the company is a Controlled Foreign Company
during its accounting period;

F = number of days in the accounting period.

5. In this Schedule—

(a) “Controlled Foreign Company” means a foreign company which satisfies the following conditions, namely:—

- (i) for the purposes of tax, it is a resident of a territory with lower rate of taxation; 5
- (ii) the shares of such company are not traded on any stock exchange recognised by law of the territory of which it is a resident for the purposes of tax;
- (iii) one or more persons, resident in India, individually or collectively exercise control over the company;
- (iv) it is not engaged in any active trade or business; 10
- (v) the specified income of the company determined in accordance with the provisions of paragraph 4 exceeds twenty-five lakh rupees;

(b) one or more persons resident in India shall be said to exercise control over the company if —

- (i) such persons, individually or collectively possess or are entitled to acquire directly or indirectly shares carrying not less than fifty per cent. of the voting power or not less than fifty per cent. capital of the company; 15
- (ii) such persons, individually or collectively are entitled to secure that not less than fifty per cent. of income or asset of the company shall be applied directly or indirectly for their benefit; 20
- (iii) such persons, individually or collectively, exercise dominant influence on the company due to special contractual relationship;
- (iv) such persons, individually or collectively, have, directly or indirectly, sufficient votes to exert a decisive influence in a shareholder meeting of the company. 25

(c) a company shall be regarded as a resident of a territory for the purposes of tax—

- (i) if in an accounting period it is liable to tax in the territory by reason of its place of incorporation or the place of management;
- (ii) if in any accounting period there are two or more territories falling in sub-clause (i) above, then, the company shall in that accounting period be regarded for purpose of this Schedule as a "resident" of any one of them— 30
 - (A) if, throughout the accounting period, the company’s place of effective management is situated in one of those territories only, in that territory; and 35
 - (B) if, throughout the accounting period, the company’s place of effective management is situated in two or more of those territories, then, in one of them in which, at the end of the accounting period, the greater amount of the company’s assets is situated; and
 - (C) if neither item (A) nor item (B) above applies, then, in one of the territories falling within sub-clause (i) above in which, at the end of the accounting period, the greater amount of the company’s assets is situated; and 40
- (iii) if in any accounting period a territory is not falling within sub-clause (i) above, then, for the purposes of this Schedule it shall be conclusively presumed that the company is in that accounting period resident in a territory with a lower rate of taxation; 45

(d) “territory with a lower rate of taxation” means a country or a territory outside India in which the amount of tax paid under the law of that country or territory in respect of profits of a company that accrue in any accounting period, is less than one-half of the corresponding tax payable on those profits computed under this Code, as if the said company was a domestic company;

(e) a company shall be deemed to be engaged in active trade or business if and only if—

(i) it actively participates in industrial, commercial or financial undertakings through employees or other personnel in the economic life of the territory of which it is resident for tax purposes; and

(ii) less than fifty per cent. of income of the company during the accounting period is of the following nature, namely:—

(A) dividend;

(B) interest;

(C) income from house property;

(D) capital gains;

(E) annuity payment;

(F) royalty;

(G) sale or licensing of intangible rights on industrial, literary or artistic property;

(H) income from sale of goods or supply of services including financial services to—

(I) persons that directly or indirectly control the company;

(II) persons that are controlled by the company;

(III) other persons which are controlled by persons referred to in sub-item (I);

(IV) any associated enterprise;

(I) income from management, holding or investment in securities, shareholdings, receivables or other financial assets;

(J) any other income falling under the head income from residuary sources;

(f) “associated enterprise” shall have the meaning as assigned to it in clause (5) of section 124.

6. (1) Unless otherwise provided, each period of twelve months ending with the 31st day of March shall be the accounting period of a company.

(2) Where a company regularly adopts a period of twelve months ending on a day other than the 31st day of March for the purpose of—

(i) complying with the tax law of the territory of which it is a resident for tax purposes; or

(ii) reporting to its shareholders,

then the period of twelve months ending with such other day shall be the accounting period of the company.

(3) The first accounting period of the company begins from the date of its incorporation and end with the 31st day of March or such other day, as the case may be, following the date of such incorporation, and the later accounting period shall be the successive periods of twelve months.

(4) If the company ceases to exist before the end of accounting period, as mentioned in sub-paragraphs (1), (2) and (3), the accounting period shall end immediately before the company ceases to exist. 5

7. A resident assessee shall furnish the details of its investment and interest in any entity outside India in such form and manner as may be prescribed.

THE TWENTY-FIRST SCHEDULE

[See section 178(I)(i)]

ORDERS APPEALABLE BEFORE COMMISSIONER (APPEALS)

Serial number	Orders against which appeal may be preferred or filed	Section, Chapter or Schedule under which Order is passed	Income-tax Authority by whom order is passed
(1)	(2)	(3)	(4)
10	1. An intimation, where the assessee objects to the making of adjustments to its returned tax bases.	149	Assessing Officer or the Processing Authority
15	2. An order of assessment (except an order passed in pursuance of directions of the Dispute Resolution Panel).	155	Assessing Officer
	3. An order of best judgment assessment.	156	Assessing Officer
20	4. An order against the assessee where he denies his liability to be assessed under this Code.	Under the relevant provisions of the Code	Assessing Officer
25	5. An order of assessment, reassessment or re-computation (except an order passed in pursuance of the directions of the Dispute Resolution Panel).	159	Assessing Officer
30	6. An order made having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under the said section [except where such order is passed by the Commissioner or Commissioner (Appeals) or by the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel].	161	Assessing Officer
35	7. An order made treating the assessee as the agent of a non-resident.	164	Assessing Officer
	8. An assessment order made upon business reorganisation.	168	Assessing Officer
	9. An assessment order made after partition of a Hindu undivided family.	169	Assessing Officer
40	10. An assessment order made in respect of a non-resident engaged in occasional shipping business.	170	Assessing Officer
	11. An assessment order in respect of persons leaving India.	171	Assessing Officer
45	12. An assessment order in respect of an unincorporated body formed for a particular event or purpose.	172	Assessing Officer

(1)	(2)	(3)	(4)	
13.	An assessment order in respect of persons likely to transfer property to avoid tax.	173	Assessing Officer	
14.	An assessment order in respect of a discontinued business.	174	Assessing Officer	
15.	An assessment order in respect of an unincorporated body in case of change in its constitution.	175	Assessing Officer	5
16.	Assessment order in respect of any two unincorporated bodies in case of succession of one unincorporated body by the other on account of death or retirement of all or any participant.	176	Assessing Officer	10
17.	An assessment order in respect of a deductor or collector.	177	Assessing Officer	
18.	An order of charging interest on failure to pay demand raised.	213	Assessing Officer	15
19.	An order of charging interest for failure to deduct or pay tax.	214	Assessing Officer	
20.	An order of refund.	215	Assessing Officer	20
21.	An order imposing a penalty or enhancing the penalty.	Chapter XII	Income-tax Authority below the rank of Commissioner or Commissioner (Appeals)	25
22.	An order under the Tenth Schedule in relation to a qualifying shipping company's application for opting for tonnage tax scheme.	Tenth Schedule	The prescribed authority.	30
23.	An order made under the provisions of this Code in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant consideration, direct.	Under the relevant provisions of the Code	Assessing Officer	35
24.	Any order passed under the Income-tax Act, 1961 or the Wealth Tax Act, 1957 and which was appealable under the said Acts, before the commencement of this Code.	Under the provisions of the Income-tax Act, 1961 or the Wealth-tax Act, 1957 as it stood before the commencement of this Code	Assessing Officer or the authority passing the order under the relevant Acts.	43 to 1961. 27 to 1957. 40

THE TWENTY-SECOND SCHEDULE

[See section 37(5)314(44)(a),(64)(a)]

DEFERRED REVENUE EXPENDITURE ALLOWANCE

5 1. The deferred revenue expenditure allowance for a financial year, in respect of an expenditure of the nature specified in column (2) of the Table given below, shall be the amount equal to the appropriate fraction of the amount of such expenditure.

10 2. The appropriate fraction referred to in paragraph 1 shall be the fraction, the numerator of which is one and the denominator of which is the total number of the financial years specified in column (3) of the said Table against the relevant deferred revenue expenditure.

3. The deferred revenue expenditure allowance shall be allowable for such number of consecutive financial years as specified in column (3) of the said Table against the relevant deferred revenue expenditure, the first such financial year of allowability being —

15 (a) in case of expenditure at serial numbers 1, 2, 3 and 5, the year in which such amount is actually paid;

(b) in case of expenditure at serial number 4, the year in which business reorganisation takes place;

(c) in case of expenditure at serial number 6, the year in which the loss referred to therein has been incurred;

20 (d) in case of expenditure at serial number 7, the year of commencement of the business or extension of the business or setting up of new business, as the case may be.

4. The total amount of deferred revenue expenditure allowable under clause (e) of sub-section (1) of section 37 shall be the aggregate of the amounts under this Schedule.

TABLE

25 Serial number	Nature of deferred revenue expenditure	Number of financial years for which expenditure is allowable
30 (1)	(2)	(3)
	1. Non-compete fee	6
	2. Premium for obtaining any asset on lease or rent	6
35	3. Amount paid to an employee in connection with his voluntary retirement in accordance with any scheme of voluntary retirement.	6
	4. Expenditure incurred by an Indian company wholly and exclusively for the purposes of business reorganisation	6
40	5. Expenditure incurred by a person resident in India wholly and exclusively on any operations relating to prospecting for any mineral or the development of a mine or other natural deposit of any mineral, to such extent, as may be prescribed.	10
	6. Any loss on account of forfeiture of any agreement entered in the course of the business.	6
45	7. Any preliminary expenditure incurred (a) before the commencement of the business; or (b) in connection with the extension of the business; or (c) in connection with the setting up of new business,	6
50	shall be such as may be prescribed having regard to the capital employed in the business and the cost of the project.	

STATEMENT OF OBJECTS AND REASONS

The Income-tax Act, 1961, has been subjected to numerous amendments since its passage fifty years ago. It has been considerably revised, not less than thirty-four times, by amendment Acts besides the amendments carried out through the annual Finance Acts. These amendments were necessitated by policy changes due to the changing economic environment, increasing sophistication of commerce, increase in international transactions as a result of globalisation, development of information technology, attempts to minimise tax avoidance and in order to clarify the statute in relation to judicial decisions. As a result of all these amendments, the basic structure of the Income-tax Act has been over burdened and its language has become complex. Tax administrators, accountants and tax payers have raised concerns about the complex structure of the Income-tax Act. In particular, the numerous amendments have rendered the Act difficult to decipher by the average tax payer. The Wealth-tax Act, 1957 has also witnessed amendments.

The Government, therefore, decided to revise, consolidate and simplify the language and structure of the direct tax laws. A draft Direct Taxes Code along with a Discussion Paper was released in August, 2009 for public comments. It proposed to replace the Income-tax Act, 1961 and the Wealth-tax Act, 1957 by a single Act, namely the Direct Taxes Code. Public and stakeholder feedback on the proposals outlined in these documents was analysed and suggestions for amendments received from members of the public, business associations and other bodies were taken into account. Thereafter, a Revised Discussion Paper addressing the major issues was released in June, 2010. The present Bill is the outcome of this process.

The Notes on clauses explain in detail the various provisions contained in the Bill.

NEW DELHI;
The 27th August, 2010

PRANAB MUKHERJEE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 (1) AND 274 (1) OF THE
CONSTITUTION OF INDIA

[Copy of letter No. F. 152/10/2010-TPL, dated the 27th August, 2010 from Shri Pranab Mukherjee, Minister of Finance to the Secretary General, Lok Sabha].

The President has, in pursuance of clause (1) of article 117, read with clause (1) of article 274 of the Constitution, recommended to Lok Sabha the introduction of the Direct Taxes Code, 2010.

Notes on clauses

The Code seeks to consolidate and amend the law relating to direct taxes.

Chapter I deals with Preliminary.

Clause 1 provides the short title, extent and commencement of the Code. The clause provides that the Direct Taxes Code, 2010, extends to the whole of India. It also provides that unless otherwise specified, the Code shall come into force on the 1st April, 2012.

Part A of the Code relates to Income-tax.

Chapter II provides for basis of charge.

Clause 2 provides for liability to pay and charge of income-tax. It provides that every person shall be liable to pay income-tax in respect of his total income of the financial year in accordance with the provisions of the Code. "Total income" and "person" have been defined in clause 314 of the Code.

Clause 2 also provides that subject to the provisions of the Code, income-tax, including additional income-tax, shall be charged in respect of the total income of a financial year of every person. The clause provides that where the income-tax is to be charged in respect of the income of a period other than the financial year, the income-tax shall be charged accordingly. Such income-tax shall be charged at the rate specified in the First Schedule in the manner provided therein. The income-tax shall be deducted or collected at source or paid in advance in respect of the income chargeable to tax in accordance with the provisions of the Code. The chargeability of income-tax for any financial year shall be determined in accordance with the provisions of this Code as they stand on the 1st April of that financial year.

Clause 3 deals with the scope of total income. It provides that subject to the provisions of the Code, the total income of any financial year of a person, who is a resident, shall include all income from whatever source derived which—

- (a) accrues, or is deemed to accrue, to him in India during the year;
- (b) accrues to him outside India during the year;
- (c) is received, or is deemed to be received, by him, or on his behalf, in India during the year; or
- (d) is received by him, or on his behalf, outside India during the year.

The said clause also provides that subject to the provisions of the Code, the total income of any financial year of a person, who is a non-resident, shall include all income from whatever source derived which—

- (a) accrues, or is deemed to accrue, to him in India during the year; or
- (b) is received, or is deemed to be received, by him, or on his behalf, in India during the year.

Any income which accrues to a resident outside India during the year, or is received outside India during the year by, or on behalf of, such resident, shall be included in the total income of the resident, whether or not such income has been charged to tax outside India.

Clause 4 provides for residence in India. It provides that an individual shall be resident in India in any financial year, if he is in India—

- (a) for a period, or periods, amounting in all to one hundred and eighty-two days, or more, in that year; or

(b) for a period, or periods, amounting in all to—

(i) sixty days, or more, in that year; and

(ii) three hundred and sixty-five days, or more, within the four years immediately preceding that year.

The above shall, however, not apply in respect of an individual who is—

(a) a citizen of India and who leaves India in that year as a member of the crew of an Indian ship; or

(b) a citizen of India and who leaves India in that year for the purposes of employment outside India.

The clause further provides that a company shall be resident in India in any financial year, if—

(a) it is an Indian company; or

(b) its place of effective management, at any time in the year, is situated in India.

The said clause also provides that every other person shall be resident in India in any financial year, if the place of control and management of its affairs at any time in the year is situated wholly or partly in India.

For this purpose, “Indian company” and “place of effective management” have been defined in clause 314 of the Code.

Clause 5 relates to income which is deemed to accrue in India. Income shall be deemed to accrue in India, if it accrues, whether directly or indirectly, through or from:

(a) any business connection in India;

(b) any property in India;

(c) any asset or source of income in India; or

(d) the transfer, of a capital asset situate in India.

The said clause also provides that in addition to the above, the following income shall be deemed to accrue in India—

(a) income from employment, if it is for service rendered in India or for service rendered outside India by a citizen of India and the income is receivable from the Government; or the rest or leave period preceding or succeeding the period of service rendered in India and forms part of the service contract of employment;

(b) any dividend paid by a domestic company outside India;

(c) any insurance premium including re-insurance premium accrued from or payable by any resident or non-resident in respect of insurance covering any risk in India;

(d) interest accrued from or payable by any resident or the Government;

(e) interest accrued from or payable by any non-resident, if the interest is in respect of any debt incurred and used for the purposes of a business carried on by the non-resident in India or for earning any income from any source in India;

(f) royalty accrued from or payable by any resident or the Government;

(g) royalty accrued from or payable by a non-resident, if the royalty is for the purposes of a business carried on by the non-resident in India; or for earning any income from any source in India;

(h) fees for technical services accrued from or payable by any resident or the Government;

(i) fees for technical services accrued from or payable by any non-resident, in respect of services utilised for the purposes of a business carried on by the non-resident in India or for earning any income from any source in India;

(j) transportation charges accrued from or payable by any resident or the Government;

(k) transportation charges accrued from or payable by any non-resident, if the transportation charges are in respect of the carriage to, or from, a place in India.

The said clause also provides that in the case of a non-resident, income deemed to accrue in India shall not include the following—

(a) any income accruing through, or from, operations which are confined to the purchase of goods in India for the purposes of export out of India;

(b) interest accrued from or payable by a resident on any debt incurred and used for the purposes of a business carried on by the resident outside India or for earning any income from any source outside India;

(c) royalty accrued from or payable by a resident for the purposes of a business carried on by the resident outside India or for earning any income from any source outside India;

(d) royalty consisting of lump sum consideration accrued from or payment made by a resident for the transfer of any rights (including the granting of a licence) in respect of computer software supplied by the non-resident manufacturer, along with a computer or computer-based equipment, under any scheme approved under the Policy on Computer Software Export, Software Development and Training, 1986;

(e) fees for technical services, accrued from or payable by a resident, in respect of services utilised for the purposes of a business carried on by the resident outside India; or for earning any income from any source outside India;

(f) transportation charges for the carriage by aircraft or ship, accrued from or payable by any resident, if the transportation charges are in respect of the carriage from a place outside India to another place outside India, except where the airport or port of origin of departure of such carriage is in India.

(g) income from transfer, outside India, of any share of interest in a foreign company, unless at any time in the twelve months preceding transfer, the fair market value of the assets in India owned, directly or indirectly, by the company represent at least fifty per cent of the fair market value of all assets owned by the company;

(h) interest accrued from, or payable by, non-resident as referred to in sub-item (ii) of item (e) of sub-clause (2), if such interest has not been claimed by the non-resident as a deduction from his tax base chargeable in India.

The clause also provides that in the case of a business of which all the operations are not carried out in India, the income of the business deemed to accrue in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

The clause also provides that income (other than income from employment and any dividend paid by an Indian company outside India) shall be deemed to accrue in India, whether or not,—

(a) the payment is made in India;

(b) the services are rendered in India;

(c) the non-resident has a residence or place of business or any business connection in India; or

(d) the income has accrued in India.

The clause further provides that where the income of a non-resident, in respect of transfer, outside India, of any share or interest in a foreign company, is deemed to accrue in India under clause (d) of sub-section (1), it shall be computed in accordance with the formula 'A*B/C', where A denotes income from the transfer computed in accordance with provisions of this Code as if the transfer was effected in India; B denotes fair market value of the assets in India, owned, directly or indirectly, by the company; and C denotes fair market value of all assets owned by the company.

“Business connection”, “royalty”, “fees from technical services” and “transportation charges” have been defined in clause 314 of the Code.

Clause 6 provides that the following income shall be deemed to be received in the financial year, namely:—

(a) any contribution made by an employer in the financial year to the account of an employee under a pension fund;

(b) any contribution made by an employer in the financial year to the account of an employee in any other fund; and

(c) the annual accretion in the financial year to the balance at the credit of any employee in a fund referred to in item (b) to the extent it exceeds the limit as may be prescribed.

Clause 7 relates to dividend income. Clause 7 provides that any dividend declared, distributed or paid by a company shall be deemed to be the income of the financial year in which it is so declared, distributed or paid. It also provides that any interim dividend shall be deemed to be the income of the financial year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it.

For this purpose, clause 314 of the Code defines “dividend”.

Clause 8 provides that the total income of a person being a transferor, shall include the income of any other person if such income accrues to any other person by virtue of a transfer, without transfer of the asset from which the income accrues; or the income accrues to any other person by virtue of a revocable transfer of an asset.

However, such income shall not be included in the total income of the transferor in a case where any income accrues from an asset transferred to any trust or any other person, if the transfer is not revocable during the lifetime of the beneficiary of the trust or during the lifetime of such other person.

The clause further provides that a transfer shall be deemed to be revocable if it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or assets to the transferor or it, in any way, gives the transferor a right to re-assume power, directly or indirectly, over the whole or any part of the income or assets. For the purpose of this clause, a transfer shall include any settlement, trust, covenant, agreement or arrangement.

Clause 9 provides that the total income of any individual shall, *inter alia*, include all income accruing directly or indirectly—

(i) to the spouse, by way of salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which the individual has a substantial interest;

(ii) from assets transferred, directly or indirectly, to the spouse by the individual, otherwise than for adequate consideration, or in connection with an agreement to live apart;

(iii) from assets transferred, directly or indirectly, to the son’s wife by the individual, otherwise than for adequate consideration; or

(iv) from assets transferred, directly or indirectly, to any other person by the individual otherwise than for adequate consideration, to the extent to which the income from such assets is for the immediate or deferred benefit of the spouse or son’s wife.

The income referred to in sub-clause (i) above shall be included in the total income of the spouse whose total income is higher. The said clause also provides that the total income of any individual will not include any income accruing to the spouse where the spouse possesses technical or professional qualifications and the income is solely attributable to the application of the technical or professional knowledge and experience of the spouse. The said clause further provides that the Board may prescribe the method for determining the income referred to in sub-clauses (ii) and (iii) above.

The said clause further provides that the total income of any individual shall also include all income accruing to a minor child (other than a minor child being a person with disability or person with severe disability) of the individual. Such income shall be included in the total income of the parent who is the guardian of the minor child or the parent whose total income is higher, if both the parents are guardians of the child. Where any such income is once included in the total income of a parent, such income arising in the succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer considers it necessary to do so, after giving an opportunity of being heard, to do so after giving an opportunity of being heard to that other parent. The clause provides that the total income of any individual shall not include all income accruing to a minor child on account of any manual work done by the child or activity involving application of the skill, talent or specialised knowledge and experience of the child.

The clause also provides that the total income of an individual shall include all income derived from any converted property or part thereof as a member of a Hindu undivided family or which is received by the spouse or minor child upon partition of the said family. In the said clause, "property" has been defined to include any interest in property whether movable or immovable, the sale proceeds of such property in whichever form and where the property is converted into any other form of property by any method, such other property. "Converted property" has been defined in clause 314 of the Code.

Clause 10 provides that the total income of a financial year of a person shall not include the income enumerated in the Sixth Schedule.

Clause 11 provides that the persons enumerated in the Seventh Schedule shall not be liable to income-tax under this Code for any financial year, subject to the fulfillment of conditions specified in the said Schedule.

Chapter III deals with computation of total income. Sub-chapter I relates to general provisions.

Clause 12 provides that the total income shall be computed in accordance with the provisions of the Chapter. It also clarifies that unless otherwise provided in the Code, reference to any accrual, receipt, expenditure, withdrawal, asset or liability shall be construed to be in relation to the financial year in respect of which, and the person in respect of whom, the income is computed.

Clause 13 relates to classification of sources of income. It provides that for the purposes of computation of total income of any person for any financial year, income from all sources shall be classified as follows:

- A.— Income from ordinary sources.
- B.— Income from special sources.

Clause 14 deals with computation of income from ordinary sources. It provides that the income from any source, other than a special source, shall be computed under the class "income from ordinary sources" and such income shall be classified under the following heads of income, namely:—

- A.— Income from employment.
- B.— Income from house property.
- C.— Income from business.
- D.— Capital gains.
- E.— Income from residuary sources.

Clause 15 deals with computation of income from special sources. It provides that every income listed in column (3) of the Table in Part III of the First Schedule shall be the income from a special source of the person specified in column (2) of the said Table. It further provides that the income from any special source shall be computed under the class "income from special sources" in accordance with the provisions of the Ninth Schedule. It also provides that in case the income is attributable to the permanent establishment of a non-resident in India, the income shall not be considered as income from a special source;

Clause 16 deals with the apportionment of income between spouses governed by the system of community of property under the Portuguese Civil Code of 1860 as in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu. The said clause provides that the income of the husband and wife, governed by the *communiao dos bens*, from ordinary sources under each head of income (other than the head "Income from employment") and from special sources shall be apportioned equally between the spouses. The income so apportioned shall be included separately in the total income of the spouses. The clause further provides that the income under the head "Income from employment" shall be included in the total income of the spouse who has actually earned it.

Clause 17 deals with avoidance of double taxation. It provides that subject to the provisions of the Code, any income which is included in the total income of a person for any financial year shall not be so included again in the total income of such person for the same or any other financial year. It also provides that any income which is includible in the total income of any person shall not be included in the total income of any other person, except where for the purpose of protecting the interest of the revenue, it is necessary to do so.

Clause 18 provides that in computing the total income of a person for any financial year, the following expenditure shall not be allowed as a deduction, namely:—

(a) any expenditure attributable to income which is not included in the total income under the Sixth Schedule, determined in accordance with such method as may be prescribed;

(b) any expenditure attributable to any income from special sources;

(c) any expenditure which has been allowed as a deduction in any other financial year;

(d) any expenditure incurred for an activity which is an offence or which is not permissible by law;

(e) any provision made for any liability, if it remains unascertained by the end of the financial year; and

(f) any unexplained expenditure referred to in item (g) of sub-clause (2) of clause 58.

The said clause also provides that any amount allowed as a deduction under any provision of the Code shall not be allowed as a deduction under any other provision of the Code. The provisions of this clause shall apply notwithstanding anything contained in any other provisions of Chapter III.

Clause 19 provides that any amount on which tax is deductible at source under Chapter XIII during the financial year shall not be allowed as a deduction in computing the total income if,—

(a) the tax has not been deducted during the financial year; or

(b) the tax, after such deduction, has not been paid on or before the due date specified in sub-clause (1) of clause 144.

The said clause also provides that a deduction shall be allowed to the person in respect of such amount in any subsequent financial year, if—

(a) tax has been deducted during the financial year, but paid in such subsequent year after the due date specified in sub-clause (1) of clause 144; or

(b) tax has been deducted and paid in such subsequent financial year.

Sub-chapter II relates to heads of income. Part A of sub-chapter II deals with income from employment.

Clause 20 provides that the income of a person from employment shall be computed under the head "Income from employment".

Clause 21 provides for computation of income from employment. The income computed under the head "Income from employment" shall be the gross salary as reduced by the aggregate amount of the deductions referred to in clause 23.

Clause 22 deals with the scope of gross salary. The gross salary shall be the amount of salary due, paid, or allowed, whichever is earlier, to a person in the financial year by or on behalf of his employer or former employer. "Salary" has been defined in clause 314. It *inter alia* includes "perquisites" and "profits in lieu of, or in addition to, salary", which have also been defined in clause 314.

Clause 23 provides that the deductions from the gross salary for computation of income from employment to the extent included in the gross salary shall be the following, namely:—

(a) any sum paid by the employee on account of a tax on employment within the meaning of clause (2) of article 276 of the Constitution;

(b) any allowance or benefit granted by an employer for journey by an employee between his residence and office or any other place of work, to such extent as may be prescribed;

(c) any allowance or benefit granted by an employer to an employee to meet expenses wholly, necessarily and exclusively in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent such expenses are actually incurred for that purpose and to meet personal expenses, considering the place of parting or nature of duties or place of residence, subject to such conditions and limits as may be prescribed;

(d) any amount of contribution made by an employer in the financial year to the account of an employee under an approved pension fund notified by the Central Government, to the extent it does not exceed ten per cent. of the salary of the employee;

(e) any amount of contribution made by an employer in the financial year to the account of an employee in an approved superannuation fund;

(f) any amount of contribution by an employer, in the financial year, to an account of an employee in an approved provident fund to the extent it does not exceed twelve per cent. of the salary of the employee;

(g) any amount of interest credited, in the financial year, on the balance to the credit of an employee in an approved fund to the extent it does not exceed the amount of interest payable at the rate notified by the Central Government;

(h) any allowance provided by an employer to meet the expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the employee, to such extent as may be prescribed.

The said clause provides that for the purposes of (d), (f) and (h) above, salary means basic salary and includes dearness allowance, if the terms of employment so provide.

Part B of sub-chapter II relates to income from house property.

Clause 24 provides that the income from letting of any house property owned by any person shall be computed under the head "income from house property". The said clause further provides that the income from any house property shall be computed under this head notwithstanding that the letting, if any, of the property is in the nature of trade, commerce or business. Where the house property is owned by two or more persons having definite and ascertainable shares, the clause provides that the income from such house property shall be computed separately for each such person. Accordingly, in a case where the shares of the owners of such house property are not definite and ascertainable, such persons shall be assessed as an association of persons in respect of such property. The clause also provides that the above provisions shall not apply,—

(a) to the house property, or any portion of the house property which is used by the person as a hospital, hotel, special Economic Zone, convention centre or

cold storage and the income from which is computed under the head "Income from business";

(b) to a house property which is not ready for use during the financial year.

For this purpose, "house property" and "owner" have been defined in clause 314.

Clause 25 provides for computation of income from house property. The income from house property shall be the gross rent as reduced by the aggregate amount of the deductions referred to in clause 27.

Clause 26 deals with the scope of gross rent. The gross rent in respect of a house property or any part of the property shall be the amount of rent received or receivable, directly or indirectly, for the financial year or part thereof, for which such property is let out. The said clause also provides that where such property was vacant during any part of the financial year, the gross rent shall be the amount of rent received or receivable for such part of the financial year for which the house was not vacant.

Clause 27 provides that the deductions from gross rent for computation of income from house property shall be the following, namely:—

(a) the amount of taxes levied by a local authority in respect of such property, to the extent the amount is actually paid by him during the financial year;

(b) a sum equal to twenty per cent. of the gross rent determined under clause 26 towards repair and maintenance of such property;

(c) the amount of any interest on loan taken for the purposes of acquisition, construction, repair or renovation of the property or on loan taken for the purpose of repayment of the said loan. The interest which pertains to the period prior to the financial year in which the house property has been acquired or constructed shall be allowed as deduction in five equal instalments beginning from such financial year. Such interest shall be reduced by any part thereof which has been allowed as deduction under any other provision of the Code.

Clause 28 provides that the amount of rent received in advance shall be included in the gross rent of the financial year to which the rent relates.

Clause 29 provides that income in respect of the rent received in arrears in a financial year shall be computed under the head "Income from house property", whether or not the person continues to be owner of the property in that year. The said clause also provides that the amount of rent referred to above shall be included in the gross rent under clause 26 for that financial year

Clause 14 of the Code seeks to provide that the "income from the ordinary sources" shall be computed under following heads of income:

- A.—Income from employment
- B.—Income from house property
- C.—Income from business
- D.—Capital gains
- E.—Income from residuary source.

Accordingly, *Clause 30* seeks to provide that income from any business carried on by the person at any time during a financial year shall be computed under the head "Income from business". The income of distinct and separate business which is specified in clause 31 shall be computed separately. The said clause also provides that any income from a business after its discontinuance shall be deemed to be the income of the recipient in the year of receipt and shall, accordingly, be computed under the head "Income from business".

Clause 31 seeks to provide that a business shall be distinct and separate from another business if there is no interlacing or inter-dependence between the businesses. It further provides that a business shall be deemed to be distinct and separate from another business, if—

(a) one unit of the business is processing, producing, manufacturing or trading the same goods as in the other unit of the business and the first-mentioned unit is located physically apart from the other unit;

(b) one unit of the business is processing, producing or manufacturing the same goods as in the other unit of the business and the first mentioned unit utilizes raw material or manufacturing process, which is different from the raw material or the manufacturing process of the other unit;

(c) separate books of account are maintained or capable of being maintained, for any business; or

(d) it is a business in respect of which profits are determined under sub-clause (2) of clause 32.

The said clause also provides that a speculative business shall also be deemed to be distinct and separate from any other business or any other speculative business.

Clause 32 provides that the income computed under the head “Income from business” shall be the profits from the business. The profits from the business of insurance shall be computed in accordance with the Eighth Schedule. The profits from the business of operating a qualifying ship shall be computed in accordance with the Tenth Schedule. The profits from the business of mineral oil or natural gas shall be computed in accordance with the Eleventh Schedule. The profits from the business of developing or aporating from a special economic zone or profits from the business of manufacture or production, or providing of services, by a unit in special economic zone shall be computed in accordance with the Twelfth Schedule. The profits from the business of generation and distribution of power, development of infrastructure facility, cold chain facility, running a hospital, laying and operating a cross country natural gas or crude or petroleum oil pipeline network shall be computed in accordance with the Thirteenth Schedule.

The profits from any business not referred to above shall be the gross earnings from the business as reduced by the amount of business expenditure incurred by the person.

Clause 33 seeks to provide that the gross earnings from the business not covered by the Eighth, Tenth, Eleventh, Twelfth and the Thirteenth Schedule, shall be the aggregate of the following, namely:—

(i) the amount of any accrual or receipt from, or in connection with, the business;

(ii) the value of any benefit or perquisite, whether convertible into money or not, accrued or received from, or in connection with, the business;

(iii) the value of the inventory of the business, as on the close of the financial year; and

(iv) any amount received from a business after its discontinuance.

The said clause provides that the accruals or receipts referred to above shall, inter-alia, include—

(i) any consideration, accrued or received under a non-compete agreement;

(ii) any amount or value of any benefit, whether convertible into money or not, accrued to, or received by a person, being a trade, professional or similar association, in respect of specific services performed for its members;

(iii) any consideration on sale of a licence, not being a business capital asset, obtained in connection with the business;

(iv) any consideration on transfer of a right or benefit accrued or received under any scheme framed by the Government, local authority or a corporation established under any law for the time being in force;

(v) the amount of cash assistance, subsidy or grant received from any person or the Government for, or in connection with, the business other than an amount to meet any portion of the cost of any business capital asset;

(vi) the amount of any remission, drawback or refund of any tax, duty or cess (not being a tax under this Code), received or receivable;

(vii) the amount of remuneration (including salary, bonus and commission) or any interest accrued to, or received by, a participant of an unincorporated body from such body;

(viii) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy;

(ix) the amount of profit on transfer, demolition or destruction of any business capital asset (other than a business capital asset used for scientific research and development) computed in accordance with the provisions of clause 42;

(x) any consideration received or receivable on transfer of carbon credits;

(xi) the amount of remission or cessation of any liability by way of loan, deposit, advance or credit;

(xii) any amount accrued to or received on account of the cessation or forfeiture of any agreement entered in the course of the business; and

(xiii) any interest accrued to, or received by, a person being a financial institution, etc.

However, the gross earnings from business shall not include any dividend, any interest other than interest accrued to, or received by, a person being a financial institution, any income from letting of house property which is included under the head "income from house property" and any income from the transfer of an investment asset.

Clause 34, inter alia, provides that the amount of business expenditure shall be aggregate of the operating expenditure, finance charges and capital allowances.

Clause 35, inter alia, provides that the amount of operating expenditure for the purposes of clause 34 shall be the aggregate of —

(a) the amount of expenditure specified in sub-clause (2), if it is laid out or expended, wholly and exclusively, for the purposes of the business and fulfills specified conditions;

(b) the value of inventory of the business, as at the beginning of the financial year;

(c) loss of inventory, or money, on account of theft, robbery, fraud or embezzlement, occurring in the course of the business, if the inventory, or the money, is written off in the books of account;

(d) any amount credited to the provision for bad and doubtful debts account, not exceeding one per cent. of the aggregate average advances computed in the prescribed manner, if the person is a financial institution, the amount is charged to the profit and loss account for the financial year in accordance with the prudential norms of the Reserve Bank of India in this regard, and the amount of trade debt or part thereof written off as irrecoverable in the books of the person is debited to the provision for bad and doubtful debts account;

(e) the debit balance, if any, on the last day of the financial year, in the provision for bad and doubtful debts account made under clause (c), if the balance has been transferred to the profit and loss account of the financial year;

(f) trade debt or part thereof, if the person is not a financial institution, and the amount is written off as irrecoverable in the books of the person; and

(g) payment to a creditor during the financial year in discharge of any remitted or ceased liability which has been included in the gross earnings of any financial year under sub-clause (2) of clause 33.

Sub-clause (2) of the said clause, inter alia, provides that the following expenditure if laid out or expended, wholly and exclusively, for the purposes of the business shall be allowed,—

(i) purchase of raw material, stores, spares and consumables, or stock-in-trade;

(ii) rent paid for any premises if it is occupied and used by the person;

(iii) current repairs to buildings if it is occupied and used by the person;

(iv) land revenue, local rates or municipal taxes in respect of premises occupied and used by the person;

(v) current repair of parts, of machinery, plant or furniture used by the person;

(vi) current maintenance or repairs of computer software or hardware;

(vii) salary or wages of employees;

(viii) sales promotion including advertisement and publicity;

(ix) use of hotel or boarding and lodging facilities;

(x) legal services;

(xi) entertainment and provision of hospitality, etc.

The said clause further provides that any expenditure, being in the nature of, or on account of personal expenses, capital expenditure including expenditure in respect of which capital allowance is allowable under clause 37, finance charges, any unascertained liability of the person, remuneration payable to any participant other than a working participant, any expenditure incurred on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party, any tax, interest or penalty payable under this Code, any amount paid which is eligible for relief of tax under section 207 any dividend declared or distributed or paid and any amount of contributions by an employer during the financial year to an approved superannuation fund on account of an employee to the extent it exceeds one lakh rupees shall not be allowed as operating expenditure.

Clause 36 provides the determination of finance charges in relation to business expenditure which shall be aggregate of the operating expenditure, permitted finance charges and capital allowances.

Clause 36 provides that the amount of finance charges for the purposes of clause 34 shall be—

(a) the amount of interest paid on any capital borrowed or debt incurred;

(b) the amount of interest paid to trade creditors;

(c) the amount of interest paid to any participant to the extent prescribed which is in accordance with the agreement of formation of unincorporated body and relates to the period following year the date of such agreement;

(d) the amount of any charge or fee paid in respect of any credit facility which has not been utilised;

(e) the amount of any incidental financial charges;

(f) the proportionate amount of discount or premium payable on any bond or debenture issued by the person, calculated in the manner as may be prescribed.

Sub-clause (2) of clause 36, *inter alia*, provides that the amount of finance charges shall not include any amount paid in respect of capital borrowed or debt incurred for acquisition of a capital asset, incidental financial charges for issue of convertible debentures, bonds or share capital and any amount of interest referred to in section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.

Sub-clause (3) of the said clause provides that the amount of interest on any capital borrowed or debt incurred, which is payable to any financial institution, shall be allowed as a deduction in the financial year in which the amount is actually paid or in the financial year in which the liability has accrued, whichever is later.

Sub-clause (4) of the said clause provides that any interest referred to in sub-clause (3) which has been converted into a loan or borrowing shall not be deemed to have been actually paid for the purposes of that sub-clause.

Sub-clause (5) of the said clause provides that, "capital borrowed" shall include recurring subscriptions received periodically from shareholders, or subscribers, in a mutual benefit finance company, which fulfils such conditions as may be prescribed.

Clause 34 provides that the amount of business expenditure shall be aggregate of the operating expenditure, finance charges and capital allowances. Clause 37 seeks to provide that the amount of capital allowances shall be the aggregate of the amount in respect of depreciation of business capital assets, initial depreciation of business capital assets, terminal allowance, scientific research and development allowance and deferred revenue expenditure allowance.

The said clause further provides that the depreciation, initial depreciation or terminal allowance shall be allowed in respect of any business capital asset if the asset is owned, wholly or partly, by the person, and used for the purposes of the business of the person. However, the condition of ownership, whether whole or in part, shall not apply in the case of a business capital asset being a capital expenditure on any building which is held by the person under a lease or other right of occupancy. A business capital asset shall be deemed to be owned by the person if he is a lessee in terms of a financial lease.

The said clause also provides that the amount of deferred revenue expenditure allowance referred to above shall be as specified and computed in accordance with the Twenty-second Schedule.

Clause 37 provides that the amount of capital allowances shall be the aggregate of the amount in respect of depreciation of business capital assets, initial depreciation of business capital assets, terminal allowance, scientific research and development allowance and deferred revenue expenditure allowance.

Clause 38, inter alia, seeks to provide that the amount of depreciation of business capital assets shall be the aggregate of the following, namely:—

(a) such percentage of the adjusted value of any block of assets as specified in clause 45 read with the Fifteenth Schedule, in respect of all the business capital assets forming part of the relevant block of assets specified therein; and

(b) *nil*, in respect of any other business capital asset not forming part of any block of assets specified in the Fifteenth Schedule.

The said clause further provides that the deduction under this clause in respect of such asset shall be restricted to fifty per cent. if the asset is acquired by the person during the financial year, and is used for the purposes of business for a period of less than one hundred and eighty days in the relevant financial year.

Clause 38 provides that the depreciation in respect of any business capital asset shall, notwithstanding anything contained in any other provisions of the Code, not be deemed to have been actually allowed, if the asset does not form part of any block of assets specified in the Fifteenth Schedule or the expenditure incurred for acquiring the asset has been allowed as a deduction under any provision of this Code.

Clause 39 seeks to provide that in addition to depreciation, an initial depreciation of business capital assets shall be allowed to the person if he is engaged in the business of manufacture or production of any article or thing, the asset is a new asset (other than any office appliance) not used either within or outside India by any other person before its installation by the person and the whole of the actual cost of the asset is not allowed as a deduction (whether by way of depreciation or otherwise) in computing the income under the head "Income from business" of any other financial year.

The said clause further provides that the initial depreciation referred shall be an amount equal to twenty per cent. of the actual cost of the asset and it shall be allowed in the financial year in which the asset is used for the first time for the purposes of the business of the person. The deduction under this clause shall be restricted to fifty per cent of the allowable sum, if the asset is used for the purposes of business for a period of less than one hundred and eighty days in the relevant financial year.

Clause 40 seeks to provide that terminal allowance shall be allowed in respect of a block of asset, if the block of assets has ceased to exist by reason of being demolished, destroyed, discarded or transferred during the financial year and the percentage specified in the Fifteenth Schedule for computing depreciation in respect of the block of assets is zero.

The terminal allowance shall be aggregate of the written down value of the block of asset at the beginning of the financial year and the actual cost of any asset falling within that block, acquired during the financial year, as reduced by the amount accrued or received in respect of the assets which are demolished, destroyed, discarded or transferred during the financial year together with the value of the carcass or the scrap, if any.

The said clause further provides that the terminal allowance shall be treated as "*nil*", if the net result of the computation is negative.

Clause 41 seeks to provide that a company shall be allowed a deduction equal to two hundred per cent. of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on creating and maintaining an in-house facility for scientific research and development and carrying out scientific research and development in the in-house facility.

The deduction under this clause shall be allowed, if the company creates and maintains an in-house facility for carrying out scientific research and development, the research facility is approved by the Central Government on the basis of recommendation of the prescribed authority and the company enters into an agreement with the prescribed authority for co-operation in the research and development facility and for audit of the accounts of such facility.

The said clause further provides that in case of business re-organisation the

approval granted to a predecessor shall be deemed to have been granted to the successor if the approval is transferred to the successor.

The said clause also provides that the deduction under this clause shall not be allowed to a company, if the expenditure is incurred in the course of its business which is in the nature of scientific research and development.

The Board may for the purposes of this clause, prescribe the nature of business, conditions and manner as may be considered necessary for grant of approval.

Clause 42 provides for the method of computation of profit on transfer of a business capital asset in case of amount, which forms part of a block of assets specified in the fifteenth schedule. It provides that the amount of profit where such capital asset is transferred, discarded, destroyed or destructed shall, be the amount accrued or received in respect of such asset together with the amount of scrap value, if any, as reduced by the amount of written down value of the block of assets at the beginning of the financial year together with the actual cost of any asset falling within that block of assets and acquired during the financial year and in case of any asset not falling in the block of assets the consideration received on transfer less actual cost will be the profit.

The said clause further provides that if the net result of the computation is negative, the profit shall be treated as "nil".

Clause 43 provides for computation of deduction on account of capital allowance in a case where business reorganisation has taken place during the financial year. The amount of deduction allowable to the predecessor shall be determined in accordance with the formula—

$$A \times \frac{B}{C}$$

C

Where

A = the amount of deduction allowable as if the business reorganisation had not taken place;

B = the number of days comprised in the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation;

C = the total number of days in the financial year in which the business reorganisation has taken place.

The said clause further provides that the the amount of deduction to the successor shall be determined in accordance with the formula —

$$A \times \frac{B}{C}$$

C

Where

A = the amount of deduction allowable as if the business reorganisation had not taken place;

B = the number of days comprised in the period beginning with the date of business reorganisation and ending on the last day of the financial year; and

C = the total number of days in the financial year in which the business reorganisation has taken place.

Clause 44 seeks to provide the meaning of actual cost for the purposes of computation of income under the head 'income from business'. The said clause, *inter alia*, provides that the actual cost of a business asset to the person shall be computed in accordance with the formula—

$$A - [B + (C \times \frac{A}{D})]$$

D

Where

A = cost of the business asset to the person including the interest paid on

the capital borrowed for acquiring the asset if such interest is relatable to the period before the asset is put to use;

B = the amount of additional duty leviable under section 3 of the Customs Tariff Act, 1975 or the amount of duty of excise, in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944;

C = the amount of subsidy, grant or reimbursement (by whatever name called) received by the assessee, directly or indirectly, from the Central Government, State Government, any authority established under any law for the time being in force or by any other person in respect of, or with reference to, any asset including the relevant asset;

D = cost of all the assets in respect of or with reference to which the amount 'C' is so received.

The said clause further provides that irrespective of the methodology provided above, the Assessing Officer may determine, with the prior approval of the Joint Commissioner, the actual cost if the assets were, at any time before the date of acquisition by the person, business assets and the Assessing Officer is satisfied that the main purpose of the transfer of the assets to the person was to reduce the income-tax liability by claiming depreciation with reference to an enhanced cost.

The said clause also provides that the actual cost of the business asset to the person shall be the deemed written down value, if the asset is acquired by way of gift or inheritance, the asset is converted into a business asset in any financial year or the person is transferee holding company or a transferee subsidiary company. The deemed written down value of a business asset shall be the actual cost to the person or the previous owner, as the case may be, when he first acquired the asset as reduced by the aggregate amount of depreciation that would have been allowable to the person or the previous owner, as the case may be, for the preceding financial year as if the asset was the only asset in the relevant block of assets.

The said clause further provides that in the case of sale and buy back transaction in the business asset, the actual cost of a business asset shall be the actual price for which the asset is re-acquired by him or the deemed written down value, whichever is lower.

The said clause also provides that where a business capital asset is acquired by the person and subsequently it is transferred back to the transferor by way of lease, hire or otherwise, the actual cost of the asset in the hands of the person shall be the written down value of the asset in the hands of the transferor at the beginning of the financial year in which the acquisition of the asset by the person has taken place.

It is further provided that where the person is a non-resident and a business capital asset, having been acquired by him outside India, is brought by him to India, the actual cost of the asset for the person shall be the cost of acquisition of the asset by him, as reduced by an amount equal to the amount of depreciation which would have been allowable, had the asset been used in India for the purposes of the business of the person since the date of such acquisition.

The clause provides that the actual cost of an asset shall be treated as 'nil', if deduction in respect of the cost of the asset has been allowed or is allowable to the person under the Eleventh Schedule or the Twelfth Schedule or the Thirteenth Schedule, or deduction in respect of the cost of the asset has been allowed or is allowable under any of the aforesaid Schedules to any other person and the person has acquired or received the asset by any of the "special modes of acquisition".

The said clause also provides that the Board may, for the purposes of determining the actual cost of a business asset, prescribe any other cost which may be included in determining the actual cost and the method of determining the actual cost in the circumstances which are not provided for under the said clause. It is provided that in the said clause, deemed written down value of a business asset shall be the actual cost to the person or the previous owner, as the case may be, when he first acquired the asset as reduced by the aggregate amount of depreciation that would have been allowable to the person or the previous owner, as the case

may be, for the preceding financial years as if the asset was the only asset in the relevant block of assets.

Clause 45 relates to the meaning of the written down value and adjusted value of assets. The said clause, *inter alia*, provides that the written down value of any block of assets at the beginning of the financial year shall be the written down value of the block of assets at the close of the immediately preceding financial year.

The written down value of the block of assets at the close of the immediately preceding financial year shall be the adjusted value of the block of assets in the immediately preceding financial year as reduced by the amount of capital allowance, if any, allowed under clause 37 during that year together with any expenditure incurred for acquiring the asset to the extent allowed as a deduction in the financial year under any provision of the Code.

The adjusted value of any block of assets for any financial year shall be computed in accordance with the formula—

$$(A+B) - (C+D+E)$$

Where

A= the written down value of the block of assets at the beginning of the financial year;

B = actual cost of any asset falling within the block, acquired during the financial year;

C = moneys receivable in respect of any asset falling within the block, which is sold or discarded or destroyed or destructed during the financial year;

D = amount of the scrap value, if any;

E = the aggregate of the deemed written down value of the assets transferred by any of the modes referred to in sub-clause (3) of clause 44.

The said clause further provides that the adjusted value of any block of asset shall be "nil" if the amount (C+D+E) exceeds the amount (A+B).

The said clause also provides that the adjusted value of the block of assets, acquired by a successor in a business reorganisation, for the financial year in which the business reorganisation has taken place shall be the amount which would have been taken as the adjusted value of the block of assets as if the business reorganisation had not taken place.

The said clause also provides the formula for determining the written down value of the block of assets, acquired by a successor in a business reorganization, on the last day of the financial year in which the business reorganization has taken place as well as for computing the adjusted value of the block of assets where a block of assets comprises of any asset acquired in any financial year from a country outside India for the purposes of business and there is variation in liability in respect of acquisition of the asset after the date of such acquisition.

It has been provided in the said clause that the amount of liability of the person, expressed in Indian rupees at the time of making payment referred to above shall in a case where the person has entered into a forward contract, be computed with reference to the rate of exchange specified in such forward contract.

The said clause also provides that the Board may prescribe the method of determining the written down value or the adjusted written down value of the block of assets as on the first day of the first financial year, the method of determining the allocation of the written down value or the adjusted written down value of the assets between the different businesses carried on by the person and the method of determining the written down value or the adjusted written down value of the block of assets in the circumstances which are not provided for in the said clause.

Accordingly, *Clause 46* provides that the income from the transfer of any investment asset shall be computed under the head “Capital gains”. In addition to such income, the income under the head “Capital gains” shall also include—

(a) income from the transfer referred to in item (d) or item (e) of sub-clause (1) of clause 47, if the parent company or its nominee ceases to hold the whole of the share capital of the subsidiary company or the investment asset is converted by the transferee into, or treated by it as, its business trading asset, before the expiry of a period of eight years from the date of such transfer;

(b) the income from the transfer referred to in item (f) of sub-clause (1) of clause 47, if any of the conditions laid down in sub-clause (16) or sub-clause (74) of clause 314 is not complied with;

(c) the income from the transfer referred to in item (j) or item (n) of sub-clause (1) of clause 47, if any of the conditions laid down in the said clauses is not complied with;

(d) the amount of withdrawal referred to in sub-clause (4) of clause 55 to the extent of deduction allowed under sub-clause (2) thereof, if the condition laid down in the said sub-clause (4) is not complied with;

(e) the amount of deposit referred to in sub-clause (5) of clause 55 to the extent of deduction allowed under sub-clause (2) thereof, if the condition laid down in the said sub-clause is not complied with.

(f) the amount of deduction allowed under sub-section (1) of section 55, if any of the conditions specified in sub-section (6) of the section (55) is not complied with.

Clause 47 provides that the income from certain transfers shall not be treated as capital gains. It, *inter alia*, provides that the following transfers shall not be included in the computation of income under the head “Capital gains”, namely:—

(a) distribution of any investment asset on the total or partial partition of a Hindu undivided family;

(b) gift, or transfer under an irrevocable trust, of any investment asset (other than sweat equity share);

(c) transfer of any investment asset under a will;

(d) transfer of any investment asset by a company to its Indian subsidiary company, if the parent company or its nominees hold the whole of the share capital of such subsidiary and such subsidiary treats the asset as an investment asset;

(e) transfer of any investment asset by a subsidiary company to the Indian holding company, if the whole of the share capital of the subsidiary company is held by such holding company or its nominees and the holding company treats the asset as an investment asset;

(f) transfer of any investment asset by a predecessor to a successor Indian company in a scheme under a business reorganisation;

(g) transfer of any investment asset by a private company or unlisted public company to a limited liability partnership or any transfer of a share held in the company by a shareholder as a result of conversion of the company into a limited liability partnership, subject to the fulfillment of the conditions specified therein;

(h) transfer of shares of a predecessor co-operative bank by a shareholder under a scheme of business reorganisation, if the transfer is made in consideration of the allotment to the shareholder of shares in the successor co-operative bank;

(i) transfer of any investment asset by a sole proprietary concern to a company, subject to the fulfillment of the conditions specified therein;

(j) transfer of any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or any public museum or institution of national importance or of renown throughout any State or States and notified by the Central Government;

(k) transfer of any investment asset by a company to its shareholders on its liquidation;

(l) transfer of any investment asset in a transaction of reverse mortgage under a scheme notified by the Central Government;

(m) transfer of any beneficial interest in a security by a depository.

The said clause also defines “banking company”, “banking institution”, “private company”, “public unlisted company” “depository” and “security”.

Clause 48 provides that the financial year of taxability of the income from the transfer of an investment asset shall be the financial year in which the transfer takes place and income shall be taxable in the hands of the transferor. However, such income shall be deemed to be the income of the recipient in the following cases for the financial year specified below—

(a) in the case of any money or asset received under an insurance from an insurer on account of damage or destruction of an insured asset, the financial year in which the money or asset is received;

(b) in the case of any money or asset received by the participant on account of his retirement from a unincorporated body, the financial year in which the money or asset is received;

(c) in respect of any money or asset received by the shareholder on account of liquidation or dissolution of a company as reduced by the amount assessed as dividend within the meaning of item (c) of sub-clause (81) of clause 314, the financial year in which the money or asset is received.

The said clause also provides that any consideration from transfer made by the depository or participant of any beneficial interest in a security shall be deemed to be the income of the beneficial owner of the financial year in which such transfer took place.

The said clause further provides that the amount referred to in item (d) of sub-clause (2) of clause 46 shall be the income of the financial year in which such amount is withdrawn and the amount referred to in item (e) of sub-clause (2) of clause 46 shall be the income of the third financial year immediately following the financial year in which the transfer of the original asset is effected. The amount referred to in item (f) of sub-clause (2) of clause 46 shall be the income of the financial year in which any conditions referred to in sub-clause (6) of clause 55 is not complied with.

The said clause also defines the term “beneficial owner”.

Clause 49 relates to the computation of income from transfer of any investment asset. The income from the transfer of any investment asset during the financial year shall be the full value of the consideration accrued or received as a result of the transfer, as reduced by the aggregate amount of the deductions referred to in clause 51. The said clause further provides that for the purpose of such computation, where the investment asset is any beneficial interest in respect of securities referred to in item (d) of sub-clause (2) of clause 48, the cost of acquisition and the period of holding of such securities shall be determined on the basis of first-in-first-out method.

Clause 50 provides that the full value of the consideration shall be the amount received by, or accruing to, the transferor or the recipient, as the case may be, directly or indirectly, as a result of the transfer of the investment asset. The said clause also

specifies as to what amount would constitute the full value of consideration in respect of transfers made under certain specific circumstances.

Clause 51 relates to deduction for cost of acquisition of an investment asset. Sub-clause (1) of the said clause provides that for the purpose of computation of income from transfer of an investment asset, the cost of acquisition of an investment asset, the cost of improvement of such asset and the amount of expenditure incurred wholly and exclusively in connection with the transfer of such asset, shall be allowed as deduction.

Sub-clause (2) of the said clause provides that in the case of an equity share in a company or a unit of an equity oriented fund, transferred at any time after one year from the end of the financial year in which such asset is acquired and such transaction is chargeable to securities transaction tax under Chapter VII of the Finance (No.2) Act, 2004, if the income computed after giving effect to sub-clause (1) is a positive income, a deduction amounting to hundred per cent. of the income so arrived at shall be allowed and if the income computed after giving effect to sub-clause (1) is a negative income, hundred per cent. of the income so arrived at shall be reduced from such income.

Sub-clause (3) of the said clause provides that if an investment asset, not being an equity share or a unit of an equity oriented fund referred to in sub-clause (2) or referred to in sub-clause (5) of clause (53) is transferred at any time after one year from the end of the financial year in which the asset is acquired by the persons, the following deductions shall be allowed for the purposes of computation of income from the transfer of such asset :—

- (i) the indexed cost of acquisition, if any, of the asset;
- (ii) the indexed cost of improvement, if any, of the asset;
- (iii) the amount of expenditure, if any, incurred wholly and exclusively in connection with the transfer of the asset; and
- (iv) the amount of relief for rollover of the asset, as determined under clause 55.

Clause 52 relates to indexed cost of acquisition or improvement. The indexed cost of acquisition of an investment asset referred to in sub-clause (3) of clause 51 for the purposes of computation of income from transfer of such asset shall be the amount determined in accordance with the formula specified in sub-clause (1) of the said clause.

The said clause further provides that the indexed cost of improvement of an investment asset referred to in sub-clause (3) of clause 51 shall be in accordance with the formula specified in sub-clause (2) of the said clause.

Clause 53 relates to cost of acquisition of an investment asset. It, inter alia, provides that the cost of acquisition of an investment asset, shall be—

- (a) the purchase price of the asset, or
- (b) at the option of the person, the fair market value of the asset on the first day of April, 2000, if the asset was acquired by the person before such date.

Sub-clause (2) of the said provides that the cost of acquisition of an investment asset specified in column (2) of the Seventeenth Schedule, acquired by the mode specified in column (3) of the said Schedule, shall be the cost specified in column (4) therein.

The said clause further provides that the cost of acquisition of an investment asset acquired by a person by any of the special modes of acquisition, shall be the cost at

which the asset was acquired by the previous owner or at the option of the person, the fair market value of the asset on the 1st day of April, 2000, if the asset was acquired by the previous owner or the person before such date.

The said clause also provides that the cost of acquisition of an investment asset referred to in items (h), (i) or (j) of sub-clause (2) of clause 58 shall be the fair market value or the stamp duty value, as the case may be, which has been taken into account for the purposes of the said clauses.

The said clause further provides that the cost of acquisition of an investment asset being an undertaking or division of a business transferred by way of a slump sale referred to in sub-clause (267) of clause 314 shall be the net worth of such undertaking or division.

The said clause also provides that the cost of acquisition of an investment asset forming part of a bundle of investment assets acquired by any participant, on distribution of the asset to him on account of his retirement from any unincorporated body, shall be the amount determined in accordance with the formula specified therein.

Further the cost of acquisition of an investment asset shall be “nil”, in relation to,—

- (a) an investment asset, where such asset has been acquired by self-generation;
- (b) the asset which is acquired by way of compulsory acquisition and the compensation or consideration for such acquisition is enhanced or further enhanced by any court, tribunal or other authority; or
- (c) the asset, where the cost of acquisition to the person or the previous owner, if any, cannot be determined or ascertained, for any reason.

The said clause also defines the terms “previous owner” and “net worth”.

Clause 54 provides that the cost of improvement of an investment asset shall be any expenditure of a capital nature incurred in making any additions or alterations to the asset by the person or by the previous owner, if the asset is acquired by any special mode of acquisition referred to in sub-clause (237) of clause 314.

The said clause also provides that the cost of improvement of the investment asset, in a case where the asset became the property of the person or the previous owner before the first day of April, 2000, shall be any capital expenditure incurred for any addition or alteration to such asset on or after the first day of April, 2000.

The said clause further provides that the cost of improvement of an investment asset shall be “nil” in relation to—

- (a) an investment asset acquired by self-generation;
- (b) an investment asset being an undertaking or division transferred by way of a slump sale; or
- (c) any investment asset if the cost of improvement cannot be determined or ascertained, for any reason.

The said clause also provides that any expenditure deductible in computing the income under any other head of income shall not be taken into account while computing the cost of improvement.

Clause 55 relates to relief for rollover of investment asset. It provides that an individual or a Hindu undivided family shall be allowed a deduction, in respect of rollover of any original investment asset referred to in sub-clause (3) of clause 51, from the capital gain arising from the transfer of the asset. Such deduction shall be computed in accordance with the formula—

$$\frac{A \times (B+C+D)}{E}$$

Where A = the amount of capital gains arising from the transfer of the original investment asset;

B = the amount invested for purchase or construction of the new asset referred to in sub-clause (6) within a period of one year before the date of transfer of original investment asset;

C = the amount invested for purchase or construction of the new asset referred to in sub-clause (6) by the end of the financial year in which the transfer of the original investment asset is effected or six months from the date of transfer, whichever is later;

D = the amount deposited in an account in any bank by the end of the financial year in which the transfer of the original investment asset is effected or six months from the date of transfer, whichever is later, in accordance with the Capital Gains Deposit Scheme framed by the Central Government in this behalf;

E = the net consideration received as a result of the transfer of the original investment asset.

The said clause further provides that such deduction shall not exceed the amount of capital gains arising from the transfer of the investment asset. Further, any amount withdrawn from an account under the Capital Gains Deposit Scheme shall be utilised within one month from the end of the month in which the amount is withdrawn, for the purposes of purchase or construction of the new asset. Also, the amount deposited in the account under the Capital Gains Deposit Scheme shall be utilised for the purposes of purchase or construction of the new asset within three years from the end of the financial year in which the transfer of the original asset is effected.

The said clause further provides that such deduction shall be allowed if—

(a) the transferred investment asset (original investment asset) was an agricultural land during two years immediately preceding the year of transfer and the person, being an individual or Hindu undivided family, acquires one or more pieces of agricultural land at least one year before the beginning of the financial year in which the transfer of the asset took place subject to the condition that the new asset shall not be transferred within one year from the end of the financial year in which the new asset is acquired;

(b) the transferred investment asset (original investment asset) was any asset acquired at least one year before the beginning of the financial year of transfer and the new investment asset is a residential house and the person does not own more than one residential house, other than the new investment asset on the date of transfer of the original asset subject to the condition that a new asset shall not be transferred which one year from the end of the financial year in which the new asset is acquired or constructed;

The said clause also defines the term “net consideration”.

Clause 56 provides that the income of every kind falling under the clause "Income from ordinary sources", shall be computed under the head "Income from residuary sources". if it is not required to be included in computing the Income under any of the heads of Income specified in items A to D of section 14.

Clause 57 deals with computation of income from residuary sources. It provides that the income computed under the head “Income from residuary sources” shall be the gross residuary income as reduced by the amount of deductions referred to in clause 59.

Clause 58 deals with scope of gross residuary income. It provides that the gross residuary income shall include all accruals or receipts in the nature of income, which do not form part of income from special sources and income under any of the heads specified in items A to D of section 14. In addition to such income, gross residuary income shall, *inter alia*, include—

(a) dividends (other than dividends in respect of which dividend distribution tax has been paid under clause 109);

(b) interest (other than interest accrued to or received by financial institutions);

(c) interest received on compensation or on enhanced compensation;

(d) income from the activity of owning and maintaining horses for the purpose of horse race;

(e) any amount received from employees as contributions to any fund set up for their welfare, if not included under the head “Income from business”;

(f) income from machinery, plant or furniture belonging to the person and let on hire, if not included under the head “Income from business”;

(g) any amount received under a Keyman insurance policy (including the sum allocated by way of bonus on such policy) if not included under the heads “Income from employment” or “Income from business”;

(h) the aggregate of any moneys and the value of any specified property, other than immovable property, received for inadequate consideration or without consideration by an individual or a Hindu undivided family;

(i) the value of any immovable property received without consideration by an individual or a Hindu undivided family;

(j) the value of any investment made by the person in the financial year to the extent for which he offers no explanation about the nature and source of the investments or offers an explanation but fails to substantiate it or such explanation offered by him is not satisfactory in the opinion of the Assessing Officer;

(k) the value of any money, bullion, jewellery or other valuable article owned by the person to the extent for which he offers no explanation about the nature and source of acquisition of the same or offers an explanation but fails to substantiate it or such explanation is not satisfactory in the opinion of the Assessing Officer;

(l) the amount of any expenditure incurred by the person in the financial year, if he offers no explanation about the source of such expenditure or offers an explanation but fails to substantiate it or such explanation is not satisfactory in the opinion of the Assessing Officer;

(m) any amount of income of a controlled foreign company attributable to a resident in accordance with the Twentieth Schedule;

(n) any amount received as advance, security deposit or otherwise from the long-term leasing or transfer of whole or part of or any interest in any investment asset;

(o) any sum received as family pension.

The said clause provides that the value of any property referred to in (h) or (i) above shall be the stamp duty value in the case of an immovable property as reduced by the amount of consideration, if any, paid by the person and the fair market value in the case of any other property as reduced by the amount of consideration, if any, paid by the person.

The said clause further provides that the amount referred to in (h) above shall not include any amount received —

- (a) from any relative;
- (b) on the occasion of the marriage of the individual;
- (c) under a will or by way of inheritance;
- (d) in contemplation of death of the payer;
- (e) from any local authority; or
- (f) from any non-profit organisation.

Further, “relative” and “specified property” have been defined in the said clause.

Clause 59 provides for deductions from gross residuary income. The deductions for the purposes of computation of income from residuary sources shall be the aggregate of —

- (a) the amount of expenditure specified in sub-clause (2), if the expenditure (other than capital expenditure) is laid out or expended, wholly and exclusively, for the purposes of making or earning the gross residuary income and it fulfills the conditions specified therein; and
- (b) the amount of deductions specified in sub-clause (3) subject to the fulfilment of the conditions specified therein.
- (c) any amount received during the year as dividend from a controlled foreign company as referred to in clause (u) of sub-section (2) of section 58, to the extent such amount has been included in the total income of the person in any preceding financial year in accordance with provisions of the said clause.

The said clause further provides certain monetary limits for allowable deduction in respect of certain income from residuary sources. It also *inter alia* provides that any amount relating to personal expenses and any amount of tax, interest or penalty paid under this Code or the Income-tax Act, 1961 or the Wealth Tax Act, 1957 as it stood before the commencement of this Code and any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft subject to the conditions specified in the said clause shall not be allowed as a deduction. The said clause also defines the term “capital sum assured” in relation to a life insurance policy.

Sub-chapter III of Chapter III deals with aggregation of income computed under various heads of income as provided under sub-chapter II.

Sub-chapter III of Chapter III deals with aggregation of income computed under various heads of income as provided under sub-chapter II.

Clause 60 seeks to provide the manner in which the income under each head of income is to be aggregated for a financial year so as to result in the income from any particular head of income for that financial year. Thus, the income for a financial year under each of the five heads of income would be determined in accordance with the provisions of this clause.

The said clause further provides for the computation of the income from capital gains, speculative business and income from the activity of owning and maintaining horses for the purpose of horse race in such a manner that any loss from such sources shall be set off only against positive income from such sources.

Clause 61 seeks to provide the manner in which the current income from ordinary sources for a year is to be computed. The classification of income as “Income from ordinary sources” and “Income from special sources” has been provided in clause 13 of the Code.

The said clause further provides that the current income of a financial year under each head of income is to be aggregated to arrive at the current income from ordinary sources.

This current income is to be further aggregated with the unabsorbed preceding year loss from ordinary sources to arrive at the gross total income from ordinary sources.

The said clause also provides that if the gross total income from ordinary sources so arrived at is negative then it shall be treated as nil and the absolute value of the negative income shall be the unabsorbed current loss from ordinary sources.

Clause 62 seeks to provide for the aggregation of income from special sources. The aggregate income from a special source in a financial year would be the current income from the special source for that financial year. The incomes from special sources are enumerated in Part III of the First Schedule to the Code.

The said clause further provides that the current income from the special source in a financial year shall be aggregated with the unabsorbed preceding year loss from the special source to arrive at the gross total income from the special source for that financial year.

The said clause also provides that if the gross total income from the special source so arrived at is negative then it shall be treated as nil and the absolute value of the negative income shall be the unabsorbed current loss from the special source for the financial year.

The said clause further provides that the gross total income from special source in respect of each special source shall be aggregated and the net result of the aggregation shall be the total income from special sources for the financial year.

Clause 63 seeks to provide the manner in which the total income of any person in a financial year is to be determined. For the sake of simplicity, the clause provides for the determination of total income by means of a mathematical formula. The clause provides that the total income of a person for a financial year is to be determined by adding the total income from ordinary sources with the total income from the special sources. The total income from ordinary sources shall, however, be reduced by the amount of deductions available to the person under sub-chapter IV of Chapter III before it is aggregated with the total income from special sources.

Clause 64 seeks to provide the manner in which income is to be aggregated in case of a business reorganisation or where a company is converted into a limited liability partnership. In such cases, the unabsorbed current loss from ordinary sources of the predecessor in the financial year in which the business reorganisation takes place, shall be treated as the unabsorbed preceding year loss from ordinary sources of the successor in business in that year and the provisions of clause 61 shall apply. Similarly, the unabsorbed current loss from special sources of the predecessor in the financial year in which the business reorganisation takes place, shall be treated as the unabsorbed preceding year loss from special sources of the successor in business in that year and the provisions of clause 62 shall apply.

Sub-clause (2) of the said clause provides that the benefit of taking over the loss of the predecessor by the successor shall not be available to the latter in a case of business reorganisation if it does not satisfy the test of continuity of business. Test of continuity of business has been defined in clause 314 of the Code as a set of conditions which the successor must fulfill to satisfy the test.

Sub-clause (2) further provides that the said benefit shall not be available to a successor in case of a business reorganisation if the predecessor is a sole proprietary concern or an incorporated body and the share holding of the sole proprietor ceases to be less than fifty per cent. of the total value of the shares of the successor company at any time during the period of five years immediately succeeding the financial year in which the business reorganisation takes place.

Sub-clause (3) of the said clause provides that the benefit of taking over the loss of the predecessor by the successor in a case of conversion of a company into a limited liability partnership shall not be available to the successor if any of the conditions, specified in item (j) of sub-clause (1) of clause 47 of the Bill are not fulfilled.

Sub-clause (4) of the said clause provides that the total income of the financial year, in which the business reorganisation or the conversion took place, and all the subsequent financial years shall, notwithstanding anything in this Code, be rectified as if the provisions of this clause had never been given effect to in those financial years if the conditions specified therein are not fulfilled at any time during five financial years immediately succeeding the financial year in which the business reorganisation or conversion took place.

Clause 65 provides that in the event of a change in the constitution of an unincorporated body, due to death or retirement of a participant, the unabsorbed current loss from ordinary or special sources shall be reduced in proportion to the percentage of share holding of such deceased or retired participant for the financial year ending on the date of death or retirement of the participant.

The said clause further provides that such reduced loss shall be the unabsorbed preceding year loss of the unincorporated body for the financial year beginning on the date immediately following the date on which the death or retirement of the participant took place.

Clause 66 seeks to provide that a closely held company shall not be allowed to aggregate the unabsorbed preceding year loss from ordinary or special sources with the income of the current financial year unless it satisfies the test of continuity of ownership.

The said clause further provides that the closely-held company shall satisfy the test of continuity of ownership if the shares of the company beneficially held by persons, carrying not less than fifty-one per cent. of the voting power on the last day of the financial year immediately preceding the relevant financial year, are held by the same persons on the last day of the relevant financial year.

The said clause also provides that while calculating the percentage of voting power—

(a) any change in the voting power in the relevant financial year due to the death of a shareholder or on account of transfer of shares by way of gift to any relative of the donor shareholder shall be ignored;

(b) any change in the shareholding of an Indian company, which is a subsidiary of a foreign company, as a result of amalgamation or demerger of a foreign company, shall be ignored, if fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

Clause 67 seeks to provide that aggregation of losses generated in a financial year shall not be allowed if the return of tax bases for the said year is not furnished by the due date. Thus, the losses generated in the current year shall not be taken into consideration for any purposes of the Code.

Sub-chapter IV of Chapter III of the Bill deals with tax incentives. Tax incentives are the deductions available to a person while computing his total income for a financial year.

Clause 68 provides that the deductions under this sub-chapter are available only in respect of “gross total income from ordinary sources” and the aggregate amount of such deductions shall not exceed the gross total income from ordinary sources.

The said clause further provides that any sum which qualifies for a deduction under this sub-chapter in any financial year, shall not qualify for deduction under any other provision of the Code for the same or any other financial year or in the case of any other person even if full deduction of the sum referred therein has not been allowed.

Clause 69 seeks to provide that a person, being an individual, shall be allowed a deduction of a maximum of one lakh rupees for savings made by him in respect of the amount paid or deposited by the person in a financial year, as his contribution to any approved fund to an account of the individual, spouse or any child of such individual.

Clause 70 seeks to provide that a person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid or deposited during a financial year to effect, or keep in force, an insurance on the life of certain specified persons. The persons specified are the individual, his spouse and children and the members of a Hindu undivided family.

The said clause further provides that the insurance policy, to be eligible for this deduction, should be one where the amount of the annual premium payable should not exceed five per cent. of the capital sum assured in any year during the term of the policy.

Clause 71 seeks to provide that a person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of any sum paid during a financial year to effect, or to keep in force, an insurance on the health of certain specified persons. The persons specified are the individual, his spouse, dependant children and parents, and the members of a Hindu undivided family.

The said clause further provides that in the case of an individual, an additional deduction shall be allowed in respect of any contribution made to the Central Government Health Scheme.

The said clause also provides that the health insurance scheme should be framed by an insurer which is approved by the Insurance Regulatory and Development Authority.

Clause 72 seeks to provide a deduction to a person, being an individual or a Hindu undivided family, in respect of any sum paid during the financial year as tuition fee to any school, college, university or other educational institution situated within India for the purpose of full-time education of any two children of such individual or Hindu undivided family.

The said clause further provides that tuition fee shall not include any payment towards any development fee or donation or any payment of similar nature. It also clarifies that full-time education shall include education in a play school or pre-school.

Clause 73 seeks to provide a maximum limit on the amount of deduction available under clauses 70, 71 and 72. It lays down a ceiling of fifty thousand rupees on the amount of deduction available in respect of payments made for a life insurance policy, health insurance policy and education of children.

Clause 74 seeks to provide that a person, being an individual or a Hindu undivided family, shall be allowed a deduction in respect of an amount paid or payable by way of interest on loan taken for the purpose of acquisition, construction, repair or renovation of a house property in the financial year in which such property is acquired or constructed or any subsequent financial year, subject to certain conditions specified therein.

Sub-clause (2) of the said clause specifies the conditions by providing that the deduction shall be available if —

(a) the house property is owned by the person and not let out during the financial year;

(b) the acquisition or construction of the house property is completed within three years from the end of the financial year in which the loan was taken; and

(c) the person obtains a certificate from the financial institution to whom the interest is paid or payable on the loan taken.

Sub-clause (3) of the said clause provides that the interest, which pertains to the period prior to the financial year in which the house property has been acquired or constructed, shall be allowed as deduction in five equal installments beginning from such financial year. For example, if the total amount of interest paid prior to the financial year in which the house property has been acquired or constructed is one lakh rupees, then, the person would be eligible for a deduction of twenty thousand rupees every year for five years starting from the year in which the house property is acquired or constructed.

Sub-clause (4) of the said clause provides that the interest for such prior period shall be reduced by any part thereof which has been already allowed as a deduction under any other provision of this Code.

Sub-clause (5) lays down the maximum limit of deduction that can be claimed under this clause. This limit has been specified as one lakh and fifty thousand rupees.

Clause 75 provides that a person being an individual, would be allowed a deduction of any amount of interest paid on a loan taken by him from any financial institution for financing the higher education of himself or of his relatives.

Sub-clause (2) of the said clause provides that the deduction shall be allowed for eight years beginning from the initial year of repayment of interest or till the interest is repaid in full, whichever is earlier.

Sub-clause (3) of the said clause provides the definitions of certain expressions used in the clause like, “financial institution”, “higher education”, etc. It clarifies that the term relative means the spouse and the child of the individual and also a student for whom the individual is the legal guardian.

Clause 76 provides that a person, being a resident individual or Hindu undivided family, shall be allowed a deduction in respect of any amount paid during the financial year for medical treatment of the prescribed disease or ailment of any specified person.

Sub-clause (2) of the said clause provides that the deduction available shall be a maximum of sixty thousand rupees in case the payment is made for a senior citizen and forty thousand rupees if the payment is made for any other person.

Sub-clause (3) of the said clause provides that the deduction allowable shall be reduced by the amount received, if any, under an insurance from an insurer, or reimbursed by an employer, for the medical treatment of the specified person.

Sub-clause (4) of the said clause provides that the deduction shall not be allowed unless the person obtains a certificate from a prescribed specialist working in a Government hospital.

Sub-clause (5) of the said clause defines the terms “specified person” and “Government hospital”.

Clause 77 seeks to provide a deduction to a person, being a resident individual and having a disability, subject to certain conditions. The deduction shall be allowed if the person obtains a certificate from a medical authority in the prescribed form and manner and the certificate remains valid during the relevant financial year or part thereof.

The said clause further provides that the amount of deduction shall not exceed—

- (a) one lakh rupees, if he is a person with severe disability; and
- (b) fifty thousand rupees, if he is a person with disability.

Clause 78 seeks to provide a deduction to a person, being a resident individual or Hindu undivided family, in respect of —

- (a) any expenditure incurred during the financial year for the medical treatment, nursing or training and rehabilitation of a dependant person with disability; or
- (b) any amount paid or deposited during the financial year under a scheme framed by any insurer and approved by the Board in this behalf, for the maintenance of a dependant person with disability.

Sub-clause (2) of the said clause provides that the deduction available shall be one lakh rupees in case the dependant person is a person with severe disability and fifty thousand rupees if he is a person with disability.

Sub-clause (3) of the said clause provides that the deduction in respect of the payment under the insurance scheme referred to in sub-clause (1) shall be allowed only if the scheme referred to therein provides for payment of an annuity or a lump sum amount for the benefit of the dependant person with disability, in the event of the death of the individual or the member of the Hindu undivided family who subscribes to such scheme.

Sub-clause (4) of the said clause provides that the deduction under this clause shall be allowed only if the person claiming the deduction obtains a certificate from a medical authority in the prescribed form and manner and the certificate remains valid during the relevant financial year or part thereof.

Sub-clause (5) of the said clause provides that in the event of the dependant person with disability predeceasing the individual or the member of the Hindu undivided family who has subscribed to the insurance scheme referred to in sub-clause (1), any amount received by such individual or Hindu undivided family shall be deemed to be his or its income for the financial year in which the amount is received.

Sub-clause (6) of the said clause defines the term “dependant”.

Clause 79 seeks to provide that a person shall be allowed a deduction of —

(a) one hundred and seventy-five per cent. of the amount of money paid by him in the financial year as contribution or donation to any person specified in Part-I of the Sixteenth Schedule;

(b) one hundred and twenty-five per cent. of the amount of money paid by him in the financial year as contribution or donation to any person specified in Part-II of the Sixteenth Schedule;

(c) one hundred per cent. of the amount of money paid by him in the financial year as donation to any person specified in Part-III of the Sixteenth Schedule;

(d) fifty per cent. of the aggregate amount of money paid by him in the financial year as donation to any person specified in Part-IV of the Sixteenth Schedule.

Parts I, II, III and IV of the Sixteenth Schedule to the Bill contain the names of the organisations/institutions/funds to which such contribution or donation is to be made so as to be eligible for the deduction under this clause.

Sub-clause (2) of the said clause provides that the aggregate of the amount of money paid to persons specified in Part IV of the Sixteenth Schedule shall be limited to ten per cent. of the gross total income from ordinary sources, if the aggregate exceeds ten per cent. of such gross total income from ordinary sources.

Sub-clause (3) of the said clause provides that the deduction under this clause shall not be allowed in respect of any amount of money paid to any person referred to in sub-clause (1) if the amount is utilized by such person (the donee) for any religious activity or for the benefit of any particular caste other than the Scheduled Castes or the Scheduled Tribes.

Sub-clause (4) of the said clause provides that the donation to any organisation/institution/fund specified in Part IV of the Sixteenth Schedule shall be eligible for deduction under sub-clause (1) only if such organisation/institution/fund obtains the approval of the prescribed authority.

Sub-clause (5) of the said clause provides that deduction to a donor shall not be denied merely on the ground that, subsequent to the donation, the donee has ceased to be a non-profit organisation. Thus, this provision protects the donor in a situation where the donee may lose its status of being a non-profit organisation for any reason whatsoever.

Clause 80 seeks to provide that a person, being an individual and not in receipt of any house rent allowance, shall be allowed a deduction of any expenditure incurred by him in excess of ten per cent. of his gross total income from ordinary sources towards payment of

rent in respect of any furnished or unfurnished accommodation occupied by him for his own residence.

The said clause further provides that the deduction shall be allowed up to a maximum limit of two thousand rupees per month and shall be subject to such other conditions as may be prescribed having regard to the area in which the accommodation is situated.

The said clause also provides that deduction under this clause shall not be available to a person if any residential accommodation is owned by him or by his spouse or minor child in the same place where he ordinarily resides or performs duties of his office or employment or carries on his business.

Clause 81 seeks to provide that a person shall be allowed a deduction in respect of any contribution made by him in a financial year to a political party or electoral trust.

The said clause further provides that the deduction shall not exceed five per cent. of the average of the net profit determined in accordance with the provisions of sections 349 and 350 of the Companies Act, 1956 during the three immediately preceding financial years, in the case of a company and five per cent. of the gross total income from ordinary sources, in any other case.

The clause also defines the term “contribution”.

Clause 82 seeks to provide that a person, being an Investor Protection Fund, shall be allowed a deduction of the amount of contribution received from any recognised stock exchange, or recognised commodity exchange, and the members thereof if such amount is included in its gross total income from ordinary sources.

The said clause further provides that the deduction shall be allowed if the Investor Protection Fund is set up, either jointly or separately, by recognised stock exchanges or recognised commodity exchanges and such Investor Protection Fund is notified by the Central Government.

Clause 83 seeks to provide a deduction of up to three lakh rupees to a resident individual, who is an author, in respect of income earned by him as a lump sum consideration for the assignment or grant of any of his interest in the copyright of the book written by him or as a royalty or copyright fee in respect of the said book, if such income is included in his gross total income from ordinary sources.

The said clause further provides that the book should be of literary, artistic or scientific nature.

The said clause also provides that brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets and tracts, etc., shall not be eligible for deduction under this clause.

Clause 84 seeks to provide a deduction to a resident individual, who is a patentee, in respect of income earned by him by way of royalty in respect of a patent registered on or after the 1st day of April, 2003 under the Patents Act, 1970, if such income is included in his gross total income from ordinary sources.

The said clause further provides that the deduction under this clause shall be equal to the amount of royalty allowable under the terms and conditions of a licence settled by the Controller under the Patents Act, 1970, if a compulsory licence is granted in respect of any patent under that Act or three lakh rupees, whichever is lower.

The terms like, “patent”, “patentee”, “royalty”, etc., have also been defined in the said clause.

Clause 85 seeks to provide that a primary co-operative society shall be eligible for a deduction of the entire amount of its income from the business of providing banking, or credit, facility to its members.

The said clause further provides that a primary cooperative society means a “primary agricultural credit society” within the meaning of Part V of the Banking Regulation Act, 1949 or a “primary co-operative agricultural and rural development bank” having its area of operation confined to a taluk and being mainly engaged in providing long-term credit for agricultural and rural development activities.

Clause 86 seeks to provide that a primary co-operative society shall be eligible for a deduction of the entire amount of its income from agriculture or agriculture-related activities. It shall also be eligible for a deduction of a maximum of one lakh rupees in respect of income derived by it from any other activity.

The said clause further provides the meaning of the terms “agriculture-related activities” and “primary co-operative society”.

Clause 87 seeks to provide for the system and procedure of maintenance of accounts. Accordingly, the said clause provides that every person shall keep and maintain such books of account and other documents which would enable the Assessing Officer to compute his total income in accordance with the provisions of this Code. Any person carrying on legal, medical, engineering, architectural, accountancy, technical consultancy, interior decoration or any other notified profession or carrying on business shall keep and maintain such books of account if —

(i) his income from the business exceeds two lakh rupees;

(ii) his total turnover or, gross receipts as the case may be, in the business exceeds ten lakh rupees in any one of the three financial years immediately preceding the relevant financial year; or

(iii) his income or, total turnover as the case may be, his in a case of a newly set up business in any financial year, is likely to exceed two lakh rupees or ten lakh rupees, respectively, during such financial year.

The said clause further provides that every person who has entered into an international transaction shall keep and maintain such information and documents in respect of such transactions, as may be prescribed.

The said clause also provides that the Board may prescribe the books of account other than those enumerated in the clause and also the period for which the books of account and other documents required to be kept and maintained under this clause shall be retained.

Clause 88 seeks to provide the method, manner and mechanism for audit of accounts and reporting of international transactions.

Accordingly, the said clause provides that every person, who is required to keep and maintain books of account under clause 87, shall get his accounts for the financial year audited if the gross receipts from the profession exceed twenty-five lakh rupees in the financial year or the total turnover or gross receipts of the business exceed one crore rupees in the financial year. The audit of the accounts shall be carried out by an accountant and the report of the audit should be obtained by the person before the due date in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

The said clause further provides that a person who has entered into an international transaction during a financial year shall furnish a report of such transaction to the Transfer Pricing Officer, on or before the due date, obtained from an accountant in the prescribed form duly signed and verified in the prescribed manner by such accountant.

Clause 89 relates to the method of accounting.

Sub-clause (1) of the said clause provides that the income chargeable under the head “Income from business” or “Income from residuary sources” shall, except as otherwise

provided in the clause, be computed in accordance with either cash or mercantile system of accounting regularly employed by the person.

Sub-clause (2) of the said clause provides that the Central Government may from time to time notify the accounting standards to be followed by any class of persons or in respect of any class of income.

Sub-clause (3) of the said clause provides that the valuation of purchase of goods and inventory for the purposes of determining the income chargeable under the head "Income from business" shall be in accordance with the method of accounting regularly employed by the person and further adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the person to bring the goods to the place of its location and condition as on the date of its valuation.

Sub-clause (4) of the said clause provides that the value of sale of goods for the purposes of determining the income chargeable under the head "Income from business" shall be determined in accordance with the method of accounting regularly employed by the person and further adjusted to include the amount of any tax, duty, cess or fee leviable on the sale of the goods.

Sub-clause (5) of the said clause provides that the interest on bad or doubtful debts of any financial institution shall be included in its total income of the financial year in which the interest is credited to the profit and loss account or is actually received, whichever is earlier.

Sub-clause (6) of the said clause provides that the interest received by a person on compensation or on an enhanced compensation shall be included in the total income of the financial year in which it is received.

Sub-clause (7) of the said clause defines the term "bad or doubtful debts".

Chapter IV deals with special provisions relating to the computation of total income of non-profit organisations.

Clause 90 provides that Chapter-IV shall be applicable to a non-profit organisation, other than any organisation of public importance, specified in the Seventh Schedule. It also provides that the Central Government may, subject to such conditions as may be considered necessary, notify a person as a non-profit organisation of public importance for the purpose of the Seventh Schedule.

For this purpose, a non-profit organisation has been defined in clause 314 to mean an organisation, by whatever name called, including a trust, if—

- (i) it is not established for the benefit of any particular caste or religious community;
- (ii) it does not provide any benefit for the members of any particular caste or religious community;
- (iii) it is established for the benefit of the general public or for the benefit of the Scheduled Castes, the Scheduled Tribes, backward classes, women or children;
- (iv) it is established for carrying on charitable activities;
- (v) it is not established for the benefit of any of its members;
- (vi) it actually carries on the charitable activities during the financial year;
- (vii) the actual beneficiaries of its activities are the general public, Scheduled Castes, the Scheduled Tribes, backward classes, women or children; and
- (viii) it is registered as such under clause 98.

Clause 91 provides that the total income of a non-profit organisation shall be computed in accordance with the provisions of Chapter IV.

Clause 92 provides for the computation of total income of a non-profit organisation. It provides that subject to the provisions of section 8, the total income of any non-profit organisation in relation to any charitable activity during the financial year shall be the gross receipts as reduced by the amount of outgoings, computed in accordance with the cash system of accounting. The said clause also provides that where the non-profit organisation is a company registered under section 25 of the Companies Act, 1956, such total income shall be computed in accordance with the mercantile system of accounting.

Clause 93 provides that the gross receipts of the non-profit organisation from any charitable activity shall be the aggregate of the following, namely:—

- (a) the amount of voluntary contributions received;
- (b) any rent received in respect of a property held by it consisting of any building or landappurtenant thereto;
- (c) the amount of income derived from any business carried on by it, if the business is incidental to any charitable activity so carried on;
- (d) income from transfer of any capital asset computed in accordance with the provisions of sections 46 to 54 (both inclusive) where the asset is not used for the purposes of any charitable activity or any business incidental to such charitable activity;
- (e) full value of the consideration received from the transfer of any business capital asset, other than the asset referred to clause (d);
- (f) the amount of income received from investment of its funds or assets; and
- (g) the amount of any incoming, realisation, proceeds, or subscription received from any source.
- (h) any amount, which was received in the last month of the immediately preceding financial year and was deposited in a specified deposit account as referred to sub-items (e) of clause 94.'

The said clause further provides that such gross receipts shall not include any loan taken during the financial year and voluntary contributions received with a specific direction that they shall form part of the corpus of the non-profit organisation.

Clause 94 provides that for the purpose of computation of the total income, the amount of outgoings during the financial year of a non-profit organisation shall be the aggregate of —

- (a) the amount paid for any expenditure incurred wholly and exclusively for earning or obtaining any receipts referred to in clause 92;
- (b) the amount paid for any expenditure, other than capital expenditure, incurred for the purposes of carrying out any charitable activity;
- (c) the amount paid for any capital expenditure for the purposes of any business, if the business is incidental to any charitable activity carried on by the non-profit organisation;
- (d) any amount applied outside India, if the amount is applied for an activity which tends to promote international welfare in which India is interested and the non-profit organisation is notified by the Central Government in this behalf;
- (e) any amount which is received during the last month of the financial year and has been deposited on or before the last day of the financial year in a specified deposit account under such Deposit Account Scheme as may be prescribed; and
- (f) any amount accumulated or set apart for carrying on any charitable activity—
 - (i) to the extent of fifteen per cent. of the total income (before giving effect to the provisions of this clause) or ten per cent. of the gross receipts, whichever is less; and

(ii) invested or deposited in the modes specified in clause 95, for a period not exceeding three years from the end of the financial year.

Clause 95 stipulates that the modes of investing or depositing the money referred to in sub-clause (f) of clause 94. It also provides that the funds or the assets of the non-profit organisation (other than any assets forming part of its corpus as on the 1st day of June, 1973) shall be invested or held, at any time during the financial year, in any of the said modes.

Clause 96 provides that any amount referred to in sub-clause (f) of clause 94 shall be deemed to be the income of the non-profit organisation, if the amount is not utilised for the purpose for which it was accumulated or set apart during the period specified therein or the amount ceases to remain invested or deposited in any of the modes specified in clause 95.

The said clause further provides that for the purposes of this clause, the amount shall be deemed to be the income of the financial year immediately following the expiry of the specified period if the amount is not utilised during the financial year for the purpose for which it was accumulated or set apart, or in which the amount ceases to remain so invested or deposited in any of the specified modes.

Clause 97 relates to use or application of funds or assets for the benefit of an interested person. It provides that the funds or the assets of the non-profit organisation shall not be used or applied, directly or indirectly, for the benefit of an interested person. The said clause further provides that the funds or assets of the non-profit organisation shall be deemed to have been used or applied for the benefit of an interested person, if —

(a) its funds or assets are lent to any interested person, for any period during the financial year without either adequate security or adequate interest or both;

(b) its land, building or other asset is made available for the use of any interested person for any period during the financial year without charging adequate rent or other compensation;

(c) any amount is paid by way of salary, allowance or otherwise during the financial year to any interested person for services rendered to the non-profit organisation and the amount so paid is in excess of what may be reasonably paid for such services;

(d) the services of the non-profit organisation are made available to any interested person during the financial year without adequate remuneration or other compensation;

(e) any share, security or other property is purchased by or on behalf of the non-profit organisation from any interested person during the financial year for consideration which is more than adequate;

(f) any share, security or other property is sold by or on behalf of the non-profit organisation to any interested person, during the financial year, for consideration which is less than adequate;

(g) any fund or asset of the non-profit organisation are diverted during the financial year in favour of any interested person if the aggregate of the funds and value of assets exceeds one thousand rupees;

(h) any funds of the non-profit organisation are, or continue to remain, invested for any period during the financial year in any concern in which any interested person has a substantial interest and such investment exceeds five per cent. of the capital of that concern.

The term “interested person” has been defined in clause 103.

Clause 98 provides the procedure for registration of a non-profit organisation. Any non-profit organisation which has been granted approval or registration under the Income

tax Act, 1961, as it stood immediately before the commencement of this Code, will not be required to apply for registration under the Code, if it fulfils the prescribed conditions. Any other non-profit organisation shall make an application for its registration in the prescribed form and manner to the Commissioner.

The said clause also provides that on receipt of such application, the Commissioner shall call for such documents or information as he considers necessary in order to satisfy himself about the objects and genuineness of its activities and may make such further inquiries as may be required. Thereafter, the Commissioner shall, within a period of six months from the end of the month in which such application was received, pass an order in writing registering the non-profit organisation if he is satisfied about its objects and the genuineness of its activities or refusing to register it, if he is not so satisfied, after giving the organisation an opportunity of being heard.

The said clause further provides that the registration so granted shall be valid from the financial year in which the said application was made. However, where the Commissioner is satisfied that the activities of the non-profit organisation are not genuine or are not being carried out in accordance with its objects or are not being carried out in accordance with the any other law which is applicable to it or under which it is registered or approved, he shall pass an order in writing cancelling the registration or withdrawing the approval, after giving the organisation an opportunity of being heard.

Clause 99 provides that a non-profit organisation shall keep and maintain the prescribed books of account. It shall also maintain separate books of account in respect of business incidental to charitable activity. The said clause further provides that if the gross receipts referred to in clause 93 of the non-profit organisation in any financial year exceed five lakh rupees, it shall obtain an audit report from an accountant in the prescribed form before the due date of filing of the return of tax bases.

Clause 100 deals with anonymous donations received by a non-profit organisation. The said clause defines “anonymous donation” to mean any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed. The said clause provides that where the total income of a non-profit organisation includes any anonymous donation, the income-tax payable shall be the aggregate of —

- (a) the amount of income-tax calculated at the rate of thirty per cent. on the aggregate of anonymous donations received in excess of five per cent. of the total donations received by it or one lakh rupees, whichever is higher, and
- (b) the amount of income-tax with which the organisation would have been chargeable on its balance income.

The said clause also provides that the above provisions shall apply even if the anonymous donation has been made with a specific direction that it shall form part of the corpus of the non-profit organisation. Besides, no outgoings shall be allowed in respect of any anonymous donation received.

Clause 101 deals with the consequences of conversion of a non-profit organisation. The clause provides that a non-profit organisation shall be liable to income-tax at the rate of thirty per cent. in respect of its net worth if—

- (a) it converts into any form of organisation which does not qualify as a non-profit organisation;
- (b) it merges with any form of organisation which does not qualify as a non-profit organisation;
- (c) it fails to transfer upon dissolution all its assets to any other non-profit organisation, within a period of three months from the end of the month in which the dissolution takes place.

The net worth of the non-profit organisation shall be computed as on the date of conversion or merger in a case falling under (a) or (b) above and the date of dissolution in a case falling under (c) above. "Net worth" has been defined in the said clause to mean the aggregate value of its total assets as reduced by its liabilities computed in accordance with such rules of valuation as may be prescribed.

Clause 102 provides that the provisions of Chapter IV shall not apply to any person who—

(a) holds any business under trust, notwithstanding any specific direction that the business shall form part of the corpus of such person or that the income from the business shall be applied only for charitable activity;

(b) fails to comply with the conditions specified in clause 96;

(c) ceases to be a non-profit organisation at any time during the financial year, irrespective of registration granted under clause 97; or

(d) carries on any business which is not incidental to charitable activity.

The said clause further provides that the non-profit organisation which ceases to be a non-profit organisation on account of conversion, merger or dissolution as referred to in sub-clause (1) of clause 101 shall be liable to income-tax in respect of its net worth in accordance with that section. The said clause also provides that the total income of any person falling under (a), (b), (c) or (d) above shall be computed in accordance with the other provisions of the Code.

Clause 103 provides the meaning of certain terms used in Chapter-IV. It defines "charitable activity" to mean the following activities carried out in India, namely:—

(i) relief of the poor;

(ii) advancement of education;

(iii) medical relief;

(iv) preservation of environment including watersheds, forests and wildlife;

(v) preservation of monuments or places or objects of artistic or historic interest;

or

(vi) advancement of any other object of general public utility, not involving the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation thereto, for a cess, fee or any other consideration (irrespective of nature of use, application or retention of the income from such activity) and where the gross receipts during the financial year from such activity exceed ten lakh rupees.

The said clause also defines the phrases "business incidental to charitable activity" and "general public".

Clause 104 seeks to provide the method of computation of book profit in case of a company for the purposes of computation of the tax payable on such book profit.

The said clause provides that notwithstanding of anything in this Code, where the normal income-tax payable for a financial year by a company is less than the tax on book profit, then the book profit shall be deemed to be the total income of the company for such financial year and it shall be liable to income-tax on such total income at the rate specified in Paragraph A of the Second Schedule. This is essentially the concept of a Minimum Alternate Tax. The terms "normal income-tax" and "tax on book profit" used in this sub-clause have been defined in sub-clause (6) of the said clause. Paragraph A of the Second Schedule provides for a rate of tax of twenty per cent. on such deemed total income.

The clause further provides a formula for the calculation of the book profit. The formula's starting point is the net profit of the company computed in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956. The sub-clause provides for various adjustments to be made to the net profit to determine the book profit. The adjustments have the effect of both increasing and decreasing the net profit. The book profit would be higher than the net profit if the adjustments have a net positive impact and *vice versa*.

The said clause also provides that every company, to which this clause applies, shall obtain a report in the prescribed form from an accountant certifying that the book profit has been computed in accordance with the provisions of this clause.

Clause 105 relates to preparation of profit and loss account for computing book profit. The said clause seeks to provide the manner in which a company has to prepare its profit and loss account for the purposes of computation of its book profit under clause 104.

Accordingly, the clause provides that the profit and loss account of the company for a financial year shall be in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956. For the purposes of this clause, the accounting policies, the accounting standards adopted for preparing such accounts (including profit and loss account) and the method and rates adopted for calculating the depreciation shall be the same as have been adopted by the company for the purpose of preparing and laying of such accounts at its annual general meeting in accordance with the provisions of section 210 of the Companies Act, 1956.

The said clause further provides that where the company has adopted or adopts a financial year under the Companies Act, 1956, which is different from the financial year under this Code, then the accounting policies, the accounting standards adopted for preparing such accounts (including profit and loss account) and the method and rates adopted for calculating the depreciation shall correspond to the accounting policies, accounting standards and the method and rates for calculating the depreciation which have been adopted for preparing such accounts for such financial year or part of such financial year falling within the relevant financial year.

Clause 106 seeks to provide the manner in which tax credit for a financial year, arising due to payment of income-tax on book profit in such year, is to be calculated and carried forward and the manner in which such tax credit is to be allowed in succeeding years.

The said clause, *inter alia*, provides that the tax credit of a financial year to be allowed under this clause shall be the excess of tax on book profit over the normal income-tax. In other words, a tax credit would arise only in a year where the company pays income-tax on its book profit. Further, the amount of such tax credit shall be equal to the amount by which the income-tax on book profit exceeds the income-tax on income computed in accordance with the provisions of Part A of the Code (other than the provisions of this Chapter).

The clause also provides that no interest shall be payable on the tax credit allowed under this clause.

The clause further provides that the tax credit shall be allowed in a financial year in which the normal income-tax exceeds the tax on book profit and the credit shall be allowed to the extent of the excess of the normal income-tax over the tax on book profit. In other words, the credit shall be allowed only in respect of the amount of income-tax payable over and above the amount of income-tax that was payable on the book profit. For example, if the normal income-tax payable is one lakh rupees and the income-tax payable on book profit is sixty thousand rupees, then tax credit shall be allowed to the extent of forty thousand rupees only. The balance amount of sixty thousand rupees shall be carried forward for the remaining period.

The clause also provides that the tax credit determined under this clause shall be carried forward and allowed not beyond the fifteenth financial year immediately succeeding the financial year for which the tax credit becomes allowable.

Clause 107 provides that apart from the specific exclusions provided in this Chapter from the application of certain provisions of the Code, all other provisions of the Code shall apply to a company referred to in this Chapter.

Clause 108 seeks to provide that notwithstanding anything in this Code, any income received by a person out of investments made in a venture capital company or venture capital fund shall be chargeable to income-tax in the same manner as if it were the income received by such person had he made investments directly in the venture capital undertaking. In other words, this clause provides a pass through status to venture capital companies and funds and they would have no income-tax liability on any income received on account of investments made by them in any venture capital undertaking.

The said clause further provides that the venture capital company, the venture capital fund or the person responsible for making payment of the income on behalf of such company or fund shall furnish, within the prescribed time limit, a prescribed statement giving the details of the nature of the income paid during the financial year and other relevant details, to the person receiving such income and to the prescribed income-tax authority.

The said clause also provides that the income paid by the venture capital company and the venture capital fund shall be deemed to be of the same nature and in the same proportion in the hands of the person receiving such income as it had been received by the said company or the fund during the financial year.

The said clause also clarifies that the provisions of Part B (Tax on distributed profits of domestic companies) or Part C (Tax on distributed income of mutual funds or life insurers) of the Code shall not apply to the income paid by a venture capital company or venture capital fund.

Clause 109 is the only clause of Part B and Chapter VII of the Bill and deals with tax on distributed profits of domestic companies or dividend distribution tax. The said clause provides that every domestic company shall be liable to pay tax on the amount of dividend declared, distributed or paid (whether interim or otherwise) to its shareholders, whether out of current or accumulated profits. The dividend distribution tax shall be charged on the dividend declared, distributed or paid at the rate specified in Paragraph B of the Second Schedule to the Bill.

The said clause further provides that the dividend on which the tax is to be levied shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year if—

- (i) such dividend is received from its subsidiary; and
- (ii) the subsidiary has paid tax under this clause on such dividend.

The said clause also provides that the the tax on dividend shall be paid to the credit of the Central Government within fourteen days from the date of declaration, distribution or payment of such dividend, whichever is earliest.

The clause also provides that the dividend distribution tax paid by the domestic company shall be treated as the final payment of tax in respect of the dividend declared, distributed or paid and no further credit shall be claimed by the domestic company or by any other person in respect of such tax. Further, no deduction on the amount of dividend charged to tax or the tax paid shall be allowed either to the company or to the shareholder.

The clause further provides that if the domestic company or the principal officer of such company fails to pay the whole or any part of the dividend distribution tax within a period of fourteen days then, it or he shall be deemed to be an assessee in default and also be liable to pay simple interest at the rate of one per cent. for every month or part thereof on the amount of such tax for the period of default.

The clause also defines the terms “subsidiary company” and “dividend”.

Clause 110 is the only clause of Part C and Chapter VIII of the Bill and deals with tax on distributed income of mutual funds and insurance company. The said clause provides that every mutual fund shall be liable to pay tax on any amount of income distributed or paid to the unit holders of an equity oriented fund and every life insurer shall be liable to pay tax on any amount of income distributed or paid to the policy holders of an approved equity oriented life insurance scheme. The tax shall be charged on the distributed income at the rate specified in Paragraph C of the Second Schedule.

The said clause also provides that the tax on distributed income shall be paid to the credit of the Central Government within fourteen days from the date of distribution or payment of such income, whichever is earlier.

The clause further provides that the tax paid by the mutual fund or the life insurer on distributed income shall be treated as the final payment of tax in respect of such income and no further credit shall be claimed by either of them or by any other person in respect of the tax so paid. Besides, no deduction under any other provision of this Code shall be allowed to the mutual fund or the life insurer in respect of the distributed income charged to tax or the tax paid.

The said clause also provides that if the mutual fund or the life insurer or the person who is responsible for making payment of distributed income on its behalf fails to pay the whole or any part of the tax on distributed income within a period of fourteen days, then, it or he shall be deemed to be an assessee in default and shall also be liable to pay simple interest at the rate of one per cent. for every month on the amount of such tax for the period of default.

The terms “equity oriented fund” and “approved equity oriented life insurance scheme” have also been defined in the said clause.

Clause 111 is the only clause of Part D and Chapter IX of the Bill and deals with tax on branch profits of a foreign company. The said clause provides that every foreign company shall be liable to branch profits tax in respect of branch profits of a financial year and such tax shall be charged at the rate specified in Paragraph IV of the Second Schedule. This tax shall be in addition to any income-tax payable by the said foreign company.

The clause further provides that the branch profits shall be the income attributable, directly or indirectly, to the permanent establishment or to an immovable property situated in India and included in the total income of the foreign company for the financial year, as reduced by the amount of income-tax payable on such attributable income.

The said clause also provides that the liability to branch profits tax shall be discharged by payment of pre-paid taxes and the tax charged under this clause shall be collected after allowing credit for such pre-paid taxes, if any, in accordance with the provisions of the Code.

Clause 112 provides that every person, other than a non-profit organisation, shall be liable to pay wealth-tax on his net wealth as on the valuation date of a financial year and such wealth-tax shall be charged at the rate specified in Paragraph V of the Second Schedule in the manner provided therein.

The said clause further provides that the liability to wealth-tax shall be discharged by payment of pre-paid taxes and the wealth-tax charged under this clause shall be collected after allowing credit for such pre-paid taxes, if any, in accordance with the provisions of this Code.

Clause 113 provides the manner in which the net wealth is to be computed. For the sake of simplicity, the manner has been expressed as a formula. The formula provides that the net wealth shall be the aggregate value of all the specified assets of the person on the date of valuation as reduced by the aggregate value of all the debts owed by the person, which have been incurred in relation to the specified assets.

The said clause further provides a detailed list of all the specified assets and also lists out certain assets that shall not be treated as specified assets for the purposes of this clause.

It also lists the categories of houses which shall be excluded from the specified asset, being “house”.

The clause also provides that the value of any specified asset, other than cash, shall be determined in such manner as may be prescribed and clarifies that the term “valuation date” means the 31st day of March in every financial year.

Clause 114 provides that if the specified assets are held by certain relatives, such as spouse or minor child, associates or associated entities of a person, then they shall be deemed to be belonging to such person if they fulfill certain conditions specified therein and shall be charged to wealth-tax in his hands.

The said clause further provides that if a minor child holds a specified asset which has been acquired from his own income, it shall not be deemed to be belonging to his parent or parents.

Clause 115 relates to disallowance of expenditure having regard to fair market value and seeks to provide that a person shall not be allowed a deduction under the Code in respect of any expenditure, whether capital or revenue in nature, which is considered by the Assessing Officer to be excessive or unreasonable if the payment in respect of the expenditure has been made to any associated person and it is excessive, or unreasonable, having regard to—

- (i) the fair market value of the goods, services or facilities for which the payment is made;
- (ii) the legitimate needs of the business of the person; or
- (iii) the benefit derived by, or accruing to, the person from such payment.

Clause 116 seeks to provide that the amount of any income, or expense, arising from an international transaction shall be determined having regard to the arm’s length price. The term “arm’s length price” has been defined in clause 124 and means a price which is applied in a transaction between unrelated persons in uncontrolled, unrelated or independent conditions.

The said clause further provides that the allocation or apportionment of, or any contribution to, any cost or expense incurred in connection with a benefit, service or facility provided to any associated enterprise shall be determined having regard to the arm’s length price of such benefit, service or facility if—

- (a) two or more associated enterprises have entered into a mutual agreement or arrangement for the allocation or apportionment of, or any contribution to, such cost or expense; and
- (b) the benefit, service or facility provided to any one or more associated enterprises involves an international transaction.

The clause also provides that its provisions shall not apply in a case where the determination of any income or allocation of any expense has the effect of reducing the income chargeable to tax, or increasing the loss computed, on the basis of entries made in the books of account for the financial year in which the international transaction was entered.

Clause 117 relates to determination of arm’s length price. The said clause seeks to provide that the arm’s length price in relation to an international transaction shall be determined in accordance with the most appropriate method out of all the prescribed methods. The most appropriate method shall be determined having regard to the nature of transaction, class of transaction, class of associated enterprises or functions performed by such enterprises or such other relevant factors as may be prescribed.

The said clause further provides that the arm’s length price shall be the price determined by the most appropriate method if only one price is determined by such method or the arithmetical mean of the prices determined by the most appropriate method if more than one

price is determined by such method. Further, the price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price if the variation between the arm's length price and the actual price does not exceed five per cent. of the latter.

The clause also provides that no deduction under Sub-chapter IV of Chapter III (tax incentives) shall be allowed in respect of the amount of income by which the total income of the person is enhanced after computation of income under this clause.

The said clause further provides that the determination of arm's length price shall be subject to the prescribed safe harbour rules.

Clause 118 seeks to provide that the Central Board of Direct Taxes, with the approval of the Central Government, may enter into an advance pricing agreement with any person, specifying therein the manner in which arm's length price is to be determined in relation to an international transaction to be entered into by that person.

The said clause further provides that the arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined in accordance with such advance pricing agreement. The advance pricing agreement shall be valid for a period as specified in the agreement but shall not exceed five consecutive financial years.

The said clause also provides that the advance pricing agreement entered into shall be binding only on the person in whose case, and only in respect of the transaction in relation to which, the agreement has been entered into. It shall be binding on the Commissioner and the income-tax authorities subordinate to him only in respect of the said person and the said transaction. However, the agreement shall not be binding if there is any amendment to the Code which has a bearing on it.

The clause also provides that the Board may declare an agreement to be void *ab initio* if it has been obtained by the person by fraud or misrepresentation of facts.

Clause 119 relates to avoidance of income-tax by transactions resulting in transfer of income to non-residents and seeks to provide that the total income of a person shall include all income accruing to any non-resident, if—

- (a) the income accrues by virtue of a transfer of any asset by the person to the non-resident;
- (b) the person acquires any rights by virtue of which he has power to enjoy such income or is entitled to receive, or has received, any capital sum, the payment of which is in any way connected with the transfer; and
- (c) the income would have been included in the total income of the person, had the transfer not taken place.

The said clause further provides that to determine whether a person has power to enjoy the income, the substantial result and effect of the transfer and all benefits which may at any time accrue to such person as a result of the transfer shall be taken into account.

The said clause also provides that this clause shall not apply if the person referred herein shows to the satisfaction of the Assessing Officer that the transfer and all associated operations were *bona fide* commercial transactions and were not designed for the purpose of avoiding any tax liability.

Clause 120 relates to avoidance of tax by sale and buy-back transaction in a security and provides that the total income of any person shall include any interest

accruing from any security owned by any other person if the transaction relating to sale and buy back of the security has been undertaken by the other person, if the interest accrues to the other person as a result of such transaction and if the transfer had not taken place, the income would have been included in the total income of the first-mentioned person.

Clause 121 seeks to provide that the transaction relating to buy and sale back of security under clause 120 shall, in the case of the other person referred to therein, be ignored and shall not be taken into account if the interest accruing to the other person is not included in his total income by virtue of the provisions of that clause.

The said clause further provides that the loss, if any, arising to a person on account of any buy and sale back transaction in any security undertaken by him, shall be ignored for the purposes of computing his total income, if any other income accruing to the person on such security is not included in his total income and the loss shall be ignored to the extent it does not exceed the amount of any other income referred to therein.

Clause 122 provides that the income accruing from a debt instrument, transferred by a person at any time during the financial year, shall not be less than the amount of broken-period income from the instrument. The term “broken-period income” has been defined in clause 124.

Clause 123 seeks to provide that any arrangement entered into by a person may be declared as an impermissible avoidance arrangement and the consequences, under this Code, of such arrangement may be determined by—

- (a) disregarding, combining or re-characterising any step in the arrangement;
- (b) treating the arrangement as if it had not been entered into or carried out or in such other manner as in the circumstances of the case, the Commissioner deems appropriate for the prevention or reduction of the relevant tax benefit;
- (c) disregarding any accommodating party or treating any accommodating party and any other party as one and the same person;
- (d) deeming persons who are connected persons in relation to each other to be one and the same person;
- (e) re-allocating, amongst the parties to the arrangement, any accrual, or receipt, of a capital or revenue nature or any expenditure, deduction, relief or rebate; or
- (f) re-characterising any equity into debt or *vice versa*, any accrual, or receipt, of a capital or revenue nature, or any expenditure, deduction, relief or rebate .

The clause further provides that the above provisions may be applied in the alternative for, or in addition to, any other basis for determination of tax liability and they shall apply in accordance with such guidelines as may be prescribed.

Clause 124 seeks to define various terms used in Chapter XI such as “accommodating party”, “arm’s length price”, “asset”, “associated enterprise”,

“impermissible avoidance arrangement”, “international transaction”, “round trip financing”, “safe harbour”, “tax benefit”, etc.

Clause 125 relates to presumption of the purpose for which an arrangement is entered into and seeks to provide that an arrangement shall be presumed to have been entered into, or carried out, for the main purpose of obtaining a tax benefit unless the person obtaining the tax benefit proves that obtaining such benefit was not the main purpose of the arrangement.

The term “arrangement” has been defined in clause 124.

Clause 126 seeks to provide for the classes of income-tax authorities for the purpose of the Code. The income-tax authorities provided in the clause are—

- (a) The Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963,
- (b) Chief Commissioners of Income-tax or Directors-General of Income-tax,
- (c) Commissioners of Income-tax or Directors of Income-tax or Commissioners of Income-tax (Appeals),
- (d) Additional Commissioners of Income-tax or Additional Directors of Income-tax,
- (e) Joint Commissioners of Income-tax or Joint Directors of Income-tax,
- (f) Deputy Commissioners of Income-tax or Deputy Directors of Income-tax,
- (g) Assistant Commissioners of Income-tax or Assistant Directors of Income-tax,
- (h) Income-tax Officers,
- (i) Tax Recovery Officers,
- (j) Inspectors of Income-tax.

Clause 127 relates to appointment and control of income-tax authorities listed in clause 126.

The said clause provides that the Central Government may appoint such persons as it thinks fit to be income-tax authorities. Subject to the rules and orders of the Central Government regulating the conditions of service of persons in public services and posts, the Central Government may also authorise the Board, or a Director-General, a Chief Commissioner or a Director or a Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner.

Further an income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.

The said clause also provides that the Board may direct by way of notification that any income-tax authority will be subordinate to the other.

Clause 128 relating to power of higher authorities, seeks to provide that any income-tax authority, above the rank of Assessing Officer, shall have all the powers that an Assessing Officer has in relation to the making of inquiries.

Clause 129 relates to powers of the Board to issue instructions.

The said clause seeks to provide that the Board may, from time to time, issue such orders, instructions, directions or circulars to other income-tax authorities as it may consider expedient or necessary for the proper administration of the provisions of the Code.

The said clause further provides that the Board shall not exercise its powers so as to require any income-tax authority to make a particular assessment or to dispose of a particular

case in a particular manner, or require the Commissioner of Income-tax (Appeals) to dispose off any matter before it in a particular manner.

The said clause also empowers the Board to issue general or special orders in respect of—

(a) any class of tax bases or class of cases, explaining the principles, specifying the guidelines or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue including charging of interest or the initiation of proceedings for the imposition of penalties;

(b) any case or class of cases, for avoiding genuine hardship, authorising any income-tax authority (other than Commissioner of Income-tax (Appeals)) to admit any application or claim for any exemption, deduction, refund or any other relief under the Code after the expiry of the period specified by or under the Code for making the application or claim and deal with the same on merits in accordance with law;

(c) any case or class of cases, relaxing any requirement or conditions contained in the Code in relation to grant of any relief, on fulfillment of certain conditions.

The said clause also provides that the orders, instructions, directions and circulars issued by the Board under this clause shall be binding on all other income-tax authorities and other persons employed in the execution of the provisions of the Code.

Clause 130 relates to the jurisdiction of income-tax authorities. The said clause seeks to provide that the income-tax authorities shall exercise its powers and performs its functions in accordance with the directions of the Board. The Board may in turn authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of its other income-tax authorities who are subordinate to it.

The orders of jurisdiction shall be made having regard to territorial area, persons or classes of persons, incomes or classes of income or cases or classes of cases.

The said clause further provides that a higher income-tax authority can exercise the powers and perform the functions of the lower income-tax authority, if so directed by the Board.

The said clause also provides that the Assessing Officer being lower in rank shall follow the directions of the Assessing Officer being higher in rank, if two or more Assessing Officers of different class have been assigned concurrent jurisdiction.

Further any income-tax authority, being an authority higher in rank, can exercise the powers and perform the functions of the income-tax authority being an authority lower in rank, if so directed by the Board.

Clause 131 relates to jurisdiction of Assessing Officers. The said clause provide that the Assessing Officer having jurisdiction over an area shall, within the limits of such area, have jurisdiction in respect of any person carrying on a business if his principal place of business is situated within that area or any other person residing within the area. Any dispute in the matter shall be decided by the concerned Chief Commissioner. However, if the dispute relates to areas within the jurisdiction of different Chief Commissioners, it will be decided by consensus and if there is no agreement, by the Board or the Chief Commissioner so directed by it.

The said clause further provides that the jurisdiction of an Assessing Officer cannot be challenged after the specified time.

Clause 132 relates to power to transfer cases. The said clause seeks to provide that the Chief Commissioner or the Commissioner may order transfer of a case from one Assessing Officer to other Assessing Officer if both are subordinate to him. The Chief Commissioner may also order transfer cases from one Assessing Officer subordinate to him to another Assessing Officer subordinate to any other Chief Commissioner, if both Chief Commissioners

are in agreement with such transfer. However, if both the Chief Commissioners are not in agreement with a transfer, the Board, or the Chief Commissioner as may be authorised by the Board, may transfer the case in certain circumstances.

The said clause also provides that the transfer of a case may be made at any stage of the proceedings, and it shall not be necessary to re-issue any notice already issued by the transferor Assessing Officer.

The said clause also seeks to define the expression “case” for the purposes of Chapter XII relating to Tax Administration and procedure.

Clause 133 relating to change of incumbent seeks to provide that the income-tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, shall continue the proceeding from the stage at which it was left by his predecessor. The assessee in such a case may be given, if so requested, an opportunity of being heard before passing any order under this Code in his case.

Clause 134 relating to powers regarding discovery and production of evidence, etc., seeks to provide that the prescribed income-tax authorities and the Dispute Resolution Panel shall, for the purposes of the Code, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of account and other documents; and
- (d) issuing commissions.

The said clause further provides that for the purposes of making any inquiry or investigation, the prescribed income-tax authority shall be vested with the powers referred above, whether or not any proceeding is pending before it.

The said clause also provides that any prescribed income-tax authority may, subject to the rules made in this behalf, impound any books of account or other documents produced before it and retain them in its custody for such period as it thinks fit if such authority is of rank of Joint Commissioner and above. Any income-tax authority below the rank of Joint Commissioner shall not retain in his custody any impounded books or documents for a period exceeding thirty days without obtaining the approval of the Chief Commissioner or the Commissioner.

Clause 135 relates to search and seizure. It *inter alia*, provides that the Competent Investigating Authority may authorise any Authorised Officer to carry out search and seizure if the Competent Investigating Authority has, in consequence of information in his possession, reason to believe that,—

- (a) any person to whom a summons or notice was issued under the specified sections or the clauses of the Income-tax Act, 1961 or the Wealth-tax Act, 1957 or the Code, as the case may be, has omitted or failed to furnish the material as required by such summon or notice; or
- (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any material which will be useful for, or relevant to, any proceeding under the Income-tax Act, 1961, or the Wealth-tax Act, 1957, or under the Code; or
- (c) any person is in possession of any tax bases or property which has not been, or would not be, disclosed for the purposes of the Income-tax Act, 1961, or the Wealth-tax Act, 1957, or the Code.

The said clause also provides that the authorised officer may, while carrying out the search and seizure, enter and search any building, place, vessel, vehicle or aircraft where he

has reason to suspect that any material are kept, or break open the lock of any door, box, locker, safe, almirah etc., or search any person and seize any such material, not being stock-in-trade, found as a result of such search. He may also place marks of identification on any books of account or other documents and make a note or an inventory of any such material including stock in trade.

Sub-clause (3) of the said clause provides that the Competent Investigating Authority may exercise the powers of search and seizure over a person on whom he exercises jurisdiction.

The said clause also provides that the Authorised Officer may requisition the services of any police officer or of any officer of the Central Government to assist him and it shall be the duty of every such officer to comply with such requisition.

The said clause also provides that the Authorised Officer may serve an order on the owner or the person, who is in immediate possession or control of any material, that he shall not remove or part with it except with his prior permission, if the Authorised Officer considers that it is not possible or practicable to take physical possession of such material, not being stock-in-trade, to a safe place due to its volume, weight or other physical characteristics (including its dangerous nature) and such action of the authorised officer shall be deemed to be seizure.

The said clause also provides that the authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any material and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Income-tax Act, 1961, or the Wealth-tax Act, 1957, or under the Code, as the case may be. Further the provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, so far as may be, to search and seizure under this clause.

Clause 136 relates to powers to requisition material taken into custody. The said clause seeks to provide that the Competent Investigating Authority may authorise any income-tax authority to require any officer or authority to deliver the material, which have been taken into custody by such officer or authority under any other law for the time being in force, to the Requisitioning Officer.

The said clause further provides that the authorisation could be issued in cases and circumstances similar to the ones as for search and seizure referred to in clause 135.

The said clause also provides that the officer or authority in whose custody the material exists, shall deliver the material to the Requisitioning Officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody. The provisions of clause 135 shall apply to this clause also.

Clause 137 relates to retention and release of books of account or documents seized or requisitioned. The said clause seeks to provide that the Authorised Officer or the Requisitioning Officer shall hand over the books of account or documents seized under clause 135 or delivered under clause 136, as the case may be, within a period of sixty days from the date on which the last of the authorisations for search was executed or the books of account were received, to the Assessing Officer having jurisdiction over the case.

However, the Authorised Officer or the Requisitioning Officer may allow the assessee to make copies or take extracts of the books of account or documents seized or requisitioned on his making an application. It is further provided that the assessing officers may retain the books of account or documents, seized or requisitioned, up to a period of thirty days from the date of assessment and beyond this period after obtaining the approval of the Chief Commissioner or the Commissioner. The retention, however, cannot be allowed beyond a period of thirty days from the date on which the proceedings under the Code are completed.

Clause 138 relating to delivery of material belonging to other persons, seeks to provide that the Assessing Officer, having jurisdiction over the person in whose case search and

seizure was carried out under section 135, or requisition was made under section 136, shall hand over any material to the Assessing Officer having jurisdiction over another person, if he is satisfied that the material seized, or requisitioned, belongs to the other person.

Clause 139 relates to retention and application of seized or requisitioned assets. The said clause seeks to provide that the Assessing Officer may recover the amount of any liability existing till the date of search or requisition or determined after such date till the release of assets out of assets seized or requisitioned or by any other mode. It further provides that the Assessing Officer may recover the existing liability and release the remaining portion of the asset, if any, within a period of one hundred and twenty days from the date on which the last of the authorisations for search under clause 135 was executed, to the person from whose custody the assets were seized, on fulfillment of certain conditions.

Clause 140 relating to power to call for information seeks to provide that for the purposes of the Code, the Board may require —

(a) any prescribed person to furnish information within such time and in such form and manner as may be prescribed; and

(b) any prescribed income-tax authority to call for the prescribed information in such form and manner as may be prescribed.

The said clause further provides that any income-tax authority, not below the rank of an Income-tax Officer, may require any person, including a banking company or any officer thereof, to furnish any information as may be useful for, or relevant to any enquiry or proceeding, pending before him under this Code, in such form, manner and within such time as may be specified by him.

The said clause also provides that the expression “person” in this clause shall include a banking company or any officer thereof.

Clause 141 relates to power of survey. The said clause seeks to provide that the prescribed income-tax authority may within his jurisdiction enter, or authorise any other income-tax authority to enter, any place at which a business is carried out by a person, if he has reason to suspect that the person has not complied with the provisions of this Code. The income-tax authority shall enter any place of business referred to therein only after sunrise and before sunset, or during the hours at which such place is open for the conduct of business. The income-tax authority may, upon entering the place, inspect the books of account or documents available there and check or verify the cash, stock or other valuable article or thing found there.

The income-tax authority may place marks of identification on the books of account, documents or record inspected by him and take extracts, or copies, therefrom, impound any books of account, documents or record inspected by him, after recording the reasons for doing so, make an inventory of cash, stock or valuables and also examine on oath any person if his statement would be useful for, or relevant to, any proceeding under the Code.

The said clause also provides that the prescribed income-tax authority, for the purpose of verifying the expenditure made by the person in connection with any function, ceremony or event, after such function, ceremony or event, may require the person by whom such expenditure has been incurred or any other person who is likely to possess the information regarding such expenditure, to furnish such information which may be useful for, or relevant to, any proceeding under this Code and record the statements of the person or any other person in this behalf.

While exercising the power under this clause, the income-tax authority shall not remove any cash, stock or other valuable article or thing from such place.

Clause 142 relates to power to disclose information in respect of any person. This clause seeks to provide that the Board, or any person specified by it by an order in this behalf, may furnish any information in respect of an assessee to other person who is performing any functions under any law relating to the imposition of any tax, duty or cess, or dealings in

foreign currency or a person who is performing any function under any other law and notified by the Central Government.

The said clause further provides that the Chief Commissioner or the Commissioner may furnish, or cause to be furnished, to any person any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Code, if—

(a) the person makes an application to the Chief Commissioner or the Commissioner in the prescribed form; and

(b) the Chief Commissioner or the Commissioner is satisfied that it is in the public interest so to do.

The said clause also provides that such decision of the Chief Commissioner or the Commissioner shall be final and shall not be called in question in any court of law.

Further, it is provided that the Central Government may direct by notified order that no information shall be furnished under sub-clauses (2) or (4) in respect of such matters relating to such class of assessee, or to such authorities, as may be specified in the order.

Clause 143 seeks to provide that any proceeding under the Code before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 and for the purposes of section 196 of the Indian Penal Code, 1860. Further, every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.

Clause 144 relates to self-reporting of tax bases. The clause, *inter alia*, provides that every person who is liable to pay income-tax under this Code or who intends to carry forward any loss shall furnish a return of tax bases on or before the due date to the Assessing Officer or the prescribed authority or agency.

The said clause further provides that a company resident in India, a mutual fund or a life insurer who distributes dividend or income, as the case may be, and is liable to pay tax on dividend or income distributed, is also required to file the return of tax bases on or before the due date.

The said clause also provides that in relation to net wealth, every person (other than a non-profit organisation) in whose case the net wealth exceeds the maximum amount which is not chargeable to wealth-tax is required to furnish the return of tax bases on or before the due date.

The said clause provides that the return of tax bases shall also be a return of tax bases of any other person of which such person is a representative assessee. The return of tax bases shall be furnished in the prescribed form and manner. The said clause also specifies the person who is required to sign and verify such return.

The said clause provides that if a person discovers any omission or any wrong statement in the return of tax bases furnished by him, he may revise such return at any time before the expiry of one year from the end of the financial year in which the return was due or before the completion of the assessment, whichever is earlier.

The said clause provides that any person who is otherwise not required to furnish a return of tax bases under the Code may furnish such return before the expiry of one year from the end of the financial year to which it pertains. It also provides that a person may furnish the return for any financial year at any time before the expiry of one year from the end of the financial year in which the return was due or before the completion of the assessment, whichever is earlier, if he has not furnished a return by the due date and no notice under clause 146 has been served on him.

Clause 145 relates to tax return preparers. The clause provide that the Board may frame a tax return preparer Scheme allowing a tax return preparer to prepare and furnish the return of tax bases of any specified class of persons.

Clause 146 relates to the issue of notice to furnish the return of tax bases. It provides that the Assessing Officer may serve on a person in whose case the due date of furnishing such return has expired, a notice requiring such person to furnish the return for the relevant financial year. Such notice may be issued within a period of twenty-one months from the end of the financial year in which the return was due. The said clause further provides that the person in receipt of such notice shall furnish the return in the prescribed form and manner within fourteen days from the date of such receipt.

Clause 147 relates to self-assessment tax. It provides that the assessee shall be liable to pay self-assessment tax before furnishing the return of tax bases. The amount paid as self-assessment tax for any financial year shall first be adjusted towards the interest payable under the Code and the balance shall be adjusted towards the tax payable. The said clause further provides that after a regular assessment has been made under clause 154 or clause 155, any amount paid as self-assessment tax shall be deemed to have been paid towards such assessment. The clause also provides that if any assessee fails to pay such self-assessment tax, he shall be deemed to be an assessee in default and all the provisions of the Code shall apply accordingly.

Clause 148 provides that on receipt of any return of tax bases for any financial year, the Assessing Officer or any other authorised person shall issue an acknowledgement for receipt of the return.

Clause 149 relates to processing of returns. It provides that the Assessing Officer or any authorised person shall process the return received under clause 144 or clause 146. For this purpose, the tax and interest shall be computed on the basis of the tax bases, after making adjustments relating to any arithmetical error in the return or an incorrect claim apparent from the existence of any information in the return. The said clause further provides that the sum payable or refundable shall be determined after giving credit for taxes paid or relief allowable under clause 207.

The said clause also provides that the processing authority shall send intimation to the assessee specifying the sum payable by, or refundable, to him. The processing authority shall also send an intimation to the assessee where the loss declared in the return is adjusted, but no tax or interest is payable or refundable. The said clause also provides that the processing authority shall not send any intimation in respect of any sum payable, if the return is processed after the expiry of twelve months from the end of the financial year in which the return is furnished. It provides that the acknowledgement of the return shall be deemed to be the intimation where no sum is payable or refundable and where no adjustment has been made.

The said clause provides that the Board may make a scheme for centralised processing of returns for expeditious determination of the tax payable or refundable.

For this purpose, “return of tax bases” and “due date” have been defined in clause 314. In relation to adjustments, clause 149 defines “an incorrect claim apparent from the existence of any information in the return”.

Clause 150 relates to notice for inquiry before assessment. It provides that the Assessing Officer may make an assessment on receipt of return under clause 144 or clause 146, if he considers it necessary or expedient to ensure that the assessee has not understated his tax bases or computed excessive loss or allowance or under-paid the tax in any manner. The said clause provides that the Assessing Officer shall serve on the assessee a notice requiring him, *inter alia*, to furnish necessary information and to produce evidence, accounts or documents (not relating to a period more than six years prior to the relevant financial year). Besides, the Assessing Officer may make necessary inquiry in order to obtain full information in respect of tax bases of any person for the relevant financial year.

The said clause also provides that no such notice shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished.

Clause 151 deals with special audit. It provides that the Assessing Officer may direct the assessee to get his accounts audited by an accountant, if he is of the opinion that considering the nature and complexity of the accounts and in the interests of revenue, it is necessary to do so. It further provides that the Assessing Officer shall not issue any such direction unless the assessee has been given an opportunity of being heard and prior approval of the Chief Commissioner or Commissioner has been obtained.

The said clause also provides that the accountant, who shall be nominated by the Chief Commissioner or Commissioner, shall furnish his report to the Assessing Officer and to the assessee, within the time allowed by the Assessing Officer, which shall not exceed one hundred and eighty days from the date on which the direction for audit of accounts is received by the assessee. It also provides that the remuneration of the accountant and other expenses of the audit shall be determined and paid in accordance with prescribed rules.

Clause 152 deals with determination of value of assets. It, *inter alia*, provides that for the purposes of assessment, the Assessing Officer may require a valuation officer to make and report to him an estimate of the value of any asset, property, investment or expenditure. The said clause provides specific powers to the valuation officer for this purpose, subject to the rules in this behalf.

The said clause also provides that after taking into account such evidence as the assessee may produce and the material in his possession or gathered by him, the valuation officer shall estimate the value of the asset, property, investment or expenditure, after giving an opportunity of being heard to the assessee, or to the best of his judgment if the assessee does not co-operate or comply with his direction.

The said clause further provides that the valuation officer shall furnish a copy of such estimate to the Assessing Officer and the assessee within a period of six months from the end of the month in which the reference was made.

Clause 153 deals with the determination of arm's length price. It, *inter alia*, provides that the Assessing Officer may, with the prior approval of the Commissioner, refer to the Transfer Pricing Officer, the computation of arm's length price under clause 117 in relation to any international transaction entered into by the assessee in any financial year. The said clause further provides that upon such reference, the Transfer Pricing Officer shall determine the arm's length price in relation to the international transaction in accordance with the provisions of clause 117 and shall send a report of his determination to the Assessing Officer and the assessee before the expiry of a period of forty-two months from the end of the financial year in which the international transaction is entered into.

Clause 154 deals with the determination of an impermissible avoidance agreement and consequences thereof. It provides that the Commissioner shall, for the purposes of clause 123, serve on the assessee a notice requiring him, *inter alia*, to produce any evidence or particulars in support of his claim that the provisions of clause 123 are not applicable to him. It further provides that after taking into account such particulars and evidence, the Commissioner shall pass an order, before the expiry of twelve months from the end of the month in which such notice is issued, declaring an arrangement as being an impermissible avoidance agreement or otherwise for the purposes of clause 123.

The said clause also provides that upon declaring an arrangement as an impermissible avoidance agreement, the Commissioner shall issue directions to the Assessing Officer to make necessary adjustments to the total income or tax liability and shall forward a copy of such order to the assessee and to the jurisdictional Commissioner of the other party to the arrangement for taking necessary action in accordance with the provisions of this clause.

Clause 155 relates to assessment. It provides that consequent to a notice issued under sub-clause (1) of clause 150, the Assessing Officer shall, by an order in writing, make an assessment of the tax bases of the assessee after taking into account the evidence furnished by the assessee, any report of audit under clause 151, any report of the valuation

officer, any order of the Transfer Pricing Officer, any direction of the Commissioner under clause 154, any direction of the Joint Commissioner under clause 157 and the material in his possession, in respect of which an opportunity of being heard has been provided to the assessee.

The said clause further provides that on the basis of such assessment, the Assessing Officer shall determine the sum payable or refundable after adjusting the sum paid by, or refunded to, the assessee in pursuance of the intimation issued under sub-clause (2) of clause 149.

The said clause also provides that the Assessing Officer shall forward the draft order to the eligible assessee if he proposes to make any variation in the income or loss returned which is prejudicial to the interests of such assessee, who may within thirty days of receipt of the draft order, file his acceptance to the Assessing Officer or file his objections to such variations to the Dispute Resolution Panel and the Assessing Officer. Thereafter, the Assessing Officer shall complete the assessment on the basis of the draft order, if the assessee accepts it, or in conformity with the direction of the Dispute Resolution Panel within a period of one month from the end of the month in which such direction is received.

The said clause also defines the term “eligible assessee”.

Clause 156 relates to best judgment assessment. It, *inter alia*, provides that the Assessing Officer shall make the assessment of the tax bases to the best of his judgment, if—

(a) the assessee fails to furnish the return required under clause 144 or clause 146 or to comply with all the terms of a notice issued under sub-clause (1) of clause 150 or to comply with a direction issued under clause 151 or to make the return in response to notice under clause 159;

(b) the assessee fails to regularly follow the accounting standards or the method of accounting laid down in clause 89; or

(c) he is not satisfied about the correctness or completeness of the accounts of the assessee.

The said clause further provides that in making the assessment, the Assessing Officer shall take into account all relevant material which he has gathered or is available on record.

Clause 157 relates to directions for assessment by Joint Commissioner. It provides that a Joint Commissioner may, on a reference made to him by the Assessing Officer or on an application of an assessee or on his own motion, call for and examine the record of any proceeding in which an assessment is pending and issue such directions as he thinks fit for the guidance of the Assessing Officer so as to enable him to complete the assessment. The Joint Commissioner shall not issue any direction prejudicial to the assessee unless an opportunity of being heard is given to him. The said clause further provides that any such direction issued shall be binding on the Assessing Officer.

Clause 158 deals with directions for assessment by Dispute Resolution Panel. It, *inter alia*, provides that where any objection is received under sub-clause (5) of clause 155, the Dispute Resolution Panel may call for and examine the record of any proceeding relating to the draft order or make, or cause to be made, any such enquiry and issue directions for the guidance of the Assessing Officer, within a period of nine months from the end of the month in which the draft order is forwarded to the assessee.

The said clause further provides that the Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order, but shall not set aside any proposed variation or issue any direction for further enquiry before passing of the assessment order. Besides, any difference of opinion among the members of the Dispute Resolution Panel on any issue shall be decided according to the opinion of the majority. The direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

Clause 159 deals with reopening of assessment. It, *inter alia*, provides that the Assessing Officer shall reopen a case for reassessment, for reasons recorded in writing, if he has reason to believe that any tax bases chargeable to tax have escaped assessment for the relevant financial year. The said clause lists the circumstances under which the tax bases chargeable to tax shall be deemed to have escaped assessment.

The said clause also provides that the notice for reopening of assessment shall be issued for the seven financial years immediately preceding the financial year in which the search and seizure has been carried out or the material has been requisitioned, and within a period of seven financial years from the end of the relevant financial year in any other case.

The said clause also provides that where an assessment has been made under clause 155 or clause 156 or under this clause, no such notice shall be issued by an Assessing Officer below the rank of Joint Commissioner—

(i) within a period of four years from the end of the relevant financial year, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issue of such notice;

(ii) after the expiry of a period of four years from the end of the relevant financial year, unless the Commissioner is so satisfied;

The said clause further provides that in any other case, no such notice shall be issued by an Assessing Officer below the rank of Joint Commissioner after the expiry of a period of four years from the end of the relevant financial year, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for issue of such notice.

The said clause also provides that any assessment proceeding relating to any financial year falling within the abovementioned period of seven financial years shall abate, if it is pending on the date of the initiation of the search or on the date of requisitioning the material in the case of the person on whom search has been conducted or to whom such material pertains.

The said clause also provides that on receipt of a return in pursuance of the notice for re-opening of assessment, or after the expiry of the time specified therein for furnishing the return, the Assessing Officer shall, by an order in writing, make the re-assessment of the total income. It provides that in the re-assessment so made, the tax shall be chargeable at the rate or rates at which it would have been charged had the tax base not escaped assessment. The said clause also provides for certain circumstances under which re-assessment proceedings shall be dropped.

Clause 160 relates to approval for search assessment. It provides that no order of search assessment or re-assessment shall be passed by an Assessing Officer without the approval of the Joint Commissioner.

Clause 161 deals with rectification of mistake. It, *inter alia*, provides that an income-tax authority may amend any order passed or intimation issued by it in order to rectify any mistake apparent on the face of the record within a period of four years from the end of the financial year in which the order sought to be amended was passed.

The said clause also provides that the income-tax authority may make an amendment on its own motion or on an application made by the assessee or the Assessing Officer. It provides that such application shall be decided within a period of six months from the end of the month in which the application is received by it. It also provides that where the order has been decided in an appeal or revision, the power of the authority to so amend shall be restricted to matters not decided in appeal or revision.

Clause 162 relates to notice of demand. It provides that any sum payable in consequence of any order made or intimation issued under this Code shall be demanded by an income-tax

authority by serving upon the assessee a notice of demand in the prescribed form and manner. It also provides that the intimation issued under sub-clause (2) of clause 149 shall be deemed to be the notice of demand for this purpose.

Clause 163 provides time limits for completion of assessment or re-assessment. It also provides that such time limit shall not apply in respect of assessment, re-assessment or recomputation to be made in consequence of, or to give effect to, any finding or direction contained in any order of specified appellate authorities or of any court in a proceeding otherwise than by way of appeal or reference under this Code.

The said clause also provides that in computing such period of limitation, certain specified time periods shall be excluded. It provides that the period of limitation available to the Assessing Officer for making an order of assessment, re-assessment or recomputation shall be extended to sixty days, if the period immediately after the exclusion of the specified time periods is less than sixty days.

Clause 164 seeks to provide that for the purposes of this Code, “representative assessee” in respect of an assessee means—

- (a) the agent of a non-resident, if the assessee is a non-resident;
- (b) the guardian, or manager, of a minor, lunatic or idiot, if the assessee is a minor, lunatic or idiot;
- (c) the Court of Wards, the Administrator-General, the Official Trustee, any receiver or manager (including any person who manages property on behalf of the assessee) appointed by, or under, any order of a court, if such person receives, or is entitled to receive, income on behalf, or for the benefit, of the assessee;
- (d) a trustee appointed under an oral trust, or a trust created under an instrument in writing and entitled to receive, income on behalf or for the benefit of any person, if the assessee is a trust;
- (e) the legal representative, or the executor, if the assessee dies;
- (f) a participant, or the legal representative of the deceased participant, in the case of dissolution of an unincorporated body; and
- (g) the liquidator appointed under section 448, or section 490, of the Companies Act, 1956 in the case of a company.

The said clause further provides as to who could be “agent” in relation to a non-resident and executor in relation to a deceased person.

Clause 165, inter alia, provides that every representative-assessee shall, in his representative capacity, be liable to assessment only in respect of the tax bases of the person represented by him.

The said clause further provides that every representative-assessee shall be subject to the same duties, responsibilities and liabilities as if the tax bases accrued to him and the taxes shall be levied upon him in the manner as it would have been leviable upon the principal.

The said clause also provides that any proceeding initiated, or which could have been initiated, before the death or dissolution of the principal or the appointment of the liquidator, shall be deemed to have been taken against, or can be initiated in case of, the representative assessee.

Clause 166 provides that nothing in the Sub-chapter shall prevent the direct assessment of the principal or the recovery of any sum payable under this Code from the principal.

Clause 167 seeks to provide that the Assessing Officer shall have the same remedy against all property of any kind vested in any representative-assessee as he would have against the property of the principal.

Clause 168 relates to assessment in the event of business reorganisation and provides the manner in which the predecessor and the successor in a business reorganisation shall be assessed.

The said clause provides that the predecessor shall be assessed in respect of the income for the period beginning with the first day of the financial year and ending on the day immediately preceding the date of business reorganisation and the successor shall be assessed in respect of the income for the period beginning with the date of business reorganisation and ending on the last day of the financial year.

The said clause further provides that any proceeding taken against the predecessor shall be deemed to have been taken against the successor and may be continued against the successor from the stage at which it stood on the date of the business reorganisation.

Clause 169 relates to assessment of a Hindu undivided family after its partition and provides that such a family shall be deemed to continue as such except where a finding of partition has been given under this clause in respect of the Hindu undivided family.

The said clause provides that the Assessing Officer, after making necessary inquiries, shall record a finding as to whether there has been a total, or partial, partition of the joint family property and, if there has been such a partition, the date on which it has taken place. The clause clarifies that no claim of partial partition of a family shall be inquired into or recognised as a partition. Further, all provisions of the Code as they applied to the Hindu undivided family prior to its total partition, shall continue to apply till the date on which the total partition of such family has taken place.

The clause further provides that in case of a partial partition of a Hindu undivided family, the family shall continue to be assessed under this Code as if no partial partition had taken place and the liability of that family or its members shall remain the same.

The clause also seeks to define the terms “partition” and “partial partition”.

Clause 170 relates to assessment of the income of a non-resident from the occasional business of operation of ships and provides that such assessment shall be made in accordance with the provisions contained therein.

The said clause, inter alia, provides that the master of a ship belonging to, or chartered by, a non-resident shall, before the departure of the ship, furnish to the Assessing Officer a return of the full amount of transportation charges accrued to, or received by, the owner or charterer, since the last arrival of the ship in that port.

The clause further provides that on receipt of the return, the Assessing Officer shall assess the income in accordance with serial number 7 of the Table under paragraph 1 of the Fourteenth Schedule and the tax determined shall be payable by the master of the ship or any other person authorised by him. Further, a port clearance shall be granted to the ship after the tax has been duly paid or satisfactory arrangements have been made for the payment.

The clause also provides that the assessment of the income for the relevant financial year of the owner, or charterer, of the ship can also be made, at his option, in accordance with the other provisions of the Code.

Clause 171 seeks to provide that the tax bases of an individual for part of a financial year may be chargeable to tax in that financial year, if it appears to the Assessing Officer that the individual may leave India during or shortly after the expiry of the financial year and has no intention of returning to India.

The said clause further provides that the Assessing Officer may require the individual to furnish the return of tax bases for the purposes of assessment and may estimate the tax bases of the individual for part of a financial year if it cannot be readily determined in accordance with the Code. Further, the tax payable on the tax bases computed under this clause shall be in addition to the tax, if any, payable under any other provision of the Code.

Clause 172 provides that where it appears to the Assessing Officer that an unincorporated body formed for a particular event or purpose in a financial year is likely to be dissolved in the financial year or shortly thereafter, then he may charge to tax in that financial year the tax bases of the unincorporated body for the period beginning from the first day of the financial year to the likely date of its dissolution. Further, the provisions of clause 171 shall apply to any proceeding under this clause as they apply in the case of a person leaving India.

Clause 173 provides that where it appears to the Assessing Officer that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets, in any financial year, with a view to avoiding payment of any liability under this Code, then he may charge to tax in that financial year the tax bases of such person for the period beginning from the first day of the financial year to the date when the Assessing Officer commences proceedings under this clause. Further, the provisions of clause 171 shall apply to any proceeding under this clause as they apply in the case of a person leaving India.

Clause 174 relates to discontinued business and provides that where any business is discontinued in any financial year, the Assessing Officer may charge to tax in that financial year the tax bases of such business for the period beginning from the first day of the financial year to the date on which the business has been discontinued.

The said clause further provides that any person discontinuing any business shall give notice of the discontinuance to the Assessing Officer within a period of fifteen days from such discontinuance.

The clause also provides that the Assessing Officer may require the person whose business has been discontinued to furnish the return of tax bases and, upon receipt of the return or after the expiry of the notice period to file such return, he shall proceed to make the assessment in accordance with the provisions of the Code. Further, the tax payable on the tax bases computed under this clause shall be in addition to the tax, if any, payable under any other provision of the Code.

Clause 175 relates to assessment of an unincorporated body in case of change in its constitution and provides that the Assessing Officer shall, in such a case, make a single assessment in respect of the entire financial year in which the change has occurred. A change is said to have taken place if existing participants move out or new participants are admitted or all the participants continue with a change in their respective shares or in the shares of some of them.

The said clause further provides that its provisions shall not apply if the change in constitution is on account of the death of a participant or the retirement of all the participants.

Clause 176 seeks to provide that the Assessing Officer shall make separate assessments on any two unincorporated bodies, if—

- (a) one unincorporated body succeeds another unincorporated body; and
- (b) the succession is by virtue of retirement of all participants in the unincorporated body or death of any of the participants.

The said clause also provides that the separate assessments shall be made in accordance with the provisions of clause 168 as if the unincorporated body, succeeding the other unincorporated body, is the successor and the unincorporated body being succeeded is the predecessor.

Clause 177 provides that the Assessing Officer shall assess every return filed by a deductor or collector as if it were a return of tax bases. Further, where a person has failed to file such return, the Assessing Officer shall issue a notice to the person requiring him to furnish the return within the time specified therein. All the other provisions of this Code shall apply as if the return referred to herein were a return of tax bases.

Clause 178 relates to appeals before the Commissioner (Appeals) and provides that an assessee may prefer an appeal to the Commissioner (Appeals) where he is aggrieved by an order passed by any income-tax authority below the rank of the Commissioner as specified in the Twenty-first Schedule to the Code or by an intimation issued under clause 149.

The said clause further provides that the assessee may also prefer an appeal where an application filed by him under clause 161 has not been disposed of by the Assessing Officer within a period of six months from the date of filing of the application or where he is required to bear the liability in respect of the tax deductible on the income payable to a non-resident under any agreement or other arrangement and he claims that no tax was deductible by him on such income and he has deposited the tax to the credit of the Central Government.

Clause 179 provides the manner in which appeals are to be preferred before the Commissioner (Appeals). The appeal by an assessee shall be preferred within the specified time limit and should be in the prescribed form and accompanied by the prescribed fee.

The clause further provides that the Commissioner (Appeals) may admit an appeal after the expiry of the specified time if he is satisfied that the appellant had sufficient cause for not preferring it within that time and the delay in preferring the appeal does not exceed a period of one year.

Clause 180 relates to the procedure to be followed in case of an appeal before the Commissioner (Appeals). It, *inter alia*, provides that the Commissioner (Appeals) may, before disposing of any appeal, make such inquiry as he thinks fit or direct the Assessing Officer to do so. He may also allow the appellant to go into any new ground of appeal if he is satisfied that the omission was not wilful or unreasonable.

Clause 181 relates to the powers of the Commissioner (Appeals) and, *inter alia*, provides that, in case of an appeal before him, he shall have the power to confirm, reduce, enhance or annul an assessment or to confirm or cancel a penalty or enhance or reduce it.

The said clause further provides that the Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

Clause 182 relates to the constitution of the Appellate Tribunal and provides that the Central Government shall constitute an Appellate Tribunal consisting of a President and as many judicial and accountant members, as it thinks fit, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Code.

The said clause also provides as to who shall be eligible to be the President, a Vice-president, a judicial member or an accountant member of the Appellate Tribunal.

Clause 183 seeks to provide that an assessee may prefer an appeal to the Appellate Tribunal if he is aggrieved by any of the orders specified therein. Similarly, the Commissioner may, if he is not satisfied with the order passed by the Commissioner (Appeals), direct the Assessing Officer to prefer an appeal to the Appellate Tribunal against such order.

The said clause further provides that no appeal shall lie to the Appellate Tribunal against the order of the Commissioner (Appeals) or Commissioner in the case of a public sector company.

The clause also provides that every appeal shall be preferred within the time period specified therein and allows the respondent to file a memorandum of cross-objection against any part of the order of the Commissioner (Appeals). The Appellate Tribunal may admit an appeal, or a memorandum of cross-objection, after the expiry of the period specified if it is satisfied that the appellant had sufficient cause for not preferring it within that time and the delay in filing the appeal does not exceed a period of one year.

Clause 184 relates to an order of stay of demand by the Appellate Tribunal. The said clause *inter alia* provides that the Tribunal may grant a stay of demand to the assessee for a period of one hundred and eighty days in the first instance and extended up to a maximum period of three hundred and sixty-five days and endeavour to dispose of the appeal in such time.

Clause 185 deals with the orders of the Appellate Tribunal and, *inter alia*, provides that the Tribunal may, after hearing both parties, pass such orders as it thinks fit. It shall also have the power to rectify any mistake apparent on the face of the record within the period of four years from the date of such order and, accordingly, amend any order passed by it.

Clause 186 deals with constitution of Benches and procedure of the Appellate Tribunal. The said clause seeks to provide that the powers and functions of the Tribunal may be exercised and discharged by its Benches constituted by the President from among the members. Each Bench shall consist of one judicial member and one accountant member. The President may constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member. If on any point the members of a Bench differ in opinion, it shall be decided according to the opinion of the majority.

The said clause further provides that any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of section 192 and section 228 and for the purpose of section 196 of the Indian Penal Code. The Appellate Tribunal shall also have powers to regulate its own procedure and procedure of Benches.

Clause 187 deals with appeals to the High Court and seeks to provide that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

The said clause further provides that the Chief Commissioner or the Commissioner or an assessee may file an appeal to the High Court within the specified period and in the specified form. The High Court may admit an appeal after the expiry of the specified period if it is satisfied that there was sufficient cause for not filing the appeal within that period.

The said clause also provides that the High Court may exercise its power to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question of law, and shall decide the question of law so formulated and deliver such judgment as it deems fit. Effect to such order shall be given by the Assessing Officer on the basis of a certified copy of the judgment.

The said clause also provides that the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall apply in the case of appeals under this clause.

Clause 188 provides that an appeal filed before the High Court to be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority of such Judges.

Clause 189 deals with appeals before the Supreme Court and provides that an appeal shall lie to the Supreme Court from any judgment of the High Court delivered under clause 187 which the High Court certifies to be a fit case for appeal to the Supreme Court.

Clause 190 relates to hearing before the Supreme Court and seeks to provide that the provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall apply in the case of appeals under section 189 as they apply in the case of appeals from decrees of a High Court.

The said clause also provides that where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 187.

Clause 191 deals with revision of orders prejudicial to revenue and, *inter alia*, seeks to provide that the Commissioner may revise any order passed by any income-tax authority subordinate to him after examining all available records, hearing the assessee and making

such inquiries as he considers necessary if he is satisfied that the order sought to be revised is erroneous in so far as it is prejudicial to the interests of the revenue.

The said clause also provides that the revision order may have the effect of enhancing or modifying the assessment but shall not be an order cancelling the assessment and directing a fresh assessment. Further, the power of the Commissioner for revising an order shall not extend to certain orders specified therein. Besides, no order shall be made after the expiry of a period of two years from the end of the financial year in which the order sought to be revised was passed.

The said clause also provides that an order passed by an income-tax authority shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if it falls in any of the specified categories of orders. It also provides that an order shall not be considered to be erroneous in so far as it is prejudicial to the interests of the revenue if the order has been made by holding a view sustainable in law and the Commissioner is not in agreement due to the existence of another view sustainable in law.

The clause also defines the expression “record”.

Clause 192 seeks to provide that the Commissioner may revise any order passed by an income-tax authority subordinate to him, other than an order to which clause 191 applies, after examining all available records. However, such revision order shall not be prejudicial to the assessee.

The said clause further provides that the power of the Commissioner for revising an order shall not extend to such orders as specified therein.

This clause also provides that the assessee should make an application for revision of any order within the specified time, accompanied by the prescribed fee. Further, the revision order shall not be passed after the expiry of a period of one year from the end of the financial year in which such application is made or a period of one year from the date of the order sought to be revised if the Commissioner revises the order *suo motu*.

Chapter XIII of the Code deals with the provisions relating to collection and recovery. Part A of this Chapter deals with deduction at source.

Clause 193 relates to deduction or collection of tax at source or advance payment. The clause seeks to provide that the tax on any income shall be payable by deduction or collection at source or by advance payment, as the case may be, in accordance with the provisions of this Chapter, notwithstanding that the regular assessment in respect of such income is to be made in a later financial year.

Sub-clause (2) of the said clause is an overriding provision stipulating that nothing in this clause shall prejudice the charge of tax on such income under the provisions of sub-clause (2) of clause 2.

Clause 194 relating to direct payment seeks to provide that the tax on income has to be paid directly by the person if there is no provision under this Chapter for deduction or collection of income-tax at the time of payment or income-tax has not been deducted or collected in accordance with the provisions of this Chapter.

Sub-clause (2) of the said clause provides that any person who is required to deduct or collect any sum in accordance with the provisions of the Code does not deduct or collect, or after so deducting or collecting fails to pay the whole or any part of the tax required to be collected or deducted under the Code, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax.

Clause 195 relating to liability to deduct tax at source seeks to provide that any person responsible for making a specified payment shall, at the time of payment, deduct income-tax therefrom at the appropriate rate. The clause further provides that the specified payment and

the appropriate rate shall be such as are listed in the Third Schedule in the case of a resident deductee and in Fourth Schedule in the case of a non-resident deductee.

The said clause further provides that in the case of a non-resident deductee, where a rate in respect of such specified payment has been provided in the relevant agreement entered into by the Central Government under clause 291, the appropriate rate shall be lower of the Scheduled rate or the rate provided in such agreement.

The said clause also provides that if the deductee is required to obtain permanent account number and does not furnish such number to the deductor, deduction of tax at source in such case shall be at the rate of twenty per cent. or at the rate specified in the said clause, whichever is higher.

Clause 196 relating to payment of income and deduction of tax, *inter alia*, provides that deduction at source shall have to be made at the earliest point of the making of payment in cash, by issue of a cheque or draft, by credit to any account, whether called suspense account or by any other name, or by any other prescribed mode.

The clause further provides that where the payment is wholly or partly in kind, the deductor should ensure the payment of tax deductible at source before making the payment. It is further provided that where the payment is to be taxed under the head "Income from employment" or is in nature of interest, the deductor can adjust the amount of deduction to offset any deficiency or excess of previous deduction or non-deduction during the financial year. The said clause further enjoins the deductor to take into account any other income from employment and tax deducted thereon of the deductee from any other employer and also the tax relief for arrears or advance receipts.

The said clause also provides that in a case where the tax payable on any payment is to be borne by the deductor in pursuance of an agreement or arrangement, the payment has to be grossed up to such amount as would, after deduction of tax thereon at the appropriate rate, be equal to the net amount payable under such agreement or arrangement.

Clause 197 seeks to empower the Assessing Officer to give a certificate for lower or no deduction of tax to the deductee where the deductee is a resident or to the deductor where the deductee is a non-resident, if the Assessing Officer is satisfied that the total income of the deductee justifies deduction of tax at a lower or nil rate. Accordingly, the clause provides that deduction shall be made in accordance with the certificate, until such certificate is cancelled by the Assessing Officer or the expiry of the validity of the certificate, whichever is earlier.

Clause 198 relating to obligations of deductor, seeks to provide that every deductor shall pay the sum deducted to the credit of the Central Government within the prescribed time and manner, furnish a certificate to the deductee and also deliver a return of tax deduction in the manner provided in clause 199.

Clause 199 relates to payments to resident without deduction of tax. The said clause seeks to provide that every deductor, being a financial institution or cooperative society or any other notified deductor, shall deliver, or cause to be delivered, a return in respect of payment of interest to residents without deduction of tax. The clause further empowers the Board *inter alia* to provide for the period of such return, its form, manner of verification, time in which it is to be filed, medium of filing.

Clause 200 seeks to provide for the cases in which no deduction of tax shall be made. It, *inter alia*, provides that in the case of resident deductee, no deduction of tax shall be made if —

- (a) any payment, other than salary, is made by an individual or a Hindu undivided family who is not required to get its accounts audited for the financial year immediately preceding the financial year in which the payment is made;
- (b) any interest payable on any security,—
 - (i) of the Central Government or a State Government; or
 - (ii) issued by a company, if such security is in dematerialized form and is listed on a recognised stock exchange in India;

(c) any interest on certain debenture payable to an individual, if the aggregate amount payable during the financial year does not exceed five thousand rupees;

(d) any interest on certain time deposits with a bank or a housing-finance public company, if the aggregate amount payable by the branch of the bank or company during the financial year, does not exceed ten thousand rupees;

(e) any interest payable to any banking company, co-operative bank, financial corporation established by or under a Central or State or Provincial Act, insurer, mutual fund or any notified institution, association or body;

(f) any interest payable by a firm to a partner of the firm;

(g) any amount payable on maturity, or redemption, of a zero coupon bond;

(h) any payment for carriage of goods by road transport if the payee furnishes his Permanent Account Number to the payer;

(i) any payment to a contractor in respect of works contract, service contract, advertising, broadcasting and telecasting, supply of labour for carrying out any works, or service, contract or carriage of goods or passengers by any mode of transport, other than by railways, if —

(i) the amount of any payment during the financial year does not exceed thirty thousand rupees; and

(ii) the aggregate amount of the payments during the financial year does not exceed seventy-five thousand rupees;

(j) any payment of rent, if the aggregate amount of the payments during the financial year does not exceed one lakh eighty thousand rupees;

(k) any payment of compensation on compulsory acquisition of immovable property, if the aggregate amount of the payments during the financial year does not exceed two lakh rupees;

Further, in the case of a non-resident deductee, being a foreign institutional investor, deduction shall not be made on any payment made to it as a consideration for sale of securities listed on a recognised stock exchange.

Clause 201 relating to credit for tax deducted, seeks to provide that for the purposes of computing total income of a deductee, the sum deducted on payments made to him shall be deemed to be his income received. Further the clause seeks to provide that the sums which have been deducted and paid to the Central Government, shall be treated as a payment of tax on behalf of the deductee. The clause further seeks to empower the Board to prescribe the procedure for giving credit to the deductee, the financial year for which such credit may be given and any other matter connected therewith.

Clause 202, seeks to *inter alia* provide that any person, being a seller, lessor or licensor, who is responsible for collecting any amount on account of—

(a) sale of alcoholic liquor for human consumption, tendu leaves, timber obtained under a forest lease or otherwise, any other forest produce not being timber or tendu leaves, or scrap; or

(b) granting of lease or licence or contract or transfer of any right or interest, either in whole or in part, for a parking lot or toll plaza or for mining or quarrying,

shall collect three per cent. of such sum as income-tax.

The said clause further provides that the collection should be made at the earliest of the time when the the payment is received in cash, by way of a cheque or draft, by debit to any account, whether called “suspense account” or by any other name or by any other

prescribed mode. It is further provided that the sum so collected has to be paid to the credit of the Central Government within prescribed time and manner. The person responsible for collecting any amount is also required to furnish to the buyer, lessee or licensee, a certificate of tax collection within prescribed time, and to file a return of tax collected at source in the form and manner as prescribed by the Board.

Clause 203 relating to credit for tax collected seeks to provide that all sums collected from a collectee and paid to the credit of the Central Government shall be deemed to be a payment of tax on behalf of the person from whom such amount has been collected. The clause further seeks to empower the Board to prescribe the procedure for giving credit to the collectee, the financial year for which such credit may be given and any other matter connected therewith.

Clause 204 relates to interpretations under the Sub-chapter A and B. For this purpose the said clause, *inter alia*, defines the terms “broadcasting and telecasting”, “professional or technical services”, “service contract”, “work”, “buyer”, “lessee”, “licensee”, “lessor”, “licensor”, “scrap” and “seller”.

Clause 205 relates to the liability to pay advance tax. The said clause seeks to provide that every person shall be liable to pay advance-tax during any financial year if the amount of advance income-tax payable by him exceeds ten thousand rupees. For ascertaining the liability to pay advance-tax, the tax on estimated total income is reduced by the tax deductible or collectible at source and the amount of any tax credit available under clause 207.

The said clause further provides that persons other than companies are liable to pay advance income-tax, in three instalments i.e. on or before 15th September, 15th December and 15th March. Amount payable by these three dates should amount to 30 per cent., 60 per cent. and 100 per cent of the advance-tax payable. Similarly for a company, there are four instalments, the dates being on or before 15th June, 15th September, 15th December and 15th March. The corresponding percentages in the case of a company are 15 per cent., 45 per cent, 75 per cent and 100 per cent. It is further provided that any amount of advance income-tax paid after 15th March but before the expiry of the financial year shall be treated as advance income-tax paid during the financial year.

The said clause also empowers the Assessing Officer to issue an order to an assessee (not after last date of February of the financial year) to pay advance income-tax in such instalments as specified in the order, if in the opinion of the Officer, the assessee is liable to pay such amounts as advance income-tax. However, the assessee may still pay the advance tax in accordance with his estimation after filing such estimation to the assessing officer.

Clause 206 seeks to provide that the Assessing Officer shall grant relief in the prescribed manner to a person if he is in receipt in any financial year of any arrears, or advance, of salary or family pension relating to any other financial year. An application is required to be made to avail of such relief. Such relief, however, would not be allowed in respect of any compensation received towards retrenchment, voluntary retirement or termination of service.

Clause 207 relates to foreign tax credit allowable to an assessee, being a resident in India in any financial year on income which is taxed in India as well as outside India.

The said clause further provides that where the assessee is required to pay Indian income-tax in respect of an income which has been taxed in any specified territory or other country with which India has an agreement under clause 291, the foreign tax credit shall be allowed in accordance with the agreement entered into with such specified territory or country. Where there is no such agreement, the tax credit shall be determined at the Indian rate of tax or the rate of tax of the other country, whichever is lower. The credit, in either case shall not

exceed the Indian income-tax payable in respect of income which is taxed outside India and the Indian income-tax payable on total income of the assessee.

Clause 208 of the Bill seeks to provide that wealth-tax referred to in clause 112 shall be payable by the due date of filing of the return of tax-bases.

Clause 209 relates to interest for default in furnishing return of tax-bases and it, *inter alia*, provides that for default in furnishing return of tax bases, the assessee shall be liable to pay simple interest at the rate of one per cent. per month, in specified circumstances.

This clause further provides the method of computation of the period for which the interest shall be payable, the amount on which the interest shall be chargeable etc. The interest shall be increased or reduced, in accordance with the variation in the amount of tax on which interest was payable under this clause.

Clause 210 relates to interest for default in payment of advance income-tax. The circumstances specified in which this interest is chargeable are where the assessee is liable to pay advance income-tax and has failed to pay such tax, or where the advance income-tax paid by such assessee is less than ninety per cent. of the assessed tax.

This clause further provides the method of computation of the period for, and the amount on, which the interest is chargeable. The interest is payable at the rate of one per cent. per month. The interest shall be increased or reduced, in accordance with the variation in the amount of tax on which interest was payable under this clause.

Clause 211 relates to interest for deferment of advance income-tax. The clause seeks to provide that where an assessee who is liable to pay advance income-tax has failed to pay such tax or has paid lesser advance tax before the due dates as specified, he shall be liable to pay simple interest at the rate of one per cent. per month for a period of three months.

The said clause also specifies the manner in which the interest has to be calculated. The interest shall not be payable on any shortfall in the advance income-tax payable on account of under-estimation or failure to estimate the amount of capital gains and income of the nature listed at serial number 4 in the Table in Part III of the First Schedule.

Clause 212 relating to interest on excess refund, seeks to provide that an assessee shall be liable to pay simple interest at the rate of one-half per cent. per month on the excess amount of refund granted to him in specified circumstances and for the period as mentioned in this clause.

Clause 213 relating to interest payable on demand raised seeks to provide that an assessee shall be liable to pay simple interest at the rate of one per cent. per month for the delay in payment of any demand after the expiry of the notice period for such payment.

Clause 214 relates to interest for failure to deduct or pay tax. The said clause seeks to provide that where any person who is required to deduct or collect any tax in accordance with the provisions of the Code, does not deduct or collect the whole or any part of the tax, or after deduction or collection fails to pay the tax, he shall be liable to pay simple interest —

(a) at the rate of one per cent. per month on the amount of such tax for the period from the date on which such tax was deductible or collectible to the date on which such tax is deducted or collected, as the case may be; and

(b) at the rate of one and one-half per cent. per month on the amount of such tax for the period from the date on which such tax was deducted or collected, as the case may be, to the date on which such tax is paid.

Clause 215, inter alia, provides that an assessee shall be entitled to a refund of the excess of any amount paid by him for any financial year over the amount with which he is liable under the Code. However, where an assessment is set aside or cancelled or an order of

fresh assessment is directed to be made in an appeal, etc., he shall be entitled to the refund only on the making of the fresh assessment.

Clause 216 relates to interest on refunds. The said clause seeks to provide that assessee shall be entitled to receive simple interest at the rate of one-half per cent. per month on any amount refundable to him under clause 215 in respect of any financial year for the period specified in the said clause.

The said clause further provides that no interest shall be payable if the amount of refund is less than ten per cent. of the tax determined under clause 149 or on regular assessment. The specified period shall not include the period of delay attributable to the assessee.

The said clause also provides that an assessee shall be entitled to receive simple interest at the rate of one-half per cent. per month on the amount of interest receivable by him under this clause for the period from the date of grant of refund to the date of actual payment of such interest, if such interest is not paid to him along with the refund.

Clause 217 seeks to provide for persons who shall be entitled to claim refund in certain special cases like on account of death, incapacity, insolvency, liquidation, etc., of the person entitled to claim the refund in first place.

Clause 218 relating to recovery by Assessing Officer seeks to provide that any amount specified as payable in a notice of demand, otherwise than by way of advance tax, shall be paid within thirty days of the service of the notice, to the credit of the Central Government. This period, however, can be reduced with the previous approval of the Joint Commissioner if the Assessing Officer has reason to believe that full period shall be detrimental to the interest of revenue.

The said clause further provides that the Assessing Officer can extend the time for payment, or allow payment by instalments during the pendency of appeal with the Commissioner (Appeals) on such conditions as he thinks fit. On default in payment of instalments, the assessee shall be deemed to be an assessee in default in respect of the whole of the amount outstanding. The recovery in such cases may be made by any of the modes provided in clause 220.

The said clause also provides that the assessing officer shall cease to exercise power for recovery of any amount after the Tax Recovery Officer is vested with the powers to recover the tax arrear.

Clause 219 relating to recovery by Tax Recovery Officer seeks to provide that such officer may draw up under his signature a statement of tax arrears (certificate) and shall proceed to recover from the assessee the amount specified in the certificate by one, or more, of the modes referred to in clause 220 or in the Fifth Schedule.

Clause 220 seeks *inter alia* to provide for the modes of recovery for the Assessing Officer or the Tax Recovery Officer. The recovery of tax arrears can be made through employer, debtor or by applying to the court which has custody over the money belonging to the assessee.

Clause 221, *inter alia*, seeks to provide as to who shall be the Tax Recovery Officer competent to take action under clause 219. Such Tax Recovery Officer shall be the one within whose jurisdiction the assessee carries on his business or the principal place of the business of the assessee is situate or the assessee resides or any movable or immovable property of the assessee is situate or who has been assigned jurisdiction under clause 130.

The said clause also provides that if the Tax Recovery Officer competent to take action under clause 219 is not able to recover the tax arrears, he may send a certificate to the other Tax Recovery Officer in whose jurisdiction the assessee resides or has property and then such Tax Recovery Officer shall assume jurisdiction for recovery of tax arrears.

Clause 222 seeks to provide that the amount of tax arrears due from a non-resident may be recovered from any asset of the non-resident, wherever located or from any amount payable by any person to the non-resident.

Clause 223 relates to recovery in the case of a company in liquidation. The said clause, *inter alia*, provides that the liquidator shall inform the concerned Assessing Officer of his appointment within a period of thirty days and thereafter, the Assessing Officer shall intimate to the liquidator, within a period of three months the amount sufficient to provide for any tax arrears or any amount which is likely to become payable thereafter by the company. The liquidator shall not part with any of the assets of the company, or the properties, in his custody until he has been intimated by the Assessing Officer. The amount so intimated shall be the first charge on the assets of the company remaining after payment of the workmen's dues and debts due to secured creditors to the extent specified.

Clause 224 relating to liability of manager of a company, seeks to provide that every person being a manager at any time during the financial year shall be jointly and severally liable for the payment of any amount due under the Code in respect of the company for the financial year, if the amount cannot be recovered from the company. These provisions shall not apply, if the manager proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company. The provisions of this section shall prevail over anything to the contrary contained in the Companies Act, 1956.

Clause 225 relates to joint and several liability of participants. It seeks to hold every person, being a participant in an unincorporated body at any time during the financial year, or the representative assessee of the deceased participant, jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under the Code.

The said clause further provides that in case of a limited liability partnership, these provisions shall not apply, if the partner proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the partnership.

Clause 226 seeks to provide that if the recovery of tax in any area has been entrusted to a State Government under clause (1) of article 258 of the Constitution, the State Government may direct that the recovery shall be made in the same manner and by the same person as the recovery of municipal tax or local rate.

Clause 227 relates to recovery of tax in pursuance of agreements with foreign countries or specified territory and *inter alia* provides for procedure to be followed by the Board and the Tax Recovery Officer for recovery of tax in this regard.

Clause 228 relating to tax clearance certificate in certain cases, seeks to provide that no person shall leave the territory of India unless he furnishes to the notified authority an undertaking to the effect that he has made satisfactory arrangement for discharging his tax liability, if any, in respect of any income or wealth liable to tax in India. Such person shall be one who is not domiciled in India, who has come to India in connection with a business or employment, and who has income derived from any source in India.

The said clause further provides that every person, who is domiciled in India at the time of his departure from India, shall furnish to the notified authority prescribed particulars and obtain a certificate that he has no liability, if in the opinion of the Assessing Officer it is necessary to do so. The Central Government may notify the classes of persons to whom the above provisions shall not apply.

The said clause also provides that the owner or charterer of any ship, or aircraft, shall be personally liable (and also deemed to be an assessee in default in respect of the liability) to pay the whole, or any part, of the amount payable under the Code by any person required to obtain a no objection certificate if the person leaves India without obtaining the certificate.

Clause 229 relates to recovery by suit not with any other law. The said clause seeks to provide that the several modes of recovery specified in this Chapter shall not affect in any way any other law for the time being in force relating to the recovery of debts due to Government, or the right of the Government to institute a suit for the recovery of the tax arrears from the assessee.

Clause 230 deals with penalty for under-reporting of tax bases. It provides that a person shall be liable to a penalty, if he has under reported the tax bases for any financial year, of a sum which shall not be less than, but which shall not exceed two times, the amount of tax payable in respect of the amount of tax bases under reported for the financial year.

The said clause provides that the amount of tax bases under reported shall be the aggregate amount of the addition or disallowance made by the Assessing Officer, the Commissioner or the Commissioner (Appeals), as the case may be. It lists the circumstances under which a person shall be considered to have under reported the tax bases as well as the circumstances under which he shall not be so considered. The said clause, *inter alia*, provides that no addition or disallowance shall form the basis for imposition of penalty, if it has been the basis of imposition of penalty in the case of the person for the same or any other financial year.

The said clause also provides that the penalty shall be imposed by the Assessing Officer, Commissioner or Commissioner (Appeals), as the case may be.

Clause 231 relates to penalty where search has been initiated. It provides that a person shall be liable to a penalty in respect of the undisclosed tax bases for the specified financial year, if a search and seizure has been conducted under clause 135 in his case. Such penalty shall be imposed by the Assessing Officer. It also provides the quantum of penalty imposable in such case.

The said clause defines the terms “undisclosed tax bases” and “specified financial year”.

Clause 232 relates to penalty for other defaults. It provides that a person shall be liable to a penalty if he has, without reasonable cause, committed the defaults that have been listed therein. The said clause also provides the quantum of penalty imposable for different defaults.

Clause 233 deals with the procedure for imposition of penalties. It provides that the specified income-tax authority shall issue a notice within the stipulated time period to any assessee requiring him to show cause why the penalty should not be imposed on him. It further provides that no order imposing a penalty under this Chapter shall be made unless the assessee has been given an opportunity of being heard. The said clause also lays down the procedure for approval of an order imposing penalty by the Joint Commissioner.

Clause 234 provides the time limits for passing the penalty orders. It also provides that in computing such period of limitation, certain specified time periods shall be excluded.

Clause 235 provides that the provisions of Chapter XV shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force relating to prosecution for offences.

Clause 236 deals with contravention of any restraint order. It provides that whoever contravenes any restraint order referred to in sub-clause (7) of clause 135 shall be punishable with rigorous imprisonment and with fine. The said clause also provides the term and quantum of such punishment.

Clause 237 provides that if a person who is required to afford the authorised officer the necessary facility to inspect the books of account or other documents under item (d) of

sub-clause (2) of clause 135, fails to afford such facility, he shall be punishable with rigorous imprisonment and with fine. The said clause also provides the term and quantum of such punishment.

Clause 238 deals with removal, concealment, transfer or delivery of property to thwart tax recovery. It provides that whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, with the intention of preventing such property or interest therein from being taken in execution of a certificate under the provisions of the Fifth Schedule shall be punishable with rigorous imprisonment and with fine. The said clause also provides the term and quantum of such punishment.

Clause 239 provides that if a person fails to give information as required by sub-clause (1) of clause 223 or fails to set aside the amount as required by sub-clause (3) of that clause or parts with any of the assets of the company or the properties in his custody in contravention of the provisions of the said sub-clause (3), he shall be punishable with rigorous imprisonment and with fine. The said clause provides the term and quantum of such punishment. It also provides that no person shall be punishable for any such failure to pay tax deducted or collected, if he proves that there was reasonable cause for the same.

Clause 240 deals with failure to pay the tax deducted or collected at source or to pay the dividend or income distribution tax under the provisions of this Code. It provides that if a person fails to pay such tax to the credit of the Central Government, he shall be punishable with rigorous imprisonment and with fine. The said clause provides the term and quantum of such punishment. It also provides that no person shall be punishable for any such failure, if he proves that there was reasonable cause for the same.

Clause 241 provides that if a person wilfully attempts in any manner to evade any tax, penalty or interest chargeable or imposable under this Code, he shall be punishable with rigorous imprisonment and with fine. It provides that such punishment shall be without prejudice to any penalty that may be imposable on him under any other provision of this Code. The said clause also provides for separate term and quantum of such punishment in respect of a case where the amount sought to be evaded exceeds one lakh rupees and other cases where it does not.

The said clause also provides that if a person wilfully attempts in any manner to evade the payment of any tax, penalty or interest under this Code, he shall be punishable with rigorous imprisonment and shall in the discretion of the court also be liable to fine. It provides that such punishment shall be without prejudice to any penalty that may be imposable on him under any other provision of this Code. The said clause provides the term of such punishment.

The said clause defines the phrase “wilful attempt to evade”.

Clause 242 deals with failure to furnish return of tax bases. It provides that if a person wilfully fails to furnish in due time the return of tax bases under sub-clause (1) of clause 144 or in response to a notice under clause 146 or clause 159, he shall be punishable with rigorous imprisonment and with fine. The said clause also provides for separate term and quantum of such punishment in respect of a case where the amount sought to be evaded exceeds one lakh rupees and other cases where it does not.

The said clause also provides that a person shall not be so proceeded against for failure to furnish in due time the return of tax bases under certain specified circumstances.

Clause 243 provides that if a person wilfully fails to produce, or cause to be produced, the accounts and documents on or before the specified date as required by any notice served on him under sub-clause (2) of clause 150, he shall be punishable with rigorous imprisonment or with fine or with both. The said clause provides the term and quantum of such punishment.

Clause 244 provides that if a person wilfully fails to comply with a direction issued to him under sub-clause (1) of clause 151, he shall be punishable with rigorous imprisonment or with fine or with both. The said clause provides the term and quantum of such punishment.

Clause 245 provides that if a person makes a statement in any verification under this Code or under any rule made thereunder or delivers an account or statement which is false and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment and with fine. The said clause also provides for separate term and quantum of such punishment in respect of a case where the amount sought to be evaded exceeds one lakh rupees and other cases where it does not.

Clause 246 deals with wilful falsification of books of account or documents by any person in order to enable any other person to evade any tax or interest or penalty chargeable and imposable under this Code. It provides that such person shall be punishable with rigorous imprisonment and with fine. The said clause also provides that for establishing the charge under this clause, it shall not be necessary to prove that the other person has actually evaded such tax, penalty or interest.

Clause 247 provides that if a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any tax bases chargeable to tax which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-clause (1) of clause 241, he shall be punishable with rigorous imprisonment and with fine. The said clause also provides for separate term and quantum of such punishment in respect of a case where the amount sought to be evaded exceeds one lakh rupees and other cases where it does not.

Clause 248 deals with offences by companies. In respect of any such offence, it provides that the company as well as every person who, at the time the offence was committed, was in charge of and was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the said clause also provides that any such person shall not be so liable if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence.

The said clause provides that where an offence under this Code has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such person shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The said clause also provides that where an offence under this Code has been committed by a company and the punishment for such offence is imprisonment and fine, then the company shall be punished with fine and every person referred to in the preceding paragraphs shall be liable to be proceeded against and punished in accordance with the provisions of this Code.

The said clause defines the terms “company” and “director”.

Clause 249 deals with proof of entries in records or documents. It provides that entries in the records or other documents which are in the custody of an income-tax authority shall be admitted in evidence in any proceeding for the prosecution of any person for an offence under this Chapter. The said clause further provides that the entries may be proved by the production of the records or other documents (containing such entries) which are in the custody of the income-tax authority or by the production of a copy of the entries certified by that authority under its signature as true copy of the original entries.

Clause 250 deals with presumption as to assets, books of account, etc., in certain cases. It provides that where during the course of any search made under clause 135, any material has been found in the possession or control of any person and such material is tendered by the prosecution in evidence against such person, or against such person and the person referred to in clause 247 for an offence under this Code, the provisions of clause 311 shall accordingly apply in relation to such material.

The said clause also provides that where any material taken into custody from the possession or control of any person, is delivered to the requisitioning officer under clause 136 and such material is tendered by the prosecution in evidence against such person, or against such person and the person referred to in clause 247 for an offence under this Code, the provisions of clause 311 shall accordingly apply in relation to such material.

Clause 251 relates to presumption as to culpable mental state. It provides that in any prosecution for any offence under this Code which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state. However, the said clause also provides that it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

The said clause provides that a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

The said clause defines the term “culpable mental state”.

Clause 252, inter alia, provides that no person shall be proceeded against for an offence under clauses 236 to 247, except with the previous sanction of the Commissioner or Commissioner (Appeals), as the case may be.

The said clause further provides that the Chief Commissioner may issue such instructions or directions to such Commissioner or Commissioner (Appeals) as he may think fit for institution of proceedings under this clause. It also provides that the Chief Commissioner may compound any offence under this Chapter under the prescribed circumstances and for the prescribed amount, either before or after the institution of proceedings. However, an offence in relation to which a punishment has been awarded by a court shall not be compounded.

Clause 253 deals with punishment for second and subsequent offences. It provides that if any person convicted of an offence under clauses 240, 241, 242, 243, 245, 246 and 247 is again convicted of an offence under any of the said provisions, he shall be punishable for the second and every subsequent offence with rigorous imprisonment and with fine. The said clause provides the term of such punishment.

Clause 254 provides that any offence punishable under this Chapter shall be deemed to be non-cognizable within the meaning of the Code of Criminal Procedure, 1973, notwithstanding anything contained in that Code.

Clause 255 deals with disclosure of information by public servants. It provides that if a public servant furnishes any information or produces any document in contravention of the provisions of clause 142, he shall be punishable with imprisonment and with fine. It also provides the term of such punishment.

The said clause provides that no prosecution shall be instituted under this clause except with the previous sanction of the Central Government. It also provides that such sanction may be accorded only after giving the public servant an opportunity of being heard.

Chapter XVI of the Code deals with advanced rulings and disputes resolutions.

Clause 256 relates to the scope of ruling and dispute resolution available with the Authority for Advance Rulings and Dispute Resolution. The said clause provides that an applicant or an appellant may seek a ruling or, as the case may be, a resolution of dispute on matters specified therein. The applicant or appellant, as the case may be, who may seek an advance ruling could be a non-resident, a resident any class of residents as notified by the Central Government a public sector company or a Commissioner.

Clause 257 relates to the constitution of the Authority for Advance Rulings and Dispute Resolution. The said clause, *inter alia*, provides that the Central Government shall constitute an Authority for Advance Rulings and Dispute Resolution for the purposes of

pronouncing an advance ruling and resolution of dispute and such Authority shall consist of a Chairperson and such number of Vice-chairpersons and legal and revenue members as the Central Government may deem fit.

The said clause further provides that a Bench shall consist of the Chairperson or the Vice-chairperson and one legal member and one revenue member. The principal Bench of the Authority shall be located at Delhi and other Benches of the Authority shall be located at such places as deemed fit by the Central Government.

Clause 258 relates to the procedure of the Authority in dealing with advance ruling and, *inter alia*, provides that an applicant may make an application for seeking an advance ruling in the prescribed form and accompanied by the prescribed fees.

The said clause further provides that the Authority may, after examining the application and the records called for, either allow or reject the application by an order in writing. The Authority shall not allow the application in the circumstances as specified therein.

The said clause also provides that where an application is allowed, the Authority shall pronounce its advance ruling on the question specified in the application after examining all relevant material and after hearing the applicant and the Commissioner.

Clause 259 seeks to provide that no income-tax authority, or the Appellate Tribunal, shall proceed to decide any issue in respect of which an application has been made by a person falling within the class of persons notified under clause 256.

Clause 260 provides that the advance ruling pronounced by the Authority shall be binding only on the applicant in whose case, and in respect of the transaction in relation to which, the ruling has been pronounced. It shall also be binding on the Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.

The said clause further provides that the advance ruling shall not be binding if there is a change in law, or fact, on the basis of which the advance ruling has been pronounced.

Clause 261 seeks to provide that the Authority may declare an advance ruling to be void *ab initio* if it finds that the ruling has been obtained by the applicant by fraud or misrepresentation of facts and in such case, all the provisions of the Code shall apply to the applicant as if such advance ruling had never been made.

Clause 262 relates to the procedure for dispute resolution. The said clause, *inter alia*, provides that a public sector company or Commissioner may file an appeal against the orders referred to in clause 256 for seeking resolution of a dispute and such appeal shall be preferred within the specified period. Further, it allows the respondent to file a memorandum of cross-objection against any part of the order of the Commissioner (Appeals).

The said clause also provides that the Authority may admit an appeal, or a memorandum of cross-objection, after the expiry of the period specified in specified circumstances. The clause further provides that the orders passed by the Authority shall be final and binding on both the parties.

Clause 263 relates to an order of stay of demand by the Authority. The said clause provides that the Authority may grant a stay of demand to the public sector company for a period of one hundred and eighty days in the first instance and may extend such stay, on an application being made by the public sector company, to a maximum of three hundred and sixty-five days, if it is satisfied that the delay in disposing of the appeal is not attributable to the company.

Clause 264 seeks to provide that the Authority shall have the power to rectify any mistake apparent from the record and may, accordingly, amend any order passed by it under clause 262. However, no such order shall be passed after a period of four years from the date on which the order sought to be amended was made.

Clause 265 provides that the Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 as are referred to in clause 134 of this Code and shall be deemed to be a civil court for the purposes of section 195 of the Code of Criminal Procedure, 1973.

The said clause further provides that every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and for the purposes of section 196 of the said Code.

Clause 266 provides that the Authority shall have the powers to regulate its own procedure in all matters pertaining to it.

Clause 267 defines certain terms that have been used in the Chapter, such as “advance ruling”, “appellant”, “application”, “Authority”, “Chairperson”, etc.

Clause 268 seeks to provide that the Central Government will constitute an Income-tax Settlement Commission for the settlement of cases, consisting of a Chairperson and as many Vice-Chairpersons and other members as the Government deems fit who shall function within the Department of the Central Government dealing with direct taxes. These persons would be appointed from amongst the officers of the Indian Revenue Service who have served for at least 28 years in the service, including at least 5 years in the rank of Commissioner or above.

Clause 269 relates to jurisdiction and powers of the Settlement Commission. The said clause seeks to provide that a Bench of the Commission would be presided over by the Chairperson or a Vice-Chairperson, and would consist of two other members. However, if third member is unable to discharge his functions or in case of vacancy, the Bench may function with only two members. The Bench headed by the Chairperson will be the principal Bench and other Benches will be called Additional Benches. The Chairperson may, for the disposal of any particular case, constitute a Special Bench consisting of more than three Members. These Benches would sit at the notified places except a Special Bench which will sit at a place to be fixed by the Chairperson.

Clause 270 seeks to provide that if there is vacancy in the office of Chairperson or if he is not in a position to discharge his duties, the notified Vice-Chairperson shall act as the Chairperson.

Clause 271 seeks to provides for power of Chairperson to transfer cases from one Bench to another which can be done on the application of the assessee or the Chief Commissioner or Commissioner or on his own motion, after recording the reasons.

Clause 272 seeks to provide that the Benches shall take decision by majority and on equal division, will make a reference to the Chairperson. The clause further seeks to provide the procedure to be adopted subsequently.

Clause 273 relates to application for settlement of cases. The said clause, *inter-alia*, provides that the application should contain full and true disclosure of income or wealth, its manner of deriving and the additional amount of tax payable, etc. The application can be made only after furnishing return of tax bases and payment of income-tax or wealth-tax on income or wealth disclosed in the application. The clause further seeks to provide that the additional tax should be a minimum of fifty lakh rupees in a case of search or requisitioning of material and ten lakh rupees in any other case, for making the application. An application once made cannot be withdrawn.

Clause 274 seeks to provide working for calculating the additional amount of income-tax.

Clause 275 relates to admission of application. The said clause seeks to provide that the Settlement Commission would issue notice of hearing to applicant within ten days and after hearing him, within a period of twenty days will reject or allow his application. However, if no such order is passed, the application shall be deemed to be allowed. The said clause

further provides that the Commission shall call for the report of the Commissioner within forty-five days of the making of application and within a period of fifteen days of the said report may declare an application as invalid on the basis of such report.

Clause 276 relates to further inquiry into the case. For this purpose the Commission is empowered to call for records from the Commissioner, direct him to make further enquiries, submit reports, etc.

Clause 277 relates to order of settlement. Such order shall provide for the terms of settlement including any demand by way of tax, penalty, etc. The settlement will be void if later it is found that it was obtained by fraud or misrepresentation. The order is to be passed within a period of eighteen months from the end of the month in which the application was made. The order may also cover any other matter relating to the case not covered by the application.

Clause 278 relates to payment of tax on settlement and specifies the time limit for payment of tax in pursuance of the order of the Settlement Commission under section 277, circumstances of its extension, etc. It also provides that simple interest at the rate of fifteen per cent. per annum shall be payable on any default from the date of the expiry of period of thirty days of the receipt of the order of Settlement Commission under clause 277.

Clause 279 relates to power of Settlement Commission to order provisional attachment to protect revenue and, *inter alia*, provides for time limits for which such attachments shall be effective.

Clause 280 relates to revival of proceedings before Assessing Officer. The said clause provides that if the order passed by the Settlement Commission becomes void in the circumstances where it was obtained by fraud or misrepresentation, the proceedings before the Assessing Officer with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was admitted by the Settlement Commission and the Assessing Officer will get twenty-one months from the end of the financial year in which the order becomes void, to frame the assessment.

Clause 281 relates to powers of Settlement Commission after admission. The said clause seeks to provide that the Commission would have powers as are vested in an income-tax authority. It also provides the time period up to which the Settlement Commission will have current jurisdiction with the assessing officer and thereafter exclusive jurisdiction.

Clause 282 relates to inspection and furnishing of reports. The said clause empowers the Commission to provide copies of reports submitted before it, on payment of prescribed fee.

Clause 283 relates to power of Settlement Commission to grant immunity. The said clause seeks to provide that the Commission may, subject to certain conditions, grant immunity from penalty and prosecution with respect to the case covered by the Settlement. The immunity can be withdrawn in the circumstances specified.

Clause 284 relates to abatement of proceeding before Settlement Commission. The said clause seeks to provide that the proceedings before the Settlement Commission shall abate if the application has not been allowed or declared as invalid or the order has not been passed within the time specified. In such circumstances, the Assessing Officer will pass order as if no application has been made. The time taken in proceedings before the Commission would be excluded for assessment purposes and the material available before the Commission can be used by the assessing officer in proceedings before him.

Clause 285 relates to credit for tax paid in case of abatement of proceedings. The said clause seeks to provide that in a case of abatement, the Assessing Officer shall allow the credit for the tax and interest paid on or before the date of making the application before the Settlement Commission or during the pendency of the case before the Commission.

Clause 286 relates to recovery of sums due under order of settlement. The said clause seeks to provide that the jurisdictional Assessing Officer may recover any sum specified in an order of settlement and any penalty for default in making payment of such sum may be imposed and recovered in accordance with the provisions of Chapter XIII.

Clause 287 relates to order of settlement to be conclusive. The said clause seeks to provide that every order of Settlement will be conclusive on the matters stated therein.

Clause 288 relates to bar on subsequent application. The said clause seeks to provide the circumstances when a person shall not be entitled to file subsequent application before the Settlement Commission and the exceptions in this regard.

Clause 289 seeks to provide that any proceeding before the Settlement Commission shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code.

Clause 290 seeks to provide certain interpretations relevant for Chapter XV.

Part—H and Chapter XVIII of the Code deal with general provisions.

Clause 291 relates to agreement with specified territory or foreign countries. The said clause seeks to provide that the Central Government may enter into an agreement with the Government of any country or specified territory for the granting of relief or avoidance of double taxation, for exchange of information for the prevention of evasion or avoidance of income-tax or wealth-tax, for tax recovery, etc. Where for such agreements, the other country has designated certain associations, the clause provides that any specified association in India may enter into such agreement with the specified association of the specified territory outside India and the Central Government will notify the agreement for adopting it.

The said clause further provides that where such an agreement has been entered into, then the provisions of this Code will apply to the assessee to whom the agreement is applicable, if such provisions are more beneficial to him except for provisions regarding General Anti Avoidance Rule, levy of Branch Profit Tax and Control Foreign Company Rules which will apply, whether or not such provisions are beneficial to him.

Clause 292 relates to permanent account number. The said clause, *inter alia*, provides that every person fulfilling prescribed requirements has to apply for the allotment of a permanent account number which shall be allotted to him. Any other person may also apply for such allotment. The number is required to be quoted in prescribed transactions. The Board has been empowered to prescribe rules with regard to form of application, the categories of transactions, and the income-tax authority authorized to receive such application etc.

Clause 293 relates to tax account number. The number is required to be obtained by a deductor or collector of tax at source and has to be quoted in prescribed transactions or documents.

Clause 294 relates to mode of acceptance or repayment of certain loans or deposits. The said clause provides that loans or deposits with aggregate amount in a financial year exceeding fifty thousand rupees, shall not be accepted or repaid otherwise than by an account payee cheque or bank draft. The clause will not apply to any loan or deposit taken or accepted from, the Government, any banking company, post office savings bank or co-operative bank and other listed entities.

Clause 295 relates to obligation to furnish annual information return. The said clause seeks to provide that every person responsible for registering or maintaining books of account or other documents containing a record of any specified financial transaction would be furnish an annual information return in respect of such specified financial transaction. Such persons, *inter alia*, are Registrar or Sub-Registrar appointed under Registration Act, 1908, the registering authority empowered to register motor vehicles, the Post Master General, the Collector, the recognised stock exchange, a depository, etc.

The said clause further provides that “specified financial transaction” will mean a transaction of purchase, sale of property, a transaction by way of an investment made or an

expenditure incurred, etc. The return is required to be furnished for transactions above a specified limit.

The said clause also provides the time and manner of filing of such return, the circumstances in which it would be treated as defective, etc.

Clause 296 relates to certain transfers to be void. The said clause seeks to provide that a transfer of asset or creation of charge on it during the pendency of any proceeding under the Code or after completion shall be void as against any claim in respect of any sum payable unless made for adequate consideration and without knowledge of the pendency of such proceeding or of any such sum payable by the person or with the previous permission of the Assessing Officer. However, the provisions of this clause shall not apply to transfer of any business trading asset.

Clause 297 relates to provisional attachment to protect revenue in certain cases. The said clause seeks to provide that the Assessing Officer can provisionally attach any property belonging to the assessee to protect interest of revenue, with prior approval of the Chief Commissioner or Commissioner. The said clause further provides for time limits for which such attachments would be effective.

Clause 298 relates to service of notice generally. The said clause seeks to provide for the manner of service of any notice, summons, requisition, order, etc., made under the Code.

Clause 299 relates to authentication of notices and other documents. The said clause seeks to provide the manner of authentication of a notice or any other document issued or served for the purposes of the Code.

Clause 300 relates to notice deemed to be valid in certain circumstances. The said clause seeks to provide that a notice would be deemed to be duly served if the person has appeared in any proceeding or co-operated in any inquiry relating to an assessment. The provision will not apply if the person has raised the objection before the completion of the assessment.

Clause 301 relates to service of notice when family is disrupted or unincorporated body is dissolved. The said clause seeks to provide that in such cases, the notice can be served on the last manager of the Hindu Undivided Family or its adult member in specified circumstances and on a participant of an unincorporated body before its dissolution.

Clause 302 relates to publication of information respecting assessee in certain cases. The said clause seeks to empower the Central Government to publish in public interest particulars like name, etc., relating to any proceeding or prosecution. Certain exceptions have been provided in case of penalty.

Clause 303 relates to appearance by registered valuer in certain matters. The said clause seeks to provide that an assessee entitled or required to attend before any income-tax authority or the Appellate Tribunal, in connection with valuation of any asset, may attend through a registered valuer except where he is required to attend personally.

Clause 304 relates to appearance by authorised representative. The said clause, *inter alia*, seeks to provide that an assessee entitled or required to attend before any income-tax authority or the Appellate Tribunal, in connection with any proceeding under the Code, may attend through an authorised representative except where he is required to attend personally.

The said clause further seeks to provide meaning of “authorised representative” and person not qualified to represent an assessee.

Clause 305 relates to rounding off of tax bases, tax, etc. It provides for rounding off of tax-bases to the nearest multiple of hundred rupees and amount payable or receivable by an assessee to the nearest multiple of ten rupees.

Clause 306 relates to indemnity. The said clause seeks to provide that every person deducting, retaining, or paying any tax in pursuance of the Code in respect of income belonging to another person is indemnified for the deduction, retention, or payment thereof.

Clause 307 relates to power to tender immunity from prosecution. The said clause seeks to empower the Central Government to tender immunity to any person from prosecution and the imposition of penalty on fulfilment of certain conditions. The immunity can also be withdrawn also in specified circumstances like concealment of particulars for obtaining immunity, giving of false evidence, etc.

Clause 308 relates to cognizance of offences. The said clause seeks to provide that no court inferior to that of a metropolitan magistrate or a magistrate of the First Class will try any offence under the Code.

Clause 309 seeks to provide that the provisions of section 360 of the Code of Criminal Procedure, 1973, or the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Code, unless the person is of eighteen years of age or more.

Clause 310 relates to return of tax bases, etc., not to be invalid on certain grounds. The said clause seeks to provide that no return of tax-bases, assessment, notice, summons, etc., shall be invalid merely by reason of any mistake, defect or omission if in substance and effect it is in conformity with the intent and purpose of the Code.

Clause 311 relates to presumption as to material found. The said clause seeks to provide that where any material is found in the possession or control of any person during search or survey, it shall be presumed that the material belongs to such person, the contents of the material, being books of account and other documents, are true, etc. Presumption as regards search will also apply to a case of requisition under provisions of clause 136.

Clause 312 relates to bar of suits in civil courts. The said clause seeks to provide that no suit shall be brought in any civil court to set aside, or modify, any proceeding taken or order made under the Code and that no prosecution, suit or other proceeding shall lie against the Government, or any officer of the Government, for anything in good faith done, or intended to be done, under the Code.

Clause 313 seeks to provide power to rescind to the Central Government or the Board or an income-tax authority regarding any notification or order, or approval or registration in respect of an assessee. The power shall be exercised after recording reasons in writing and giving the assessee a reasonable opportunity of showing cause against the proposed rescindment.

Clause 314 deals with interpretations. The said clause provides definitions of terms used in this Code and which have not been separately provided in the respective Chapters. Certain definitions correspond to the definitions provided in the Income-tax Act, 1961 as it stood before the commencement of this Code. Other definitions are new and have been provided for the first time in this Code.

Clause 315 provides the rule of construction for interpreting the provisions of this Code. It provides that a reference to any income or to the result of any computation shall be construed as a reference to both the negative and positive variation of the income or the result. The said clause further provides that any direction for aggregation of two or more items expressed as amounts shall be construed also to include a direction for aggregation of negative and positive amounts in all their combinations. The said clause also provides that the value of any variable in a formula shall be deemed to be nil, if the value of such variable is indeterminable or unascertainable.

Clause 316 relates to power to make rules and seeks to empower the Board to notify rules for the purposes of the Code subject to the control of the Central Government.

The said clause seeks to provide power in general terms as well as in specific matters mentioned therein like the ascertainment and determination of any class of income, the manner of arriving at the income in case of agriculture, a person residing outside India, the

form and manner in which any document, application, claim, return or information may be made or furnished, the fee that may be payable, the authority to be prescribed for any of the purposes of the Code, the procedure of giving effect to the terms of any agreement for avoidance of double taxation etc.

The clause further seeks to provide that the power to make rules will include the power to give retrospective effect, from a date not earlier than the date of commencement of the Code. However, no retrospective effect will be given to any rule so as to prejudicially affect the interests of the assessee.

Clause 317 relates to rules, scheme and certain notifications to be placed before Parliament. The said clause seeks to provide that every rule and scheme made and notification issued under this Code shall be laid before each House of Parliament within time as specified and that if both Houses agree in making any modification or annulment, the rule, scheme or notification will be modified to that extent so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, scheme or notification.

Clause 318 relates to repeal and savings. The said clause seeks to repeal the Income-tax Act, 1961 and the Wealth-tax Act, 1957.

The said clause further provides for savings of certain specified proceedings, agreements, appointments, orders, declaration, etc., under the Acts sought to be repealed.

The said clause, *inter alia*, provides for saving of certain deductions like the deduction under section 80-IA, section 80-IAB, section 80-IB, section 80-IC, section 80-ID, section 80-IE or section 80JJA or section 80JJAA of the Income-tax Act, 1961 if the assessee is eligible for such deduction for the assessment year beginning on the 1st day of April, 2012 and subject to certain conditions.

Clause 319 relates to power to remove difficulties. The said clause seeks to empower the Central Government for the purpose of removing any difficulty which arises in giving effect to the provisions of the Code.

SCHEDULES

The *First Schedule* of the Code seeks to provide various rates for calculating income-tax payable on total income. The Schedule is divided into three Parts. Part I provides rates of income-tax on total income from sources other than a special source. The income of a society, other than a co-operative society, unincorporated body, local authority, and a company is proposed to be taxed at a flat rate whereas, tax slabs have been provided for individual, co-operative society, Hindu undivided family and artificial juridical person. Further, for resident individuals, different slabs have been provided for women tax-payers and senior citizens as relief is proposed to be provided to them *vis-à-vis* other resident tax-payers. The Schedule also provides for a flat rate of tax for a non-profit organisation after a threshold limit.

Part II of the Schedule seeks to provide the method of aggregation of agricultural income for rate purposes in a case where the person to whom Part I is applicable, has net agricultural income during a year exceeding 5000 rupees, and total income exceeds the threshold limit.

Part III seeks to provide rates of taxation if the person has income from any special source. The rates listed pertain to a non-resident or where the person, whether resident or non-resident, has income by way of lottery, crossword puzzle, race, including horse race or card game or any other game or gambling or betting.

The *Second Schedule* seeks to provide rates of other taxes, namely, tax on book profit, tax on distributed profits (dividend) of a domestic company tax on distributed income-tax on branch profits and tax on net wealth.

The *Third Schedule* seeks to provide a list of specified payments and the appropriate rates on which deduction of tax at source is required to be made in the case of a resident deductee.

The *Fourth Schedule* seeks to provide a list of specified payments and the appropriate rates on which deduction of tax at source is required to be made in the case of a non-resident deductee.

Clause 219, inter alia, provides that the Tax Recovery Officer shall proceed to recover from the defaulter, the amount specified in the certificate of tax arrears by the modes referred to in the Fifth Schedule.

Accordingly, the Fifth Schedule provides the procedure for recovery of tax. It corresponds to the Second Schedule of the Income-tax Act, 1961, as it stood before the commencement of this Code.

Part I of the Schedule contains general provisions of the procedure for recovery of tax. It provides the manner of execution of a certificate by the Tax Recovery Officer and the various modes of realisation of the amounts mentioned in the certificate. It further provides that in discharging his duties, the Tax Recovery Officer may seek assistance of the police. Part II of the Schedule provides the procedure for attachment and sale of movable property. Part III thereof provides the procedure for attachment and sale of immovable property. Part IV thereof contains the procedure for distraint and sale of movable property. It provides that such distraint and sale shall be made in the same manner as attachment and sale of any movable property attachable by actual seizure.

Part V of the Fifth Schedule relates to the appointment of receiver for business and for immovable property. It provides that the receiver shall have such powers as may be necessary for the proper management of the property and realisation of the profits or rents thereof. Part VI thereof provides the procedure for arrest and detention of the defaulter for certain acts committed by such defaulter which impede recovery of tax arrears.

Part VII of the Fifth Schedule contains miscellaneous provisions for recovery of tax relating to evidence, appeals, review etc. It also provides that the Board is empowered to make any rules for regulating the procedure under this Schedule.

Clause 10 of this Code provides that the total income for a financial year of a person shall not include certain specified incomes.

Accordingly, the Sixth Schedule of the Code lists such income. In certain cases, such income is exempt subject to the fulfilment of the conditions stipulated therein. In other cases, the income is exempt without any conditions. The Schedule also provides for notification of income in certain cases by the Central Government for this purpose.

Clause 11 of this Code provides that certain persons shall not be liable to income-tax for any financial year.

Accordingly, the Seventh Schedule of the Code enumerates such persons. In certain cases, the Schedule provides that the persons shall not be so liable to income-tax, subject to the fulfilment of conditions stipulated therein. In other cases, the entity shall be completely exempt from tax without any conditions.

Sub-clause (2) of clause 32 of this Code, *inter alia*, provides that the income from the business of insurance is to be computed in accordance with the Eighth Schedule.

Accordingly, the Eighth Schedule seeks to provide that the profits of the business of life insurance shall be the profit determined in the Shareholders' Account (Non-Technical Account) in accordance with the Insurance Act, 1938 as increased and reduced by items specified in the said Schedule. Similarly, it is provided that the profits of the business of insurance other than life insurance shall be the profits disclosed in the annual accounts, copies of which are required to be furnished under the Insurance Act, 1938, to the Controller of Insurance as increased and reduced by items specified in the said Schedule. The profits of business of insurance will be the aggregate of the aforesaid amounts. The said Schedule further provides that the loss from any business of insurance shall be allowed to be set off from the profits of the same business of the succeeding years. The Schedule also seeks to define certain terms relevant to the Schedule.

Sub-clause (2) of clause 15 provides that the income from any special source shall be computed under the class "Income from special sources" in accordance with the provisions of the Ninth Schedule.

Accordingly, the Ninth Schedule provides for the computation of income accrued or received from any special source. It further provides that income from special source shall be presumed to have been computed after giving effect to loss, allowance or deduction under this Code. It also provides that the amount of common costs attributable to any special source which are presumed to have been allowed shall be determined in the prescribed manner.

Sub-clause (2) of clause 32 of this Code, *inter alia*, provides that the profits from the business of operating a qualifying ship shall be computed in accordance with the provisions contained in the Tenth Schedule.

Accordingly, the Tenth Schedule provides that the profits of the business of operating a qualifying ship for a financial year shall be determined in accordance with the formula specified therein. It further provides that the computation of such profits shall be presumed to have been made after giving effect to loss, allowance or deduction under this Code. It also provides that the amount of common costs attributable to such business shall be determined in the prescribed manner.

The said Schedule further provides that the Board may make rules for the purpose of computation of income from the business of operating a qualifying ship. It also defines various terms for the purpose of computation of such income.

Sub-clause (2) of clause 32, *inter alia*, provides that the profits from the business of mineral oil or natural gas shall be computed in accordance with the provisions contained in the Eleventh Schedule.

Accordingly, the Eleventh Schedule provides that the profits of the business of mineral oil or natural gas for a financial year shall be the gross income from such business as reduced by the amount of the business expenditure incurred by the assessee wholly and exclusively for the purpose of such business. It further provides that the computation of such profits shall be presumed to have been given after giving effect to loss, allowance or deduction under this Code. It also provides that the amount of common costs attributable to such business shall be determined in the prescribed manner. The circumstances under which the provisions of this Schedule shall apply have also been specified therein. It also defines various terms for the purpose of computation of such profits.

Sub-clause (2) of clause 32, *inter alia*, provides that the profits from the business of developing a Special Economic Zone or manufacture or production of article or things or providing of any service by a unit established in a Special Economic Zone shall be computed in accordance with the provisions contained in the Twelfth Schedule.

Accordingly, the Twelfth Schedule provides that the profits of the business of developing or operating from a Special Economic Zone or manufacture or production of article or things or providing of any service by a unit established in a Special Economic Zone for a financial year shall be the gross income from such business as reduced by the amount of the business expenditure incurred by the assessee wholly and exclusively for the purpose of such business. It further provides that the computation of such profits shall be presumed to have been made after giving effect to loss, allowance or deduction under this Code. It also provides that the amount of common costs attributable to such business shall be determined in the prescribed manner. The circumstances under which the provisions of this Schedule shall apply have also been specified therein.

Sub-clause (2) of clause 32, *inter alia*, provides that the profits from the business specified in paragraph 1 of the Thirteenth Schedule shall be computed in accordance with the provisions contained in the said Schedule.

Accordingly, the Thirteenth Schedule provides the list of such specified businesses. The provisions of this Schedule shall apply to the said specified businesses which fulfil the prescribed conditions and are notified by the Central Government.

The said Schedule further provides that the profits of every specified business shall be computed separately. The profits of any specified business shall be the gross income from such business as reduced by the amount of the business expenditure incurred by the assessee wholly and exclusively for the purpose of such business. It further provides that the computation of such profits shall be presumed to have been made after giving effect to loss, allowance or deduction under this Code. It also provides that the amount of common costs attributable to such business shall be determined in the prescribed manner. The circumstances under which the provisions of this Schedule shall apply have also been specified therein.

Sub-clause (2) of clause 32, *inter alia*, provides that the profits from the business listed in Fourteenth Schedule where income is determined on presumptive basis shall be computed in accordance with the provisions contained in the said Schedule.

Accordingly, the Fourteenth Schedule provides the list of such businesses. It provides that the income from such business carried on by the assessee at any time during the financial year shall be the amount specified therein and subject to the conditions specified therein.

The said Schedule further provides that the computation of such income shall be presumed to have been made after giving effect to loss, allowance or deduction under this Code. It also provides that the amount of common costs attributable to such business shall be determined in the prescribed manner. The circumstances under which the provisions of this Schedule shall not apply have also been specified therein.

The Fifteenth Schedule relates to depreciation. Depreciation of business capital assets is one of the capital allowances allowed under clause 37 of the Code. The manner of calculation of depreciation of business capital assets is provided in clause 38 of the Code. The said clause makes a reference to Fifteenth Schedule. In respect of any block of assets, the depreciation is to be allowed at the percentages specified against such block of assets in the Table given in the said Schedule on the adjusted value or written down value of such block of assets, as the case may be, as are used for the purposes of the business of the person at any time during the financial year. The said Table broadly divides business capital assets, into twelve classes of assets. These are building, furniture and fittings, vehicles, aeroplanes, rails, ships, books, machinery and plant, scientific research assets, family planning asset, animals and intangible assets. Depreciation shall not be allowed, in respect of any other business capital asset not forming part of any block of assets specified in the Fifteenth Schedule. The said Schedule further provides that no depreciation shall be allowed in respect of any machinery or plant, if the actual cost thereof is allowed as a deduction in one or more years. It is also provided that the depreciation shall be one hundred per cent. of the adjusted written down value of the block of assets, being intangible assets, if the adjusted value or written down value of the block of assets is one lakh rupees or less. The Schedule also seeks to provide list of various items included in the assets listed in the table in the Schedule.

Clause 79 of this Code provides that a person shall be allowed a deduction of a specified sum of the amount of money paid by him in the financial year as contribution or donation to any person specified in the Sixteenth Schedule.

Accordingly, the Sixteenth Schedule provides the list of such persons. Parts I, II, III and IV thereof enumerate the entities in respect of whom contributions or donations are eligible for deduction of one hundred and seventy-five per cent., one hundred and twenty-five per cent., one hundred per cent. and fifty per cent, respectively.

Sub-clause (3) of clause 53 of this Code, *inter alia*, provides that the cost of acquisition of an investment asset specified in the Seventeenth Schedule and acquired by the specified mode shall be the cost specified in the said Schedule.

Accordingly, the Seventeenth Schedule provides the method of determination of the cost of acquisition of investment asset being shares or certain rights which have been acquired by the various modes specified therein.

Sub-clause (160) of clause 314 of this Code defines “mineral” as including a group of associated minerals specified in the Eighteenth Schedule.

Accordingly, Part I and Part II of the Eighteenth Schedule respectively provide the list of such minerals and group of associated minerals.

The Nineteenth Schedule to the Bill deals with three types of funds, *i.e.*, approved provident fund, approved superannuation fund and approved gratuity fund and seeks to provide the guidelines that would govern their approval and functioning. The said Schedule has three parts. Part I deals with approved provident funds, Part II with approved superannuation funds and Part III with approved gratuity funds.

Part I relating to approved provident funds, provides that the Commissioner shall accord or withdraw approval to a provident fund and the conditions, upon the satisfaction of which he will accord approval to such fund, have been specified. In certain circumstances, the conditions can also be relaxed. This Part also provides that certain funds established under a scheme of other specified Acts will be deemed to be approved if notified in this behalf.

The said Part also provides that contribution by an employer in excess of twelve per cent. of the salary or one lakh rupees, whichever is less, and interest credited in excess of the rate of interest prescribed by the Central Government for this purpose, shall be deemed to be the income of the concerned employee and shall be liable to income-tax. Besides, an employee will be entitled to a deduction in computation of his income in respect of his contribution to his account, subject to a specified limit.

Part II of the Schedule relates to approved superannuation funds. As in case of provident funds, the Commissioner shall accord or withdraw approval to a superannuation fund. The conditions, upon the satisfaction of which an approval shall be accorded by the Commissioner, have also been specified.

The said Part further provides as to when the contribution by an employer shall be deemed to be the income of an employer and also for deduction of tax on contributions paid to an employee. It also provides that deduction from the pay of, and contributions on behalf of, employees is to be included in the return to be filed by the employer. The Part also specifies the liability of trustees on cessation of approval given to a superannuation fund and provides for the particulars to be furnished in respect of such funds.

Part III of the Schedule relates to approved gratuity funds. As in case of provident funds, the Commissioner shall accord or withdraw approval to a gratuity fund. The conditions, upon the satisfaction of which an approval shall be accorded by the Commissioner, have also been specified. Further, it has also been provided as to when the contribution by an employer shall be deemed to be the income of an employer. It also specifies the liability of trustees on cessation of approval given to a gratuity fund and provides for the particulars to be furnished in respect of such funds.

In the Nineteenth Schedule, for all three Parts, it has also been provided that an aggrieved employer may file an appeal before the Central Board of Direct Taxes within sixty days from the date of the Commissioner’s order of not according an approval to a fund or of withdrawal of approval. Further, the Board may make rules for the smooth regulation of the funds. Besides, some relevant terms like “employer”, “employee”, “contribution”, “balance to the credit of an employee”, “annual accretion”, etc. have been defined.

The Twentieth Schedule provides the method and manner for computation of income attributable to a Controlled Foreign Company, which shall be included in the total income of an assessee, who is resident in India, for a financial year, in accordance with clause 58. The said Schedule, for the sake of simplicity, has provided formulae for the determination of the amount of income attributable to a Controlled Foreign Company and for the specified income of such a company.

The said Schedule has also defined certain terms like “Controlled Foreign Company”, “territory with a lower rate of taxation” and “associated enterprise”.

Clause 178 provides that an assessee may prefer an appeal to the Commissioner (Appeals) where he is aggrieved by an order passed by an income-tax authority below the rank of Commissioner, as specified in the Twenty-first Schedule. Accordingly, the Schedule provides a list of orders that are appealable before the Commissioner (Appeals).

Clause 37 of this Code, *inter alia*, provides that one of the items of capital allowances *viz.* deferred revenue expenditure allowance shall be such proportion of the expenditure as specified and computed in accordance with the Twenty-second Schedule. Accordingly, the said Schedule seeks to provide the items of deferred revenue expenditure on which deferred revenue expenditure allowance would be available for a financial year. The items provided, *inter alia*, are non-compete fee, premium for obtaining any asset on lease or rent, amount paid to an employee in connection with his voluntary retirement, expenditure incurred by an Indian company, any loss on account of forfeiture of any agreement entered in the course of the business and prescribed preliminary expenditure incurred before the commencement of the business, or in connection with the extension of the business, or in connection with the setting up of new business.

FINANCIAL MEMORANDUM

This Bill seeks to replace the Indian Income-tax Act, 1961 and the Wealth Tax Act, 1957 and thus no additional expenditure of significance, apart from what is being spent on the administration of these Acts, is contemplated by reason merely of the passing of this Bill.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Clause 6 of the Bill provides that the following income shall be deemed to be received in the financial year—

(a) any contribution made by any employer, in the financial year, to the account of an employee under a pension fund;

(b) any contribution made by any employer, in the financial year, to the account of an employee in any other fund;

(c) the annual accretion, in the financial year, to the balance at the credit of any employee in a fund referred to in clause (b) to the extent it exceeds the limit as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make the rules in this regard for the purposes of this clause.

2. Clause 9 of the Bill provides that the total income of any individual shall include, besides other income, all income which accrues, directly or indirectly from assets transferred, directly or indirectly, to the spouse by the individual, otherwise than for adequate consideration, or in connection with an agreement to live apart; and from assets transferred, directly or indirectly, to the son's wife by the individual, otherwise than for adequate consideration. It has been further provided that the Board may prescribe the method for determining the income referred to above.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

3. Clause 18 of the Bill provides that in computing the total income of a person for any financial year, any expenditure attributable to income which is not included in the total income under the Sixth Schedule, and determined in accordance with such method as may be prescribed, shall not be allowed as a deduction.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

4. Clause 23 of the Bill provides for the deductions from the gross salary for computation of income from employment. These deductions include - any allowance or benefit granted by an employer for journey by an employee between his residence and office or any other place of work, to such extent as may be prescribed; any allowance or benefit granted by an employer to an employee to meet expenses wholly, necessarily and exclusively in the performance of the duties of an office or employment of profit, as may be prescribed, to the extent such expenses are actually incurred for that purpose, and to meet personal expenses, considering the place of posting or nature of duties or place of residence, subject to such conditions and limits as may be prescribed; any amount of interest credited, in the financial year, on the balance to the credit of an employee in an approved fund to the extent it does not exceed the amount of interest payable at the rate notified by the Central Government; any allowance provided by an employer to meet the expenditure actually incurred on payment of rent in respect of residential accommodation occupied by the employee, to such extent as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make the rules and notify the "rate of interest" in this regard for the purposes of this clause.

5. Clause 33 of the Bill provides that the gross earnings referred to in clause 32 shall also include any payment or aggregate of payments made to a person in a day, in respect of an expenditure incurred during the financial year or in respect of a liability incurred and allowed as a deduction in any preceding financial year, which has been made otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft; exceeds a sum of thirty-five thousand rupees if the payment is made to transporter for

carriage of goods by road, or a sum of twenty thousand rupees in any other case; and has not been made in such cases and in such circumstances as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make the rules in this regard for the purposes of this clause.

6. Clause 35 of the Bill specifies the operating expenditure with respect to business expenditure and includes remuneration to any working participant or partner to the extent prescribed which it is in accordance with the agreement of the unincorporated body or the Limited Liability Partnership, as the case may be, association and relates to the period falling after the date of such agreement; contribution by a person, being an employer, to an approved fund subject to such limits and conditions, as may be prescribed and to the extent the amount is actually paid;

7. Clause 35 further specifies the deductions for the purpose of determination of operating expenditure, which include contribution by the person, being an employer, to an approved fund subject to such limits and conditions, as may be prescribed and to the extent the amount is actually paid; as well as, any amount credited to the provision for bad and doubtful debts account, not exceeding one per cent. of the aggregate average advances computed in the prescribed manner if the person is a financial institution or a non-banking finance company as may be notified.

Accordingly, it is proposed to empower the Central Government to make rules and issue notifications in this regard for the purposes of this clause.

8. Clause 36 of the Bill specifies the finance charges with respect to business expenditure and includes the amount of interest paid to any participant to the extent prescribed which it is in accordance with the agreement of formation of unincorporated body and relates to the period falling after the date of such agreement; the proportionate amount of discount or premium payable on any bond or debenture issued by the person, calculated in the manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

9. Clause 37 of the Bill provides deduction of an amount in accordance with such deposit scheme in respect of the person carrying on business of growing and manufacturing tea or coffee or rubber in India, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make the rules in this regard.

10. Clause 41 of the Bill provides that a company shall be allowed a deduction equal to two hundred per cent. of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on creating and maintaining an in-house facility for scientific research and development; and carrying out scientific research and development in the in-house facility, if—

(a) the company creates and maintains an in-house facility for carrying out scientific research and development;

(b) the research facility is approved by the Central Government on the basis of recommendation of the prescribed authority; and

(c) the company enters into an agreement with the prescribed authority for co-operation in the research and development facility and for audit of the accounts maintained for such facility.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

11. Clause 41 of the Bill further provides that for the purposes of granting approval to a research facility for claiming deduction for scientific research and development allowance, the Board may prescribe the nature of business, conditions and manner as may be considered necessary for grant of such approval.

12. Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

13. Clause 44 of the Bill provides that the Board may, for the purposes of determining the actual cost of a business Capital asset, prescribe- (a) any other cost which may be included in determining the actual cost; and (b) the method of determining the actual cost in the circumstances which are not provided for in this section.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

14. Clause 45 of the Bill provides that the Board may prescribe-(a) the method of determining the allocation of the written down value or the adjusted written down value of the assets between the different businesses carried on by the person; and (b) the method of determining the written down value or the adjusted written down value of the block of assets in the circumstances which are not provided for in this section.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

15. Clause 47 of the Bill provides that the income from the transfer of any work of art, archaeological, scientific or art collection, book, manuscript, drawing, painting, photograph or print, to the Government or a University or any public museum or institution of national importance or of renown throughout any State or States and notified by the Central Government, shall not be included in the computation of income under the head "Capital gains".

Accordingly, it is proposed to empower the Central Government to issue notification(s) in this regard for the purposes of this clause.

16. Clause 47 further provides that the transfer of any investment asset in a transaction of reverse mortgage under a scheme notified by the Central Government shall not be included in the computation of income under the head "Capital gains".

Accordingly, it is proposed to empower the Central Government to frame the scheme in this regard for the purposes of this clause.

17. Clause 58 of the Bill provides that the gross residuary income shall *inter alia* include any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if it has not been incurred in such cases and under such circumstances, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

18. Clause 59 of the Bill provides that for the purposes of computation of income from residuary sources, any payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, if it has not been incurred in such cases and under such circumstances, as may be prescribed, shall not be allowed as a deduction.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

19. Clause 69 of the Bill provides that a person, being an individual, shall be allowed a deduction for savings in respect of the aggregate of the sums specified in the said clause as does not exceed to the extent of one lakh rupees paid or deposited by the person in a

financial year. The specified sums include any sum as a contribution to any provident fund set up and notified by the Central Government where such contribution is to an account of the individual, spouse or any child of such individual; any sum to effect or keep in force a contract for any annuity plan of any insurer as approved by the Board in accordance with the prescribed guidelines; any sum as a contribution to a pension scheme, approved and notified by the Board in accordance with the prescribed guidelines.

Accordingly, it is proposed to empower the Board to issue notification in this regard for the purposes of this clause.

20. Clause 75 of the Bill provides that a person, being an individual, shall be allowed a deduction in respect of any amount paid by him in the financial year by way of interest on loan taken by him from any financial institution for the purpose of- (a) pursuing his higher education; or (b) higher education of his relatives. For the purposes of this clause, "financial institution" means a banking company or any other financial institution which the Central Government may, by notification, specify in this behalf.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

21. Clause 76 of the Bill provides that a person, being resident individual of Hindu undivided family, shall be allowed a deduction in respect of any amount paid during the financial year for medical treatment of the prescribed disease or ailment of any specified person. This deduction shall not be allowed unless the person obtains a certificate in the prescribed form from a prescribed specialist working in a Government hospital.

According, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

22. Clause 77 of the Bill provides that a person, being resident individual, shall be allowed a deduction of one lakh rupees, if he is a person with severe disability; and of fifty thousand rupees, if he is a person with disability. This deduction shall be allowed if the person obtains a certificate from a medical authority in the prescribed form and manner and the certificate remains valid during the relevant financial year or part thereof.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

23. Clause 78 of the Bill provides that the deduction under this clause shall be allowed if the person, claiming a deduction under this section, obtains a certificate from a medical authority in such form and manner as may be prescribed and the certificate remains valid during the relevant financial year or part thereof.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

24. Clause 79 of the Bill provides that the donation to any person specified in Part IV of the Sixteenth Schedule shall be eligible for deduction under sub-clause (1), if the donee obtains the approval of the prescribed authority in accordance with the procedure and subject to such conditions, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the nominee of this clause.

25. Clause 80 of the Bill provides that a person, being an individual and not in receipt of any house rent allowance, shall be allowed a deduction of any expenditure incurred by him in excess of ten per cent. of his gross total income from ordinary sources towards payment of rent in respect of any furnished or unfurnished accommodation occupied by him for his own residence. This deduction shall be allowed up to a maximum of two thousand rupees per month and shall be subject to such other conditions as may be prescribed having regard to the area or place in which the accommodation is situated.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

26. Clause 82 of the Bill provides for a deduction of income of Investor Protection Fund, if the Fund is notified by the Central Government.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

27. Clause 87 of the Bill provides that every person who has entered into an international transaction shall keep and maintain such information and document in respect thereof, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

28. Clause 87 of the Bill further provides that any person carrying on legal, medical, engineering, architectural profession or profession of accountancy, technical consultancy, interior decoration or any other profession as is notified by the Board, shall keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Code.

Accordingly, it is proposed to empower the Board to issue notifications in this regard for the purposes of this clause.

29. Clause 87 of the Bill further provides that in respect of the maintenance of accounts, the bills or receipts issued to any person shall contain the name, address and such other particulars as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

30. Clause 87 of the Bill further provide that the Board may, having regard to the nature of the business carried on by any class of persons, prescribe- (a) any other books of account and documents to be kept and maintained; (b) the particulars to be contained in the books of account and documents; and (c) the form and the manner in, and the place at, which the books of account and other documents shall be kept and maintained. The Board may, also prescribe the period for which the books of account and other documents required to be kept and maintained under this section shall be retained.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

31. Clause 88 of the Bill provides that every person, who is required to keep and maintain books of account under clause 87 shall get his accounts for the financial year audited. The report of this audit shall be obtained in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed. A person shall be deemed to have complied with the provisions of this clause if the person gets the accounts of his business audited as required by, or under, any other law for the time being in force, before the due date; and obtains by the due date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this clause. Further, a person who has entered into an international transaction shall furnish a report of the international transaction entered into during the financial year to the Transfer Pricing Officer on or before the due date. This report shall be obtained from an accountant in the prescribed form duly signed and verified in the prescribed manner by such accountant.

Accordingly, it is proposed to empower the Central Government to make rules and forms in this regard for the purposes of this clause.

32. Clause 89 of the Bill provides that the income chargeable under the head "Income from business" or "Income from residuary sources" shall, except as otherwise provided in this section, be computed in accordance with either cash or mercantile system of accounting regularly employed by the person. The Central Government may from time to time notify accounting standards to be followed by any class of persons or in respect of any class of income.

Accordingly, it is proposed to empower the Central Government to make rules and issue notifications in this regard for the purposes of this clause.

33. Clause 89 of the Bill further specifies that for the purposes of this clause, “bad or doubtful debts” shall be such debts as may be prescribed, having regard to the guidelines issued by the Reserve Bank of India or the National Housing Bank, as the case may be, in relation to such debts.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

34. Clause 90 of the Bill provides that the Central Government may, subject to such conditions as may be considered necessary, notify a person as a non-profit organisation of public importance for the purpose of the Seventh Schedule.

Accordingly, it is proposed to empower the Central Government to issue notifications in this regard for the purposes of this clause.

35. Clause 94 of the Bill provides that the amount of outgoings during the financial year for the purpose of computation of the total income shall include any amount applied outside India, if - (i) the amount is applied for an activity which tends to promote international welfare in which India is interested; and (ii) the non-profit organisation is notified by the Central Government in this behalf.

Accordingly, it is proposed to empower the Central Government to issue notifications in this regard for the purposes of this clause.

36. Clause 94 of the Bill further provides that the amount of outgoings during the financial year for the purpose of computation of the total income shall be the aggregate of the amounts specified therein. These amounts include any amount accumulated or set apart for carrying on any charitable activity- (i) to the extent of fifteen per cent. of the total income (before giving effect to the provisions of this clause) or ten per cent. of the gross receipts, whichever is less; and (ii) invested or deposited in the modes specified in clause 95, for a period not exceeding three years from the end of the financial year. The modes of investing or depositing the money in such activity include any other mode of investment or deposit as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of clause 95.

37. Clause 98 of the Bill provides that a non-profit organisation shall make an application for its registration in the prescribed form and manner to the Commissioner. These provisions shall not apply to any non-profit organisation which has been granted approval or registration under the Income Tax Act, 1961 before the commencement of the Code, if the organisation fulfils such conditions as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules and forms in this regard for the purposes of this clause.

38. Clause 99 of the Bill provides that the non-profit organisation shall keep and maintain such books of accounts, in the manner as may be prescribed. Further, the non-profit organisation shall obtain a report of audit in the prescribed form from an accountant before the due date of filing of the return of tax bases, if the gross receipts referred to in clause 93 in any financial year exceed five lakh rupees.

Accordingly, it is proposed to empower the Central Government to make rules and forms in this regard for the purposes of this clause.

39. Clause 100 of the Bill defines “anonymous donation for the purpose of the said clause to mean any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

40. Clause 101 of the Bill provides that a non-profit organisation shall be liable to income-tax at the rate of thirty per cent. in respect of its net worth subject to the conditions

specified in the said clause. “Net worth” of the non-profit organisation has been defined to mean the aggregate value of the total assets of the non-profit organisation a reduced by the liabilities of such organisation computed in accordance with such rules of valuation as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

41. Clause 104 of the Bill provides that every company to which this clause in respect of computation of book profit applies, shall obtain a report in such form as may be prescribed from an accountant certifying that the book profit has been computed in accordance with the provisions of this clause.

Accordingly, it is proposed to empower the Central Government to make rules and issue forms in this regard for the purposes of this clause.

42. Clause 108 of the Bill provides that the venture capital company, the venture capital fund or the person responsible for making payment of the income on behalf of such company or fund shall furnish, within such time as may be prescribed, to the person receiving such income and to the prescribed income-tax authority, a statement in the prescribed form and manner, giving details of the nature of the income paid during the financial year and such other relevant details as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for th purposes of this clause.

43. Clause 110 of the Bill provides that every life insurer shall be liable to pay tax on any amount of income, computed in the manner prescribed, distributed or paid to the policy holders of an approved equity oriented life insurance scheme.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

44. Clause 110 of the Bill further to provide that in this clause “approved equity oriented life insurance scheme” means—

(i) a life insurance scheme where more than sixty-five per cent. of the total premia received under such scheme are invested by way of equity shares in domestic companies; and

(ii) such scheme is approved by the Board in accordance with such guidelines as may be prescribed.

Accordingly, it is proposed to empower the Board to frame the guideline in this regard for the purposes of this clause.

45. Clause 113 of the Bill provide that in relation to computation of net wealth for the purposes of targeability of wealth-tax, the value of any specified asset, other than cash, referred to in the said clause, shall be determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

46. Clause 117 of the Bill provides that the arm’s length price in relation to an international transaction shall be determined in accordance with any of the methods as may be prescribed, being the most appropriate method; the most appropriate method shall be determined having regard to the nature of transaction, class of transaction, class of associated enterprises or functions performed by such enterprises or such other relevant factors as may be prescribed; and the most appropriate method determined as above shall be applied for determination of arm’s length price in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

47. Clause 116 of the Bill further provides that the determination of arm's length price shall be subject to safe harbour rules, as may be prescribed in this behalf.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

48. Clause 118 of the Bill provides that the Board may, by notification, frame a Scheme for advance pricing agreement in respect of an international transaction.

Accordingly, it is proposed to empower the Board to frame the scheme in this regard for the purposes of this clause.

49. Clause 123 of the Bill provides that the provisions in respect of general anti-avoidance rule shall apply in accordance with such guidelines as may be prescribed.

Accordingly, it is proposed to empower the Central Government to frame the guidelines in this regard for the purposes of this clause.

50. Clause 124 of the Bill provides that for the purposes of the Chapter on "Special Provisions Relating To Avoidance Of Tax", two enterprises shall be deemed to be associated enterprises at any time during the financial year, if they are associated with each other by virtue of the conditions specified in the said clause. These conditions include – 'any specific or distinct location of either of the enterprises as may be prescribed'; 'any other relationship of mutual interest, existing between the two enterprises, as may be prescribed'.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purpose of this clause.

51. Clause 127 of the Bill further provides that the Board may, by notification, direct that any income-tax authority or authorities specified in the notification shall be subordinate to such other income-tax authority or authorities as may be specified in such notification.

Accordingly, it is proposed to empower the Board to issue notification in this regard for the purposes of this clause.

52. Clause 133 of the Bill provides in relation to retention and application of seized assets, the Assessing Officer shall release, within the time and subject to such conditions prescribed, to the person from whose custody the assets were seized, any asset or proceeds thereof, which remains after the liabilities referred to in the said clause are discharged.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

53. Clause 135 of the Bill provides that in relation to search and seizure, the Board may make rules —

- (a) to provide for the procedure to be followed by the Authorised Officer —
 - (i) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available; and
 - (ii) for ensuring safe custody of any material seized; and
- (b) any other matter in relation to search and seizure under this clause.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

54. Clause 140 of the Bill provides that for the purposes of the Direct Taxes Code, the Board may, notwithstanding anything contained in any other law for the time being in force, require —

- (a) any prescribed person to furnish such information within such time and in such form and manner as may be prescribed; and
- (b) any prescribed income-tax authority to call for such information in such form and manner as may be prescribed.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

55. Clause 142 of the Bill provides that the Chief Commissioner or the Commissioner may furnish, or cause to be furnished, to any person any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Code, if the person makes an application to the Chief Commissioner or the Commissioner in the prescribed form; and the Chief Commissioner or the Commissioner is satisfied that it is in the public interest so to do.

Accordingly, it is proposed to empower the Central Government to issue the form in this regard for the purposes of this clause.

56. Clause 142 of the Bill further provides that the Board, or any person specified by it by an order in this behalf, may furnish, or cause to be furnished, any information in respect of an assessee to any other person performing any functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest specify by notification in this half.

Accordingly, it is proposed to empower the Central Government issue notification in this regard for the purposes of this clause.

57. Clause 144 of the Bill provides that every person shall furnish a return of tax bases on or before the due date to the Assessing Officer or such other authority or agency as may be prescribed.

Accordingly, is proposed to empower the Central Government to make rules in this regard for the rposes of this clause.

58. Clause 144 of the Bill further provides that the person required to furnish a return of tax bases in relation to income shall also include; besides those enumerated in the said clause, any class or classes of persons as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules/issue notification in this regard for the purposes of this clause.

59. Clause 144 of the Bill further provides that the return of tax bases shall be furnished in such form, verified in the manner and setting forth such particulars, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

60. Clause 145 of the Bill provides that the Board may, without prejudice to the provisions of frame a Tax Return Preparer Scheme so as to allow a Tax Return Preparer to prepare and furnish the return of tax bases of any specified class of persons, in accordance with the Scheme.

Accordingly, it is proposed to empower the Board to frame the Tax Return Preparer Scheme in this regard for the purposes of this clause.

61. Clause 149 of the Bill provides that the Board may make a scheme for centralised processing of returns for expeditious determination of the tax payable by, or the refund due to, the assessee.

Accordingly, it is proposed to empower the Board to frame the scheme in this regard for the purposes of this clause.

62. Clause 151 of the Bill provides that the Asuming Officer may direct the assessee to get his accounts audited by an accountant, if, at any stage of the proceeding, he is of the opinion that, having regard to the nature and complexity of the accounts of the assessee and the interests of revenue, it is necessary to do so. The accountant shall furnish the report of the audit in such form, duly signed and verified by him, and setting forth such particulars as may be prescribed and such other particulars as the Assessing Officer may require.

Accordingly it is proposed to empower the Central Government to make rules/forms in this regard for the purposes of this clause.

63. Clause 154 of the Bill further provides that the remuneration of the accountant and other expenses the special audit shall be determined and paid by the Chief Commissioner or Commissioner in accordance with such guidelines as may be prescribed. Accordingly, it is proposed to empower the Central in accordance Government to frame the rules this regard for the purposes of this clause.

64. Clause 155 of the Bill provides that for the purpose of assessment, “eligible assessee” includes any class or classes of persons as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

65. Clause 159 of the Bill provides that for reopening a case, the Assessing Officers all serve on the assessee a notice requiring him to furnish, within a period of thirty days, a return of tax bases for any financial year, in such form, verified in the manner and setting forth such other particulars as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules/forms in this regard for the purposes of this clause.

66. Clause 162 of the Bill provides that any sum payable in consequence of any order made, or intimation issued, under this Code shall be demanded by an income-tax authority by serving upon the assessee a notice of demand in such form and manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules/forms in this regard for the purposes of this clause.

67. Clause 179 of the Bill provides that every appeal under clause 178 to Commissioner (Appeals) shall be in such form and verified in such manner and accompanied by a fee as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules/forms in this regard for the purposes of this clause.

68. Clause 182 of the Bill provides that an appeal or the memorandum of cross-objection to the Appellate Tribunal shall be in such form and be verified in such manner as may be prescribed. The appeal by an assessee shall be accompanied by such fees as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules/forms in this regard for the purposes of this clause.

69. Clause 184 of the Bill provides that an assessee may make an application to the Appellate Tribunal for stay of demand in relating to the appeal preferred by him under 183 and such application shall be accompanied by such fees as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

70. Clause 192 of the Bill provides that every application by an assessee for revision of any order passed by an authority subordinate to the Commissioner, other than an order to which section 190 applies, shall be accompanied by such fees as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

71. Clause 196 of the Bill provides that for the purposes of the liability to deduct tax at source, the specified payment shall be deemed to have been made, if the payment has been made in cash; by issue of a cheque or draft; by credit to any account, whether called ‘suspense account’ or by any other name; or by any other mode as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

72. Clause 196 the Bill further provides that for the purposes of making any deduction of tax from the payment liable to be taxed under the head “Income from employment”, the deductor shall take into account the specified particulars, if any, furnished by the deductee in such form and manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules/forms in this regard for the purposes of this clause.

73. Clause 197 of the Bill provides that the deductee may make an application, in such form and manner, as may be prescribed, to the Assessing Officer seeking a certificate for deduction of income-tax at a lower rate or, as the case may be, no deduction of income-tax from payments to be received by him. Further, the deductor may make an application, in such form and manner as may be prescribed, to the Assessing Officer seeking a certificate for deduction of income-tax at a lower rate or, as the case may be, no deduction of income-tax from payments to be made by him to a non-resident deductee.

Accordingly, it is proposed to empower the Central Government to make rules/forms in this regard for the purposes of this clause.

74. Clause 197 of the Bill further provides that the Board may prescribe the circumstances and the cases in which an application may be made for the grant of the certificate for lower or no deduction of tax and the conditions subject to which such certificate may be granted and provide for all other matters connected therewith.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

75. Clause 198 of the Bill provides that every deductor shall pay the sum deducted to the credit of the Central Government with such time and manner as may be prescribed. Further, every deductor shall furnish to the deductee a certificate to the effect that tax has been deducted within such time and containing such particulars as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

76. Clause 199 of the Bill provides that the Central Government may, by notification in the official Gazette, require any deductor to deliver, or cause to be delivered, a return in respect of any payment without deduction of tax.

Accordingly, it is proposed to empower the Central Government to issue notifications in this regard for the purposes of this clause.

77. Clause 199 of the Bill further provides that the Board shall, in respect of the return of tax-deduction and the return under this clause, prescribe the following:

- (a) the period in respect of which the return is to be furnished;
- (b) the form of the return and the particulars therein;
- (c) the manner of verification of the return;
- (d) the time by, and the medium in, which the return is to be delivered;
- (e) the income-tax authority, or any other person, authorised to receive the return; and
- (f) any other matters connected therewith.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

78. Clause 200 of the Bill provides that no tax shall be deducted at source, where the payee is a resident, from any interest payable to any institution, association or body, or class of institutions, associations or bodies, which the Central Government may, for reasons to be recorded in writing, notify in this behalf. Further, the same shall also apply for any interest payable in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf.

Accordingly, it is proposed to empower the Central Government to issue notifications and make scheme in this regard for the purposes of this clause.

79. Clause 201 of the Bill provides that for the purposes of giving credit in respect of tax deducted, the Board may prescribe —

- (a) the procedure for giving credit to the deductee, or any other person;

- (b) the financial year for which such credit may be given; and
- (c) any other matter connected therewith.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

80. Clause 201 of the Bill provides that for the purposes of tax collection at source, the collection of an amount shall be deemed to have been made, if the amount has been received in cash; by way of a cheque or draft; by debit to any account, whether called “suspense account” or by any other mode as may be prescribed, whichever is earlier.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

81. Clause 202 of the Bill further provides that any person collecting any amount in the form of tax collected at source shall pay the sum so collected to the credit of the Central Government within such time and manner as may be prescribed. Also, every person responsible for collecting any amount the form of tax collected at source shall furnish to the buyer, lessee or licensee a certificate of tax collection within such time as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

82. Clause 202 of the Bill further provides that the Board shall prescribe the following in respect of the return of tax collection:—

- (a) the period in respect of which the return is to be furnished;
- (b) the form of the return and the particulars therein;
- (c) the manner of verification of the return;
- (d) the time by, and the medium in, which the return is to be delivered;
- (e) the income-tax authority, or any other person, authorised to receive the return; and
- (f) any other matter connected therewith.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

83. Clause 203 of the Bill provides that for the purpose of giving credit in respect of tax collected, the Board may prescribe —

- (a) the procedure for giving credit to the collectee, or any other person;
- (b) the financial year for which such credit may be given; and
- (c) any other matter connected therewith.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

84. Clause 204 of the Bill provides that for the purposes of the Chapter on “Collection at Source”, ‘professional or technical services’ means services rendered by a person in the course of carrying on legal, medical, engineering, architectural or accountancy profession, technical consultancy, interior decoration or any other profession as notified by the Board.

Accordingly, it is proposed to empower the Board to make rules/issue notifications in this regard for the purposes of this clause.

85. Clause 205 of the Bill provides that where in the opinion of the Assessing Officer may, any person is liable to pay advance income-tax, he may by an order in writing - require such person to pay advance income-tax calculated in such manner as may be prescribed; and issue to such person a notice of demand under section 168 specifying the instalments

in which such tax is to be paid. Further, the person, who has been served with such an order, may file an estimation, in such form as may be prescribed, to the Assessing Officer, if in his estimation, the advance tax payable by him is lower than the amount specified in the said order, and pay the advance tax in accordance with his estimation on or before the due dates specified in this section.

Accordingly, it is proposed to empower the Central Government to make rules and forms in this regard for the purposes of this clause.

86. Clause 206 of the Bill provides that the Assessing Officer shall, on an application made to him by any person, grant such relief as may be prescribed, if the person is in receipt in any financial year of any arrears, or advance, of salary or family pension relating to any other financial year.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

87. Clause 207 of the Bill provides that the Central Government may, for the relief or avoidance of double taxation, prescribe,—

- (a) the method for computing the amount of credit;
- (b) the manner of claiming credit; and
- (c) such other particulars as may be considered necessary.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

88. Clause 210 of the Bill provides that in relation to interest for default in furnishing return of tax-bases, the Assessing Officer shall serve on the assessee a notice of demand, in such form as may be prescribed, specifying the sum payable on account of increase in the interest payable as a result of modification in the assessed income on account of any rectification, revision or appellate order under the Code, and such notice shall be deemed to be a notice under section 168.

Accordingly, it is proposed to empower the Central Government to issue the forms in this regard for the purposes of this clause.

89. Clause 210 of the Bill provides that in relation to interest for defaults in payment of advance income-tax, the Assessing Officer shall serve on the assessee a notice of demand in such form as may be prescribed specifying the sum payable on account of increase in the interest on account of any rectification, revision or appellate order under the Code and such notice shall be deemed to be a notice under section 168 and the provisions of this Code shall apply accordingly.

Accordingly, it is proposed to empower the Central Government to issue the forms in this regard for the purposes of this clause.

90. Clause 215 of the Bill provides that an assessee shall be entitled to a refund of the excess of any amount paid by him or on his behalf, or treated as paid by him or on his behalf, for any financial year over the amount with which he is liable under the Code, and every claim for refund shall be made within such time and such form and manner, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

91. Clause 216 of the Bill provides that in relation to interest on refunds, the Assessing Officer shall serve on the assessee a notice of demand in such form as may be prescribed specifying the amount of excess interest paid to him where interest is reduced in accordance with the variation in the amount on which the interest was payable as a result of any rectification, revision or appellate order under the Code, and such notice shall be deemed to be a notice under section 161.

Accordingly, it is proposed to empower the Central Government to issue the forms in this regard for the purposes of this clause.

92. Clause 218 of the Bill provides that any amount specified as payable in a notice of demand, otherwise than by way of advance tax, shall be paid within thirty days of the service of the notice, to the credit of the Central Government in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

93. Clause 219 of the Bill provides that the Tax Recovery Officer may draw up under his signature a statement of tax arrears of an assessee in default referred to in sub-section (3) or sub-section (4) of section 213, in the prescribed form.

Accordingly, it is proposed to empower the Central Government to issue the forms in this regard for the purposes of this clause.

94. Clause 220 of the Bill provides that the Assessing Officer or the Tax Recovery Officer may require the employer of the assessee to deduct from any payment to the assessee such amount as is sufficient to meet the tax arrear from the assessee. Upon such requisition, the employer shall comply with the requisition and shall pay the sum so deducted to the credit of the Central Government in the prescribed manner.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

95. Clause 220 of the Bill further provides that the Assessing Officer or the Tax Recovery Officer may, by notice in writing, require any debtor of the assessee to pay such amount, not exceeding the amount of debt, as is sufficient to meet the tax arrear of the assessee. Upon receipt of such notice, the debtor shall comply with the requisition and shall pay the sum to the credit of the Central Government in such manner as may be prescribed within the time (not being before the debt becomes due to the assessee) specified in the notice.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

96. Clause 221 of the Bill provides that the Tax Recovery Officer, may send a certificate, in such manner as may be prescribed, specifying the tax arrear to be recovered, to another Tax Recovery Officer within whose jurisdiction the assessee resides or has property, if the first-mentioned Tax Recovery Officer is not able to recover the entire amount by sale of the property, movable or immovable, within his jurisdiction; or is of the opinion that, for the purpose of expediting, or securing, the recovery of the whole, or any part, of the amount under this chapter, it is necessary so to do.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

97. Clause 228 of the Bill provides that every person, who is domiciled in India at the time of his departure from India, shall furnish to the notified authority such particulars as may be prescribed; and obtain a certificate from the notified authority that he has no liability, if in the opinion of the Assessing Officer it is necessary for such person to obtain such certificate.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

98. Clause 228 of the Bill further provides that no person shall leave the territory of India unless he furnishes to such authority, as may be notified, an undertaking to the effect that he has made satisfactory arrangement for discharging his tax liability, if any, in respect of any income or wealth liable to tax in India.

Accordingly, it is proposed to empower the Central Government to notify the authority in this regard for the purposes of this clause.

99. Clause 228 of the Bill further provides direct Board may having regard to the interesting revenue may prescribe—

(a) the circumstances

(b) the form and manner in which the under taking is so be furnished and

(c) any other manner connected therewith accordingly it is proposed to empower the poorer to make rules and issue forms in this regard for purposes of this clause.

100. Clause 252 of the Bill provides that the Chief Commissioner may compound, either before or after the institution of proceedings, any offence under Chapter XV, under the circumstances and for the amount, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

101. Clause 256 of the Bill provides that an applicant or appellant, being any class of residents as notified by Central Government in the Official Gazette in this behalf, may seek a ruling or, as the case may be, a resolution of dispute on matters concerning a determination in respect of an issue relating to computation of tax bases is pending before any income-tax authority, or the Appellate Tribunal, and such determination shall include the determination of any question of law or of fact relating to such computation of tax bases specified in the application.

Accordingly, it is proposed to empower the Central Government to make rules and issue notifications in this regard for the purposes of this clause.

102. Clause 257 of the Bill provides that in respect of the Authority for Advanced Rulings and Dispute Resolution, the salaries and allowances payable to, and the terms and conditions of service of, the Members shall be such as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

103. Clause 258 of the Bill provides that in respect of the procedure for advance ruling, the application shall be made in such form and manner as may be prescribed, and be accompanied by such fees as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

104. Clause 258 of the Bill further provides that in respect of the procedure for advance ruling, a copy of the advance ruling pronounced by the Authority, duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant and to the Commissioner, as soon as may be, after such pronouncement.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

105. Clause 262 of the Bill provides that in respect of the procedure for dispute resolution, the appeal, or the memorandum of cross objections, shall be in such form and manner and be verified in such manner as may be prescribed. Further, the appeal by the public sector company shall be accompanied by such fees as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

106. Clause 263 of the Bill provides that a public sector company may make an application to the Authority for Advanced Rulings and Dispute Resolution for stay of demand relating to the appeal preferred by it under section 256 and such application shall be accompanied by such fees as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

107. Clause 269 of the Bill provides that the principal Bench and the additional Benches of the Settlement Commission shall ordinarily sit at such places as the Central Government may, by notification in the Official Gazette, specify.

Accordingly, it is proposed to empower the Central Government to issue notifications in this regard for the purposes of this clause.

108. Clause 270 of the Bill provides that in respect of the Settlement Commission, the Vice-Chairperson or, as the case may be, one of the Vice-Chairperson as the Central Government may, by notification in the Official Gazette, authorise in this behalf, shall act as the Chairperson.

Accordingly, it is proposed to empower the Central Government to issue notifications in this regard for the purposes of this clause.

109. Clause 273 of the Bill provides that an assessee may, at any stage of a case relating to him, make an application to the Settlement Commission in such form and manner as may be prescribed, to have the case settled. Such application shall contain, besides the specified particulars, such other particulars as may be prescribed.

It has also been provided that every application made to the Settlement Commission shall be accompanied by such fees as may be prescribed. Further, the assessee shall, on the date on which he makes such an application to the Settlement Commission, also intimate the Assessing Officer in such manner as may be prescribed, of having made such application to the Settlement Commission.

Accordingly, it is proposed to empower the Central Government to make rules and forms in this regard for the purposes of this clause.

110. Clause 282 of the Bill provides that no person shall be entitled to inspect, or obtain copies of, any reports made by any income-tax authority to the Settlement Commission; but the Settlement Commission may, in its discretion, furnish copies thereof to any such person on an application made to it in this behalf and on payment of such fee as may be prescribed. Further, for the purpose of enabling any person whose case is under consideration to rebut any evidence brought on record against him in any such report, the Settlement Commission shall, on an application made in this behalf, and on the payment of such fee as may be prescribed, furnish such person with a certified copy of any such report or part thereof relevant for the purpose.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

111. Clause 291 of the Bill provides that in respect of any agreement with foreign countries or specified territory, the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreements.

Accordingly, it is proposed to empower the Central Government to issue notifications in this regard for the purposes of this clause.

112. Clause 291 of the Bill further provides that in respect of any agreement with foreign countries or specified territory, a person shall not be entitled to claim relief under the provisions of the agreement unless a certificate of his being a resident in the other country or specified territory is obtained by him from the tax authority of that country or specified territory, in the prescribed form.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

113. Clause 292 of the Bill provides that every person who fulfils such conditions and requirements as may be prescribed shall make an application for the allotment of a permanent account number and the applicant shall be allotted a permanent account number. Further, a permanent account number may, having regard to the nature of transactions as may be prescribed, be allotted to any other person, whether or not an application is made by him.

Also, any person who has been allotted a permanent account number shall quote the number in the transactions, or documents, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

114. Clause 292 of the Bill further provides that the Board shall prescribe the following in respect of the permanent account number:

(a) the form and the manner in which an application may be made for the allotment of a permanent account number and the particulars which such application shall contain;

(b) the income-tax authority, or any other person, authorised to receive the application or allot the permanent account number;

(c) the categories of transactions in relation to which Permanent Account Numbers shall be quoted by every person in the documents pertaining to such transactions;

(d) the categories of documents in which such numbers shall be quoted by every person;

(e) class, or classes, of persons to whom the provisions of this section shall not apply;

(f) the form and the manner in which the person who has not been allotted a Permanent Account Number shall make his declaration;

(g) the manner in which the Permanent Account Number shall be quoted in respect of the categories of transactions referred to in clause (c); and any other matters connected therewith.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

115. Clause 293 of the Bill provides that any person who has been allotted a tax account number shall quote the number in the transactions, or documents, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

116. Clause 294 of the Bill provides that no person shall accept from, or repay to, any other person any loan or deposit otherwise than by an account payee cheque or bank draft, if the aggregate amount of such loan or deposit in a financial year exceeds fifty thousand rupees. However, these provisions shall not apply to any loan or deposit taken or accepted from, or by such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify.

Accordingly, it is proposed to empower the Central Government to issue notifications in this regard for the purposes of this clause.

117. Clause 295 of the Bill provides that every person responsible for registering or maintaining books of account or other documents containing a record of any specified financial transaction, under any law for the time being in force, shall furnish an annual information return, in respect of such specified financial transaction. Such person will also include a designated person in the case of an office of Government.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

118. Clause 295 of the Bill further provides that the annual information return in respect of the specified financial transactions shall be furnished to such authority, in such form and manner (including on a floppy, diskette, magnetic cartridge tape, CD-ROM or any computer readable media) and within such time as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

119. Clause 295 of the Bill further provides that for the purposes of furnishing the annual information return, “specified financial transaction” shall include any other transaction as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

120. Clause 295 of the Bill further provides that the annual information return in respect of the financial transactions shall be furnished if the aggregate value of each such transaction in any financial year exceeds the amount as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

121. Clause 295 of the Bill further provides that the prescribed income-tax authority may, if he considers that the annual information return furnished is defective, intimate the defect to the person who has furnished such return and give him an opportunity of rectifying the defect within a period of one month from the service of such intimation. Further, the prescribed income-tax authority shall treat the annual information return as invalid if such defect is not removed within the time allowed, and the provisions of the Code shall apply as if such person had failed to furnish the annual information return.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

122. Clause 295 of the Bill further provides that if a person who is required to furnish an annual information return under the said clause has not furnished the same within the prescribed time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of the notice and such person shall furnish the annual information return within the time specified in the notice.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

123. Clause 304 of the Bill provides that any assessee who is entitled, or required, to attend before any income-tax authority, or the Appellate Tribunal, in connection with any proceeding under this Code, may attend through an authorised representative. An “authorised representative” means a person authorised by the assessee in writing to appear on his behalf, including any person who has acquired such educational qualifications as may be prescribed for this purpose.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

124. Clause 304 of the Bill further provides that a person, not being a legal practitioner or an accountant, who is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, shall not be qualified to represent an assessee as his authorised representative.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

125. Clause 305 of the Bill provides that the method of rounding off of the amount of tax bases to the nearest multiple of hundred rupees, and any amount payable, or receivable, by the assessee, to the nearest multiple of ten rupees under the provisions of the Code shall be such as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

126. Sub-clause (18) of clause 314 of the Bill defines “approved fund” to also mean a provident fund, superannuation fund, gratuity fund, pension fund, or any other fund, as approved by the Board in accordance with the scheme framed and prescribed by the Central Government in this behalf;

Accordingly, it is proposed to empower the Central Government to frame the scheme in this regard for the purposes of this clause.

127. Sub-clause (31) of clause 314 of the Bill defines “backward classes” to mean such classes of citizens, other than the Scheduled Castes and the Scheduled Tribes, as may be notified, from time to time, by the Central Government or any State Government.

Accordingly, it is proposed to empower the Central Government and the State Governments to issue notifications in this regard for the purposes of this clause.

128. Sub-clause (34) of clause 314 of the Bill defines “Board” to mean the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 and notified by the Central Government for the purposes of this Code.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

129. Sub-clause (36) of clause 314 of the Bill defines “broken-period income” to mean the income for the period commencing from the date on which the debt instrument is acquired by the person or the beginning of the financial year, whichever is later, and ending on the date on which the security is sold, and calculated in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

130. Sub-clause (55) of clause 314 of the Bill defines “Competent Investigating Authority” to mean any income-tax authority not below the rank of Joint Commissioner prescribed as such.

Accordingly, it is proposed to empower the Central Government to notify/make rules in this regard for the purposes of this clause.

131. Sub-clause (57) of clause 314 of the Bill defines “computer software” to mean any computer programme recorded on any disc, tape, perforated media or other information storage device; or any customised electronic data or any product or service of similar nature, as may be notified by the Board.

Accordingly, it is proposed to empower the Board to issue notification in this regard for the purposes of this clause.

132. Sub-clause (63) of clause 314 of the Bill defines “Cost Inflation Index” in relation to a financial year as the index as the Central Government may specify by Notification, having regard to seventy-five per cent. of the average rise in the consumer price index for non-urban manual employees for the immediately preceding financial year.

Accordingly, it is proposed to empower the Central Government to notify the “index” in this regard for the purposes of this clause.

133. Sub-clause (74) of clause 314 of the Bill provides that the transfer, in relation to “demerger”, shall be in accordance with such other conditions as may be notified by the Central Government having regard to the necessity to ensure that the transfer is for genuine business purposes. It is further provided that the splitting up or the reconstruction of any authority or a body constituted or established under a Central, State or Provincial Act, or a local authority or a public sector company to form a resulting company, shall be in accordance with the conditions as may be notified by the Central Government.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

134. Sub-clause (86) of clause 314 of the Bill defines “due date” in relation to any other return, other than the return of tax bases, to mean such date as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

135. Sub-clause (87) of clause 314 of the Bill defines “electoral trust” to mean a trust so approved by the Board in accordance with the scheme made in this regard by the Central Government.

Accordingly, it is proposed to empower the Central Government to make the scheme in this regard for the purposes of this clause.

136. Sub-clause (93) of clause 314 of the Bill defines “fair market value”, in relation to an asset, to mean the price determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

137. Sub-clause (112) of clause 314 of the Bill defines “head office expenditure” to mean executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of, in addition to the matters specified therein, such other matters connected with administration as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

138. Sub-clause (159) of Clause 314 of the Bill defines “medical authority” as - (i) the medical authority referred to in clause (p) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or (ii) such other medical authority as may be notified by the Central Government for this purpose.

Accordingly, it is proposed to empower the Central Government to notify the “medical authority” in this regard for the purposes of this clause.

139. Sub-clause (166) of clause 314 of the Bill defines “net worth” in relation to an undertaking or division transferred under slump sale, to mean the value determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

140. Sub-clause (191) of clause 314 of the Bill provides that the value of the perquisites defined therein shall be computed in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in respect of the manner of computation of the value of perquisites for the purposes of this clause.

141. Sub-clause (211) of clause 314 of the Bill defines “recognised stock exchange” to mean a recognised stock exchange as referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 and which fulfils such conditions as may be prescribed and notified by the Central Government for this purpose.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

142. Sub-clause (213) of clause 314 of the Bill defines “registered valuer” to mean a person registered as such by the Board for determining the value of any asset in accordance with the procedure as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

143. Sub-clause (239) of clause 314 of the Bill defines “specified association” to mean any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and notified as such by the Central Government.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

144. Sub-clause (241) of clause 314 of the Bill defines “specified knowledge-based industry or service” to mean any other industry or service, other than those specified therein, as may be notified by the Central Government.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

145. Sub-clause (242) of clause 314 of the Bill defines “specified territory” to mean any area outside India and notified as such by the Central Government.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

146. Sub-clause (250) of clause 314 of the Bill defines “State Pooled Finance Entity” to mean such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

147. Sub-clause (259) of clause 314 of the Bill defines “Tax Recovery Officer” to mean any Income-tax Officer who may be authorised by the Chief Commissioner or the Commissioner, by general or special order in writing to exercise the powers of a Tax Recovery Officer to exercise or perform such powers and functions which are conferred on, or assigned to, an Assessing Officer as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

148. Sub-clause (260) of clause 314 of the Bill provides that “test of continuity of business” stands satisfied, in case of a successor, if he, in addition to fulfilling the conditions specified therein, fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor or to ensure that the business reorganisation is for genuine business purpose.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

149. Sub-clause (284) of clause 314 of the Bill defines “urban area” as an area within such distance from the local limits of any municipality or cantonment board referred to in item (a), as the Central Government may having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

150. Sub-clause (289) of clause 314 of the Bill provides that “value of sweat equity shares” shall be the value of the sweat equity shares on the date on which the option is exercised by the assessee, determined in accordance with the method as may be prescribed, as reduced by the amount actually paid by, or recovered from, the assessee in respect of such shares.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

151. Sub-clause (290) of clause 314 of the Bill defines “venture capital company” to mean a company,—

- (a) which has been granted a certificate of registration as a venture capital company under the Securities and Exchange Board of India Act, 1992; and
- (b) which fulfils all other conditions as may be prescribed in this behalf.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

152. Sub-clause (291) of clause 314 of the Bill defines “venture capital fund” to mean a fund,—

- (a) which has been granted a certificate of registration as a venture capital fund under the Securities and Exchange Board of India Act, 1992; and
- (b) which fulfils all other conditions as may be prescribed in this behalf.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

153. Sub-clause (292) of clause 314 of the Bill defines “venture capital undertaking” to mean such domestic company whose shares are not listed in a recognised stock exchange in India and which is engaged in the business of—

- (a) nanotechnology;
- (b) information technology relating to hardware and software development;
- (c) seed research and development;
- (d) bio-technology;
- (e) research and development of new chemical entities in the pharmaceutical sector;
- (f) production of bio-fuels;
- (g) dairy or poultry;
- (h) building and operating composite hotel-cum-convention centre with seating capacity of more than three thousand;
- (i) development of infrastructure facility; or
- (j) any other business as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

154. Sub-clause (297) of clause 314 of the Bill defines “zero coupon bond” to mean a bond issued by any company, fund or scheduled bank in accordance with a scheme notified by the Central Government; in respect of which no payment and benefit is received or receivable before maturity or redemption from the company, fund or scheduled bank; and which the Central Government may, by notification, specify in this behalf.

Accordingly, it is proposed to empower the Central Government to frame and notify the scheme in this regard for the purposes of this clause.

155. Sub-clause 316 of the Bill provides that the Board may, subject to the control of the Central Government, make rules for the whole or any part of India for carrying out the purposes of this Code. It has been further provided that in particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

- (a) the ascertainment and determination of any class of income;

(b) the manner in which and the procedure by which the income shall be arrived at, in the case of—

(i) agriculture income;

(ii) a person residing outside India;

(iii) a person whose total income includes income referred to in section 8;

(c) the determination of the amount of expenditure allowable under this Code in such manner, to such extent, and on such basis and conditions, as appears to the Board to be proper and reasonable;

(d) the methods by which an estimate of any income liable to tax, or expenditure liable to deduction, may be made, if such income or expenditure cannot be definitely ascertained, or can be ascertained only with an amount of trouble and expense to the assessee which in the opinion of the Board is unreasonable;

(e) the form and manner in which any document, application, claim, return or information may be made or furnished and the fees that may be levied in respect of any document, application or claim;

(f) the class or classes of persons who shall be required to furnish any document, application, claim, return or information in electronic form;

(g) the form and manner in which a document, application, claim, return or information may be furnished electronically;

(h) the document, statement, receipt, certificate or report which, regardless of anything to the contrary contained in this Code, may not be furnished along with the return but shall be produced before the Assessing Officer on demand;

(i) the computer resource or the electronic record to which a document, application, claim, return or information may be transmitted electronically;

(j) the manner in which any document, application, claim, return or information required to be filed under this Code may be verified;

(k) the authority, agency or organisation who may receive any application, claim, return or information on behalf of the Board or the Department;

(l) the procedure to be followed in calculating interest payable by assesseees or interest payable by Government to assesseees under any provision of this Code, including the rounding off of the period for which such interest is to be calculated in cases where such period includes a fraction of a month, and specifying the circumstances in which and the extent to which petty amounts of interest payable by assesseees may be ignored;

(m) the form and manner in which any appeal or cross-objection may be filed under this Code and the manner in which intimation of any such order as is referred to in clause (d) of sub-section (3) of section 184 may be served;

(n) the circumstances in which, the conditions subject to which and the manner in which, the Commissioner (Appeals) may permit an appellant to produce evidence which he did not produce or which he was not allowed to produce before the Assessing Officer;

(o) the fee payable in respect of any appeal, application, reference or ruling;

(p) the maintenance of a register of persons referred to in section 270, other than legal practitioners or accountants, practicing before income-tax authorities and for the constitution of and the procedure to be followed by the authority referred to in sub-section (4) of that section;

(q) the issue of certificate verifying the payment of tax by assesseees;

(r) the authority to be prescribed for any of the purposes of this Code;

(s) the procedure for giving effect to the terms of any agreement for the granting of relief in respect of double taxation or for the avoidance of double taxation which may be entered into by the Central Government under this Code; and

(t) any other matter which by this Code is to be, or may be, prescribed.

The aforesaid clause also provides that any order made, proceeding initiated or conducted, or liability or obligation discharged, in accordance with the Rules framed under this section shall be deemed to be duly made, initiated, conducted or discharged, in accordance with the provisions of the Code. It has also been provided that the power to make rules conferred by this clause shall include the power to give retrospective effect, from a date not earlier than the date of commencement of the Code, to the rules or any of them and, unless the contrary is permitted, no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.

Accordingly, it is proposed to empower the Board to make rules and notifications in this regard for the purposes of this clause.

156. Paragraph 93 of the Fifth Schedule of the Bill provides that the Board may prescribe the form to be used for any order, notice, warrant, or certificate to be issued under the Fifth Schedule.

Accordingly, it is proposed to empower the Board to prescribe forms in this regard for the purposes of this clause.

157. Paragraph 4 of the Sixth Schedule of the Bill provides that the amount of family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including para-military forces) of the Union, if the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed.

Accordingly, it is proposed to empower the Central Government to frame the scheme and make rules in this regard for the purposes of this clause.

158. Paragraph 5 of the Sixth Schedule of the Bill provides that income not included any income arising to a foreign company, as the Central Government may, by notification, specify in this behalf, by way of royalty or fees for technical services received in pursuance of an agreement entered into with the Government for providing services in or outside India in projects connected with security of India.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

159. Paragraph 6 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any income of the European Economic Community (established by the Treaty of Rome of 25th March, 1957), derived in India by way of interest, dividends or capital gains from investments made out of its funds under such scheme as the Central Government may, specify in this behalf.

Accordingly, it is proposed to empower the Central Government to frame the scheme and issue notification in this regard for the purposes of this clause.

160. Paragraph 10 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any income, the nature and extent, accruing to a body or authority which is notified by the Central Government in this behalf if such body or authority—

(a) has been established or constituted or appointed under—

(i) a treaty or an agreement entered into by the Central Government with two or more countries; or

(ii) a convention signed by the Central Government; and

(b) is not established, constituted or appointed for the purposes of profit.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

161. Paragraph 12 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any payment from a provident fund to which the Provident Funds Act, 1925, applies or from any other provident fund set up by the Central Government and notified by it in this behalf.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

162. Paragraph 27 item (a) of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any amount received by way of pension by an individual, who had been in the service of the Central Government or State Government and has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other gallantry award as the Central Government may, by notification, specify in this behalf.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

163. Paragraph 31 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any amount of interest on bonds issued by a local authority or by a State Pooled Finance Entity as a public sector company and specified by the Central Government by notification.

Accordingly, it is proposed to empower the Central Government to make rules and issue notification in this regard for the purposes of this clause.

164. Paragraph 34 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any income and amount thereof notified by the Central Government accruing to any person from any international sporting event held in India, if such event is approved by the international body regulating the international sport relating to such event; has participation of more than two countries; and is notified by the Central Government for the purposes of this paragraph.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

165. Paragraph 41 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any payment received by any employee, from one or more employers, as the cash equivalent of the leave salary in respect of the period of earned leave at this credit at the time of this retirement, to the extent the aggregate of such amount does not exceed the limit as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

166. Paragraph 42 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any payment received by any employee, from one or more employers, by way of gratuity on his retirement, or on his becoming incapacitated prior to such retirement, or on termination of his employment; or any gratuity received by the family on the death of the employee, to the extent the aggregate of such amount does not exceed the limit as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

167. Paragraph 43 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise any amount received by any employee, from one or

more employers, in connection with his voluntary retirement or termination of his service or voluntary separation under any scheme framed for this purpose in accordance with such rules as may be prescribed, to the extent the aggregate of such amount does not exceed the limit as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

168. Paragraph 47 of the Sixth Schedule of the Bill provides that income not included in the total income shall also comprise income of a co-operative society from such activities and to such extent as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

169. Paragraph 22 of the Seventh Schedule of the Bill provides that any electoral trust so approved by the Board in accordance with the scheme made in this regard by the Central Government, shall not be liable to income-tax, if ninety five per cent. of the aggregate of all voluntary contributions received by it during the financial year and the surplus, if any, brought forward from any preceding financial year is distributed to political parties.

Accordingly, it is proposed to empower the Central Government to frame the scheme in this regard for the purposes of this clause.

170. Paragraph 24 of the Seventh Schedule of the Bill provides that any corporation established by the Central or State Government for promoting the interests of the members of a minority community notified as such by the Central Government, shall not be liable to income-tax.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

171. Paragraphs 3 and 4 of the Eighth Schedule of the Bill provides that the profits of the business of insurance other than life insurance shall be the profits disclosed in the annual accounts, copies of which are required to be furnished under the Insurance Act, 1938, to the Controller of Insurance. Such profits shall also be decreased by such amount carried over to a reserve for unexpired risks as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

166. Paragraph 11 of the Eighth Schedule of the Bill provides that the amount of common costs (including depreciation) attributable to the business of insurance shall be determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

172. Paragraph 6 of the Ninth Schedule of the Bill provides that the amount of common costs (including depreciation) attributable to the special source and presumed to have been allowed under paragraph 4 thereof shall be determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

173. Paragraph 7 of the Tenth Schedule of the Bill provides that the amount of common costs (including depreciation) attributable to the business of operating a qualifying ship and any other business shall be determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

174. Paragraph 13 of the Tenth Schedule of the Bill provides that the Board may make rules for the purposes of computation of income from the business of operating a qualifying ship in respect of the following:—

(a) method and time for opting into the tonnage income scheme and the period for, and circumstances under, which the option shall remain in force;

(b) circumstances under which a company may be excluded from the tonnage income scheme;

(c) such other conditions for applicability of tonnage income scheme having regard to the need for generating internal accruals for acquiring new ships and training of crews;

(d) limits for charters of tonnage;

(e) prevention of abuse of the tonnage income scheme, having regard to the need to ensure that no transaction or arrangement results, or but for the rules prescribed hereunder, would have resulted in a tax advantage being obtained for—

(i) a person other than a qualifying shipping company; or

(ii) a qualifying shipping company in respect of its activities other than its business of operating a qualifying ship;

(f) valuation of goods or services where these are transferred between the business of operating a qualifying ship and any other business carried on by a qualifying shipping company;

(g) determination of arm's length price of the business transactions if the arrangement of transactions results in abuse of the tonnage income scheme.

It is proposed to empower the Board to make rules in this regard for the purposes of this clause.

176. Paragraph 16 of the Tenth Schedule of the Bill further provides that the 'deemed tonnage' in a case where an arrangement has been entered into by the qualifying company for purchase of slots, slot charter or sharing of a qualifying ship, calculated in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

177. Paragraph 3 of the Eleventh Schedule of the Bill provides that for the purpose of computing the profits of the business of mineral oil or natural gas, the amount of business expenditure shall be the aggregate of the amounts specified therein, payment to Site Restoration Account maintained in State Bank of India in accordance with the Scheme as may be prescribed.

Accordingly, it is proposed to empower the Central Government to frame the Scheme in this regard for the purposes of this clause.

178. Paragraph 6 of the Eleventh Schedule of the Bill provides that the amount of common costs including depreciation attributable to the business of mineral oil or natural gas and any other business shall be determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

179. Paragraph 7 of the Twelfth Schedule of the Bill provides that the amount of common costs (including depreciation) attributable to the specified business referred to that Schedule shall be determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

180. Paragraph 1 of the Thirteenth Schedule of the Bill provides that the provisions of that Schedule shall apply to the specified businesses enumerated therein which fulfil the prescribed conditions and are notified by the Central Government in the Official Gazette.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

181. Paragraphs 1, item (j) of the Thirteenth Schedule of the Bill further provides that 'specified business' for the purposes of that Schedule shall, *inter alia*, include the business of developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed.

Accordingly, it is proposed to empower the Central Government and the State Governments to make the scheme and guidelines and the Board to issue notifications and prescribe rules in this regard for the purposes of this clause.

182. Paragraph 8 of the Thirteenth Schedule of the Bill provides that the amount of common costs including depreciation attributable to the specified business and any other business referred to in that Schedule shall be determined in such manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

183. Paragraph 9 of the Thirteenth Schedule of the Bill provides that the provisions of that Schedule shall apply to the business referred to in paragraph (1) therein, which fulfils the conditions specified therein along with any other condition as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

184. Item (ii) and (iii) of paragraph 9 of the Thirteenth Schedule of the Bill provides that the provisions of that Schedule shall apply to the specified business of laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of the network, which fulfils the condition that it has been approved by the Petroleum and Natural Gas Regulatory Board established under sub-clause (1) of clause 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in the Official Gazette in this behalf.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

185. Paragraph 5 of the Fourteenth Schedule of the Bill provides that the amount of common costs (including depreciation) attributable to the business specified in column 2 of the Table in paragraph 1 and presumed to have been allowed under Paragraph 3 shall be determined in the prescribed manner.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

186. Part I of the Sixteenth Schedule of the Bill specifies the contributions or donations eligible for one hundred seventy-five per cent. deduction. This includes any research association or National Laboratory or university, college or other institution if it is engaged in carrying on scientific research and development; and such association, university, college or other institution is approved in this behalf subject to conditions and in accordance with such guidelines and manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

187. Part II of the Sixteenth Schedule of the Bill specifies the contributions or donations eligible for one hundred twenty-five per cent. deduction. This includes any research association or a university, college or other institution if it is engaged in carrying on statistical

research or research in social science; and such association, university, college or other institution is approved in this behalf subject to conditions and in accordance with such guidelines and as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

188. Part III of the Sixteenth Schedule of the Bill specifies the contributions or donations eligible for one hundred per cent. deduction. This includes any University or educational institution of national eminence as may be approved by the prescribed authority in this behalf; the Government or any such local authority, institution or association as may be approved in this behalf by the Central Government, to be utilised for the purpose of promoting family planning; the Indian Olympic Association or to any other association or institution established in India, as the Central Government may, having regard to the prescribed guidelines, by notification, specify in this behalf for— (a) the development of infrastructure for sports and games; or (b) the sponsorship of sports and games, in India and where the sum is paid by an assessee, being a company; a rural development fund set up and notified by the Central Government; the National Urban Poverty Eradication Fund set up and notified by the Central Government.

Accordingly, it is proposed to empower the Central Government to make rules and issue notifications in this regard for the purposes of this clause.

189. Part D of the Sixteenth Schedule of the Bill specifies the contributions or donations eligible for fifty per cent. deduction. This includes a temple, mosque, gurdwara, church or any other place as is notified by the Central Government to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout a State or States, to be utilised for the renovation or repair of such temple, mosque, gurdwara, church or other place.

Accordingly, it is proposed to empower the Central Government to issue notification in this regard for the purposes of this clause.

190. Paragraph 3 of Part-I of the Nineteenth Schedule of the Bill provides that in order that a provident fund may receive and retain approval, it shall, subject to the provisions of Paragraph 5, satisfy the conditions set out thereunder and any other conditions which the Board may, by rules, specify. It further provides that the Board may by rules specify the conditions and restrictions in respect of portion of balance to the credit of employees payable to him.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

191. Paragraph 4 of Part-I of the Nineteenth Schedule of the Bill further provides that where approval is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day immediately preceding the day on which the approval takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Board may prescribe.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

192. Paragraph 6 of Part-I of the Nineteenth Schedule of the Bill provides that that portion of the annual accretion in any financial year to the balance at the credit of an employee participating in an approved provident fund as consists of – (a) contributions made by the employer in excess of twelve percent of the salary of the employee or one lakh rupees, whichever is less; and (b) interest credited on the balance to the credit of the employee in so far as it is allowed at a rate exceeding such rate as may be fixed by the Central Government in this behalf by notification, shall be deemed to have been received by the employee in that financial year and shall be included in total income for that financial year, and shall be liable to income-tax.

Accordingly, it is proposed to empower the Central Government to fix the rate and issue notification in this regard for the purposes of this clause.

193. Paragraph 11 of Part-I of the Nineteenth Schedule of the Bill provides that the accounts of an approved provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars, as the Board may prescribe. It is further provided that the accounts shall be open to inspection at all reasonable times by income-tax authorities, and the trustees shall furnish to the Assessing Officer such abstracts thereof as the Board may prescribe.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

194. Paragraph 13 of Part-I of the Nineteenth Schedule of the Bill provides that an employer objecting to an order of the Commissioner refusing to approve or an order withdrawing approval from a provident fund, may appeal, within sixty days of such order, to the Board. The Appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as the Board may prescribe.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

195. Paragraph 15 of Part-I of the Nineteenth Schedule of the Bill provides that in addition to any power conferred by that Part, the Board may make rules—

- (a) prescribing the statements and other information to be submitted along with an application for approval;
- (b) limiting the contributions to an approved provident fund by employees of a company who are shareholders in the company;
- (c) regulating the investment or deposit or the moneys of an approved provident fund;
- (d) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in an approved provident fund;
- (e) determining the extent to and the manner in which exemption from payment of tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which approval has been withdrawn; and
- (f) generally, to carry out the purposes of this part and to secure such further control over the approval of provident funds and the administration of approved provident funds as it may deem requisite.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

196. Paragraph 3 of Part-II of the Nineteenth Schedule of the Bill provides that in order that a superannuation fund may receive and retain approval, it shall satisfy the conditions set out therein and any other conditions which the Board may, by rules, prescribe.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

197. Paragraph 6 of Part-II of the Nineteenth Schedule of the Bill provides that where any contributions made by an employer, including interest on contributions, if any, are paid to any employee during his lifetime, in circumstances other than those referred to in paragraph (13 of the Sixth Schedule, tax on the amounts so paid shall be deducted at the average rate of tax at which the employee was liable to tax during the preceding three years or during the period, if less than three years, when he was a member of the fund, and shall be paid by the trustees to the credit of the central government within the prescribed time and in such manner as the Board may direct.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

197. Paragraph 8 of Part-II of the Nineteenth Schedule of the Bill provides that an employer objecting to an order of the Commissioner refusing to accord approval to a superannuation fund of an order withdrawing such approval may appeal, within sixty days of such order, to the Board. The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

199. Paragraph 10 of Part-II of the Nineteenth Schedule of the Bill provides that in addition to any power conferred by that Part, the Board may make rules—

- (a) prescribing the statements and other information to be submitted along with an application for approval;
- (b) prescribing the returns, statements, particulars, or information which the Assessing Officer may require from the trustees of an approved superannuation fund or from the employer;
- (c) limiting the ordinary annual contribution and any other contributions to an approved superannuation fund by an employer;
- (d) regulating the investment or deposit of the moneys of an approved superannuation fund;
- (e) providing for the assessment by way of penalty of any consideration received by an employee for any assignment of, or creation of a charge upon, his beneficial interest in an approved superannuation fund;
- (f) determining the extent to, and the manner in, which exemption from payment of tax may be granted in respect of any payment made from a superannuation fund from which approval has been withdrawn;
- (g) providing for the withdrawal for approval in the case of a fund which ceases to satisfy the requirements of this Part or of the rules made thereunder; and
- (h) generally, to carry out the purposes of this Part and to secure such further control over the approval of superannuation funds and the administration of approved superannuation funds as it may deem requisite.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

200. Paragraph 7 of Part-III of the Nineteenth Schedule of the Bill, *inter alia*, provides that in order that a gratuity fund may receive and retain approval, it shall satisfy the conditions set out below and any other conditions which the Board may, by rules, prescribe—

- (a) the fund shall be a fund established under an irrevocable trust in connection with a trade or undertaking carried on in India, and not less than ninety per cent. of the employees shall be employed in India;
- (b) the fund shall have for its sole purpose the provision of gratuity to employees in the trade or undertaking on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement or on termination of their employment after a minimum period of service specified in the rules of the fund on to the widows, children or dependants of such employees on their death;
- (c) the employer in the trade or undertaking shall be a contributor to the fund; and
- (d) all benefits granted by the fund shall be payable only in India.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

201. Paragraph 9 of Part-III of the Nineteenth Schedule of the Bill provides that an employer objecting to an order of the Commissioner refusing to accord approval to a gratuity fund or an order withdrawing such approval may appeal, within sixty days of such order, to the Board. The appeal shall be in such form and shall be verified in such manner and shall be subject to the payment of such fee as may be prescribed.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

202. Paragraph 9 of Part-III of the Nineteenth Schedule of the Bill provides that in addition to any power conferred by that Part, the Board may make rules—

(a) prescribing the statements and other information to be submitted along with an application for approval;

(b) limiting the ordinary annual and other contributions of an employer to the fund;

(c) regulating the investment or deposit of the moneys of an approved gratuity fund;

(d) providing for the assessment by way of penalty of any consideration received by an employee for any assignment of, or creation of a charge upon, his beneficial interest in an approved gratuity fund;

(e) providing for the withdrawal for approval in the case of a fund which ceases to satisfy the requirements of this part or of the rules made thereunder;

(f) generally, to carry out the purposes of this Part and to secure such further control over the approval of gratuity funds and the administration of gratuity funds as it may deem requisite.

Accordingly, it is proposed to empower the Board to make rules in this regard for the purposes of this clause.

203. Paragraph 7 of the Twentieth Schedule of the Bill provides that a resident assessee shall furnish the details of its investment and interest in any entity outside India in such form and manner as may be prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

204. Paragraph 22 of the Twentieth Schedule of the Bill provides that an order under the Tenth Schedule in relation to a qualifying shipping company's application for opting for tonnage tax scheme, passed by an authority as may be prescribed, shall be an appealable order before Commissioner (Appeals).

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

205. Paragraph 3 of the Twenty-Second Schedule, *inter alia*, provides that the deferred revenue expenditure allowance shall be allowable for ten consecutive financial years, the first such financial year of allowability being the year in which such amount is actually paid, in case of expenditure incurred by a person resident in India wholly and exclusively on any operations relating to prospecting for any mineral or the development of a mine or other natural deposit of any mineral, to the extent prescribed.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

206. Paragraph 3 of the Twenty Second Schedule further provides that in the case of expenditure incurred by a person resident in India wholly and exclusively on any operations relating to prospecting for any mineral or the development of a mine or other natural deposit of any mineral, to the extent as may be prescribed, the deferred revenue expenditure allowance shall be allowable for ten consecutive financial years, the first such financial year of allowability being the year in which such amount is actually paid. Further, the deferred revenue expenditure allowance shall be allowable for six consecutive financial years, the first such financial year of allowability being the year of commencement of the business or extension of the business or setting up of new business, as the case may be, in case of any preliminary expenditure incurred—

- (a) before the commencement of the business; or
- (b) in connection with the extension of the business; or
- (c) in connection with the setting up of new business,

which shall be such as may be prescribed having regard to capital employed in the business and cost of the project.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this clause.

207. The rules and scheme made and notification issued under the proposed legislation shall be required to be laid before the Parliament.

208. The matters in respect of which rules or scheme may be made or notifications issue are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

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to consolidate and amend the law relating to direct taxes.

(Shri Pranab Mukherjee, Minister of Finance)

GMGIPMRND—4316LS(S1)—28-08-2010.