

## Notes on clauses

### Income-tax

Clause 2, read with the First Schedule to the Bill, specifies the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2011-2012. Further, it lays down the rates at which tax is to be deducted at source during the financial year 2011-2012 from income other than "Salaries" subject to such deductions under the Income-tax Act; and the rates at which "advance tax" is to be paid, tax is to be deducted at source from, or paid on, income chargeable under the head "Salaries" and tax is to be calculated and charged in special cases for the financial year 2011-2012.

#### Rates of income-tax for the assessment year 2011-2012

Part I of the First Schedule to the Bill specifies the rates at which income is liable to tax for the assessment year 2011-2012. These rates are the same as those specified in Part III of the First Schedule to the Finance Act, 2010, for the purposes of deduction of tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2010-2011.

#### Rates for deduction of tax at source during the financial year 2011-2012 from income other than "Salaries"

Part II of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source during the financial year 2011-2012 from income other than "Salaries". The rates are the same, as those specified in Part II of the First Schedule to the Finance Act, 2010 for the purposes of deduction of income-tax at source during the financial year 2010-2011. However, in view of the proposed insertion of new section 194LB, a special rate of tax deduction at five per cent will apply in case of certain interest payments to a non-resident.

The amount of tax so deducted shall be increased by a surcharge in the case of every company other than a domestic company at the rate of two per cent. No surcharge will be levied in any other case.

#### Rates for deduction of tax at source from "Salaries", computation of "advance tax" and charging of income tax in special cases during the financial year 2011-2012

Part III of the First Schedule to the Bill specifies the rates at which income-tax is to be deducted at source from, or paid on, income under the head "Salaries" and also the rates at which "advance tax" is to be paid and income-tax is to be calculated or charged in special cases for the financial year 2011-2012.

Paragraph A of this Part specifies the rates of income-tax as under:—

(i) in the case of every individual [other than those specifically mentioned in sub-paragraphs (ii), (iii) and (iv)] or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act, not being a case to which any other Paragraph of Part III applies:—

|                             |              |
|-----------------------------|--------------|
| Up to Rs.1,80,000           | Nil.         |
| Rs.1,80,001 to Rs. 5,00,000 | 10 per cent. |
| Rs.5,00,001 to Rs.8,00,000  | 20 per cent. |
| Above Rs.8,00,000           | 30 per cent. |

(ii) In the case of every individual, being a woman resident in India, and below the age of sixty years at any time during the previous year:—

|                             |              |
|-----------------------------|--------------|
| Up to Rs.1,90,000           | Nil.         |
| Rs.1,90,001 to Rs. 5,00,000 | 10 per cent. |
| Rs.5,00,001 to Rs.8,00,000  | 20 per cent. |
| Above Rs.8,00,000           | 30 per cent. |

(iii) In the case of every individual, being a resident in India, who is of the age of sixty years or more but less than eighty years at any time during the previous year:—

|                             |              |
|-----------------------------|--------------|
| Up to Rs.2,50,000           | Nil.         |
| Rs.2,50,001 to Rs. 5,00,000 | 10 per cent. |
| Rs.5,00,001 to Rs.8,00,000  | 20 per cent. |
| Above Rs.8,00,000           | 30 per cent. |

(iv) In the case of every individual, being a resident in India, who is of the age of eighty years or more at any time during the previous year:—

|                            |              |
|----------------------------|--------------|
| Up to Rs.5,00,000          | Nil.         |
| Rs.5,00,001 to Rs.8,00,000 | 20 per cent. |
| Above Rs.8,00,000          | 30 per cent. |

No surcharge will be levied.

Paragraph B of this Part specifies the rates of income-tax in the case of every co-operative society. In such cases, the rates of tax will continue to be the same as those specified for assessment year 2011-2012. No surcharge will be levied.

Paragraph C of this Part specifies the rate of income-tax in the case of every firm. In such cases, the rate of tax will continue to be the same as that specified for assessment year 2011-2012. No surcharge will be levied.

Paragraph D of this Part specifies the rate of income-tax in the case of every local authority. In such cases, the rate of tax will continue to be the same as that specified for the assessment year 2011-2012. No surcharge will be levied.

Paragraph E of this Part specifies the rates of income-tax in the case of companies. In both the cases of domestic companies and companies other than domestic companies, the rate of tax will continue to be the same as that specified for assessment year 2011-2012.

Surcharge in the case of domestic companies having income above one crore rupees is proposed to be reduced to five per cent. from the existing rate of seven and one-half per cent. In case of companies other than domestic companies, the surcharge is proposed to be reduced to two per cent. from the existing rate of two and one-half per cent. Marginal relief will be provided.

In all other cases (including sections 115JB, 115-O, 115R, etc.) the surcharge will now be applicable at the rate of five per cent.

"Education cess" at the rate of two per cent. and "Secondary and Higher Education Cess" at the rate of one per cent. shall continue to be levied in all cases covered under Part III of the First Schedule. In the cases covered under Part II of the First Schedule, there will be no levy of Education Cess and Secondary and Higher Education Cess on tax deducted or collected at source in the case of domestic company and any other person who is resident in India. Both the cesses would continue to apply on tax deducted at source in the case of salary payments. These would also continue to be levied in the cases of persons not resident in India and companies other than domestic company.

*Clause 3* of the Bill seeks to amend section 2 of the Income-tax Act relating to definitions.

The existing provisions contained in clause (15) of the aforesaid section defines "charitable purpose" to include relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wild life) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.

The first proviso to the aforesaid clause (15) provides that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

The second proviso to the said clause provides that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to in the first proviso is ten lakh rupees or less in the previous year.

It is proposed to amend the said second proviso to provide that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to in the first proviso is twenty-five lakh rupees or less in the previous year.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 4* of the Bill seeks to amend section 10 of the Income-tax Act relating to incomes not included in total income.

The *Explanation* to clause (34) of the aforesaid section was inserted by way of a modification *vide* section 27 of the Special Economic Zones Act, 2005 read with the Second Schedule thereof.

The existing provisions contained in the *Explanation* to clause (34) of the aforesaid section clarify that the dividend referred to in section 115-O shall not be included in the total income of the assessee, being a Developer or entrepreneur.

Sub-clause (a) of this clause of the Bill seeks to omit the *Explanation* to clause (34) of the aforesaid section.

This amendment will take effect from 1<sup>st</sup> June, 2011.

Under the existing provisions contained in the Income-tax Act, any perquisites or allowances received by an employee is taxable under the head "salary" unless it is specifically exempted under the Act.

Sub-clause (b) seeks to insert a new clause (45) in the said section so as to provide exemption to any allowance or perquisite, as may be notified by the Central Government in the Official Gazette in this behalf, paid to the Chairman or a retired Chairman or any other member or retired member of the Union Public Service Commission.

This amendment will take effect retrospectively from 1<sup>st</sup> April, 2008 and will, accordingly, apply in relation to the assessment year 2008-2009 and subsequent years.

The existing provisions contained in section 10 provide that income mentioned in any of the clauses of the said section shall not be included in the total income of the previous year of any person.

Sub-clause (c) seeks to insert a new clause (46) in the said section so as to provide that any specified income arising to a body or authority or Board or Trust or Commission (by whatever name called) which is constituted or established by or under a Central, State or Provincial Act or has been constituted by the Central Government or a State Government with the object of regulating or administering an activity for the benefit of general

public shall be exempt if it is not engaged in commercial activity and is specified by the Central Government by notification in the Official Gazette in this behalf. The proposed *Explanation* enables the Central Government to notify the nature and extent of the income of the body or authority or Board or Trust or Commission which shall constitute the specified income.

Sub-clause (c) also seeks to insert a new clause (47) in section 10 so as to enable the Central Government to notify any infrastructure debt fund which is set up in accordance with the guidelines as may be prescribed and the income of such notified fund will be exempt from income-tax.

These amendments will take effect from 1<sup>st</sup> June, 2011.

*Clause 5* of the Bill seeks to amend section 35 of the Income-tax Act relating to expenditure on scientific research.

The existing provisions contained in clause (a) of sub-section (2AA) of the aforesaid section provide for a weighted deduction to the extent of one and three-fourth times the sum paid to a National Laboratory or a University or an Indian Institute of Technology or a specified person for the purpose of an approved scientific research programme.

It is proposed to amend the said clause (a) so as to enhance the weighted deduction to two times the sum paid.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to assessment year 2012-2013 and subsequent years.

*Clause 6* of the Bill seeks to amend section 35AD of the Income-tax Act relating to deduction in respect of expenditure on specified business.

The existing provisions contained in sub-section (5) of the aforesaid section provide for the date of commencement of operations of the specified businesses referred to in sub-section (2) of the said section for the purposes of availing the deduction. Further, the existing provisions of clause (c) of sub-section (8) of the aforesaid section define the expression "specified business".

The amendments proposed to the aforesaid section seek to include two new businesses as "specified business" along with their dates of commencement and also to omit the word "new" from the existing definition of "specified business" in respect of new hotel and new hospital.

Sub-clause (a) of this clause seeks to insert a new clause (ad) in the said sub-section (5) so as to provide that the date of commencement of operations shall be on or after the 1<sup>st</sup> day of April, 2011 where a business is in the nature of developing and building a housing project under a scheme for affordable housing 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.

It further seeks to insert a new clause (ae) in the said sub-section (5) to specify that the date of commencement of operations shall be on or after the 1<sup>st</sup> day of April, 2011 in a new plant or in a newly installed capacity in an existing plant for production of fertiliser.

These amendments will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

Sub-clause (b) of this clause seeks to omit the word "new" from the expressions "new hotel" and "new hospital" in sub-clauses (iv) and (v) of clause (c) of sub-section (8) from the definition of "specified business".

These amendments will take effect retrospectively from 1<sup>st</sup> April, 2011 and will, accordingly, apply in relation to the assessment year 2011-2012 and subsequent years.

Sub-clause (b) further seeks to insert a new sub-clause (vi) in clause (c) of the aforesaid sub-section (8) so as to include within

the scope of "specified business", the business of developing and building a housing project under a scheme for affordable housing 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.

It also seeks to insert a new sub-clause (viii) in the said clause (c) of the aforesaid sub-section (8) so as to include production of fertilizer in India as a "specified business".

These amendments will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 7* of the Bill seeks to amend section 36 of the Income-tax Act relating to other deductions.

The existing provisions of sub-section (1) of the aforesaid section provide for allowing certain deductions in computing the income under the head profits and gains of business or profession.

It is proposed to insert a new clause (iva) in the said sub-section so as to provide that any sum paid by the assessee as an employer by way of contribution towards a pension scheme as referred to in section 80CCD on account of an employee to the extent it does not exceed ten per cent. of the salary of the employee in the previous year shall be allowed as a deduction.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 8* of the Bill seeks to amend section 80CCE of the Income-tax Act relating to the limit on deductions under sections 80C, 80CCC and 80CCD.

The existing provisions contained in the aforesaid section 80CCE provide that the aggregate amount of deductions under section 80C, section 80CCC and section 80CCD shall not exceed one lakh rupees.

It is proposed to amend the aforesaid section 80CCE so as to provide that contribution made by the Central Government or any other employer to a pension scheme under sub-section (2) of section 80CCD shall not be included in the limit of deduction of one lakh rupees provided under section 80CCE.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 9* of the Bill seeks to amend section 80CCF of the Income-tax Act relating to deduction in respect of subscription to long-term infrastructure bonds.

Under the existing provisions contained in section 80CCF, deduction is allowed to the extent of such amount which does not exceed twenty-thousand rupees, paid or deposited during the previous year relevant to the assessment year beginning on the 1<sup>st</sup> day of April, 2011 as subscription to long-term infrastructure bonds.

It is proposed to amend the said section so as to provide the same deduction for the amount paid or deposited during the previous year relevant to the assessment year beginning on the 1<sup>st</sup> day of April, 2012.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013.

*Clause 10* of the Bill seeks to amend section 80-IA of the Income-tax Act relating to deductions in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development, etc.

Under the existing provisions contained in clause (iv) of sub-section (4) of the aforesaid section, a deduction is allowed to an

undertaking which,— (a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1<sup>st</sup> April, 1993 and ending on 31<sup>st</sup> March, 2011; (b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1<sup>st</sup> April, 1999 and ending on 31<sup>st</sup> March, 2011; or (c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1<sup>st</sup> April, 2004 and ending on 31<sup>st</sup> March, 2011.

It is proposed to amend the said clause so as to extend the time limit from 31<sup>st</sup> March, 2011 to 31<sup>st</sup> March, 2012.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 11* of the Bill seeks to amend section 80-IB of the Income-tax Act, relating to deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings.

Sub-section (9) of the said section provides that the amount of deduction to an undertaking shall be hundred per cent. of the profits for a period of seven consecutive assessment years, including the initial assessment year, if such undertaking fulfils certain conditions stipulated therein.

Clause (ii) of the said sub-section requires that such undertaking is located in any part of India and has begun or begins commercial production of mineral oil on or after the 1<sup>st</sup> day of April, 1997.

It is proposed to amend the said clause so as to insert a proviso therein which provides that the provisions of said clause (ii) shall not apply to blocks licensed under a contract awarded after the 31<sup>st</sup> day of March, 2011 under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated the 10<sup>th</sup> February, 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 12* seeks to amend section 92C of the Income-tax Act, relating to computation of arm's length price.

Under the existing provisions contained in sub-section (2) of the aforesaid section, where more than one price is determined by the most appropriate method, then the arm's length price shall be taken to be arithmetical mean of such price. Further, the second proviso to the said sub-section provides that if the variation between the arm's length price as determined and price at which the international transaction has actually been undertaken does not exceed five per cent. of the latter, the price at which the international transaction has actually been undertaken shall be deemed to be the arm's length price.

It is proposed to amend the second proviso to said sub-section (2) so as to provide that the allowable variation will be such percentage as may be notified by the Central Government in this behalf.

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 13* of the Bill seeks to amend section 92CA of the Income-tax Act relating to reference to Transfer Pricing Officer.

Under the existing provisions contained in sub-section (1) of the aforesaid section, where an assessee has entered into an international transaction in any previous year, and the Assessing Officer considers it necessary, he may, with the previous approval of the Commissioner, refer the computation of the arm's length

price in relation to the international transaction under section 92C, to the Transfer Pricing Officer.

Sub-section (2) of the aforesaid section, *inter alia*, provides that the Transfer Pricing Officer, for the purpose of determining the arm's length price in respect of international transactions referred to him by the Assessing Officer shall serve a notice on the assessee requiring him to produce evidence in support of computation of the arm's length price of such transactions.

It is proposed to insert a new sub-section (2A) so as to enable the Transfer Pricing Officer to take into account any other international transaction which comes to his notice subsequently during the course of the proceeding before him as if such transaction is an international transaction referred under sub-section (1) and the provisions of Chapter X of the Income-tax Act shall apply accordingly.

Sub-section (7) of the aforesaid section provides that for the purposes of determining arm's length price, the Transfer Pricing Officer shall have the powers as provided under sub-section (1) of section 131 and clause (6) of section 133.

It is proposed to amend the said sub-section (7) so as to enable the Transfer Pricing Officer to exercise the power of survey conferred upon an income-tax authority under section 133A of the Act.

These amendments will take effect from 1<sup>st</sup> June, 2011.

*Clause 14* of the Bill seeks to insert a new section 94A in the Income-tax Act relating to special measures in respect of transactions with persons located in a notified jurisdictional area.

It is proposed to enable the Central Government to notify any country or territory outside India, having regard to the lack of effective exchange of information by it with India, as notified jurisdictional area.

It is further proposed to provide that if an assessee enters into a transaction where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises within the meaning of section 92A, and that transaction shall be deemed to be an international transaction within the meaning of section 92B and, accordingly, the provisions of sections 92, 92A, 92B, 92C [except the second proviso to sub-section (2)], 92CA, 92CB, 92D, 92E and 92F shall apply to such transaction.

It is also proposed to provide that notwithstanding anything contained in the Income-tax Act, no deduction in respect of any payment made to any financial institution located in the notified jurisdictional area shall be allowed unless the assessee furnishes an authorisation in the prescribed form authorising the Board or any other income-tax authority acting on its behalf to seek relevant information from the said financial institution and no deduction in respect of any other expenditure or allowance (including the depreciation) arising from the transaction with a person located in a notified territory shall be allowed under any provision of the Act unless the assessee maintains such other documents and furnishes the information as may be prescribed.

It is also proposed to provide that if any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee notwithstanding anything to the contrary contained in the Act.

It is also proposed to provide that any payment made to a person located in the notified jurisdictional area shall be liable to the highest of the rates of tax deduction specified therein.

It is also proposed to define the expressions "person located in a notified jurisdictional area", "permanent establishment" and "transaction" for the purposes of the section.

These amendments will take effect from 1<sup>st</sup> June, 2011.

*Clause 15* of the Bill seeks to amend section 115A of the Income-tax Act, relating to tax on dividends, royalty and technical service fees in case of foreign companies.

Under the existing provisions contained in sub-section (1) of the aforesaid section, the rates at which income-tax shall be payable is prescribed, where the total income of a non-resident (not being a company) or a foreign company, includes any income by way of dividends (other than dividends referred to in section 115-O); or interest received from the Government or an Indian concern on monies borrowed or debt incurred by the Government or the Indian concern in foreign currency; or income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under clause (23D) of section 10 or of the Unit Trust of India.

It is proposed to amend sub-clause (ii) of clause (a) of sub-section (1) of the aforesaid section so as to provide that the rates at which income-tax shall be payable, where the total income of a non-resident (not being a company) or a foreign company, includes any income by way of interest received from Government or an Indian concern on monies borrowed or debt incurred by the Government or the Indian concern in foreign currency, not being the interest received from an infrastructure debt fund referred to in clause (47) of section 10.

It is further proposed to insert a new sub-clause (iia) in clause (a) of sub-section (1) of the aforesaid section so as to provide that the rates at which income-tax shall be payable, where the total income of a non-resident (not being a company) or a foreign company, includes any income by way of interest received from an infrastructure debt fund referred to in clause (47) of section 10.

It is also proposed to insert a new item (BA) after item (B) of clause (a) of sub-section (1) of the aforesaid section to provide that the tax shall be payable at the rate of five per cent. on any interest income received by a non-resident from an infrastructure debt fund referred to in clause (47) of section 10.

These amendments will take effect from 1<sup>st</sup> June, 2011.

*Clause 16* of the Bill seeks to insert a new section 115BBD in the Income-tax Act relating to tax on certain dividends received from foreign companies.

Under the existing provisions of the Income-tax Act, dividend received from foreign companies is taxable in the hands of the recipient at his applicable marginal rate of tax. Therefore, in case of companies who receive foreign dividend, such dividend is taxable at the rate of thirty per cent. plus applicable surcharge and cess.

Sub-section (1) of the aforesaid new section seeks to provide that where the total income of an assessee, being an Indian company, for the previous year relevant to the assessment year beginning on the 1<sup>st</sup> day of April, 2012, includes any income by way of dividends declared, distributed or paid by a subsidiary foreign company, the income-tax payable shall be the aggregate of the amount of income-tax calculated on the income by way of such dividends at the rate of fifteen per cent. and the amount of income-tax with which the assessee would have been chargeable had its total income been reduced by the amount of aforesaid income by way of dividends.

Sub-section (2) of the aforesaid new section provides that no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of the Income-tax Act in computing its income by way of dividends.

Sub-section (3) of the aforesaid new section seeks to define the expressions "dividends" and "subsidiary foreign company".

This amendment will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013.

*Clause 17* of the Bill seeks to amend section 115JB of the Income-tax Act relating to special provision for payment of tax by certain companies.

The existing provisions contained in sub-section (1) of the aforesaid section provide that in case of a company, if the tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2011, is less than eighteen per cent. of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be eighteen per cent. of such book profit.

It is proposed to amend sub-section (1) of the aforesaid section to provide that if the income-tax payable on the total income as computed under the Income-tax Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012 is less than eighteen and one-half per cent. of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable for the relevant previous year shall be eighteen and one-half per cent. of such book profit.

Sub-section (6) of section 115JB of the Income-tax Act was inserted in that section by way of a modification *vide* section 27 of the Special Economic Zones Act, 2005 read with the Second Schedule thereof.

The existing provisions contained in the aforesaid sub-section (6) provide that the provisions of section 115JB shall not apply to the income accrued or arising on or after the 1<sup>st</sup> day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.

It is proposed to insert a proviso to the said sub-section (6) so as to provide that the provisions of that sub-section shall cease to have effect in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2012.

These amendments will take effect from 1<sup>st</sup> April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

*Clause 18* of the Bill seeks to insert a new Chapter XII-BA [consisting of new sections 115JC, 115JD, 115JE and 115JF] in the Income-tax Act containing special provisions relating to certain limited liability partnerships.

Under the provisions of newly inserted section 115JC, where the regular income-tax payable for a previous year by any limited liability partnership is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such limited liability partnership and it shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

For the purpose of the aforesaid provision, adjusted total income shall be the total income before giving effect to the newly inserted Chapter XII-BA as increased by the deductions claimed under any section included in Chapter VI A under the heading "*C.-Deductions in respect of certain incomes*" and deduction claimed under section 10AA.

The proposed new section 115JD seeks to provide that the credit for tax paid by a limited liability partnership under section 115JC shall be the excess of the alternate minimum tax paid over the regular income-tax payable. This shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such tax credit becomes allowable and shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the alternate minimum tax to the extent of the excess of the regular income-tax over the alternate minimum tax.

The proposed new section 115JE seeks to provide that save as provided in the newly inserted Chapter XII-BA, all other provisions of the Income-tax Act shall apply to a limited liability partnership.

The proposed new section 115JF seeks to define the expressions "accountant", "alternate minimum tax", "limited liability partnership" and "regular income-tax" for the purposes of newly inserted Chapter XII-BA.

These amendments will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

*Clause 19* of the Bill seeks to amend section 115-O of the Income-tax Act relating to tax on distributed profits of domestic companies.

Sub-section (6) was inserted in the aforesaid section by way of a modification *vide* section 27 of the Special Economic Zones Act, 2005 read with the Second Schedule thereof.

The existing provisions contained in the aforesaid sub-section provide that notwithstanding anything contained in section 115-O, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after the 1<sup>st</sup> day of April, 2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend.

It is proposed to insert a proviso to the said sub-section (6) to provide that the provisions of the said sub-section shall cease to have effect from the 1st day of June, 2011. Accordingly, tax on distributed profits shall be chargeable under this section on any amount declared, distributed or paid by way of dividends by the aforesaid undertaking or enterprise on or after the 1st day of June, 2011.

This amendment will take effect from 1st June, 2011.

*Clause 20* of the Bill seeks to amend section 115R of the Income-tax Act relating to tax on distributed income to unit holders.

Under the existing provisions contained in sub-section (2) of the aforesaid section, any amount of income distributed by the specified company or a Mutual Fund to its unit holders shall be chargeable to tax and such specified company or Mutual Fund shall be liable to pay additional income-tax on such distributed income at the rate of twenty-five per cent. on income distributed by a money market mutual fund or a liquid fund; twelve and one-half per cent. on income distributed to any person being an individual or a Hindu undivided family by a fund other than a money market mutual fund or a liquid fund; and twenty per cent. on income distributed to any other person by a fund other than a money market mutual fund or a liquid fund.

It is proposed to amend clause (i) of sub-section (2) of the aforesaid section to specifically provide that additional income-tax at the rate of twenty-five per cent shall be leviable on any income distributed to an individual or a Hindu undivided family by a money market mutual fund or a liquid fund.

It is further proposed to insert a new clause (ia) after clause (i) in sub-section (2) of the aforesaid section to provide that any income distributed to any other person by a money market mutual fund or a liquid fund shall be liable to additional income-tax at the rate of thirty per cent.

It is also proposed to amend clause (iii) of sub-section (2) of the aforesaid section so as to increase the rate of additional income-tax from twenty per cent. to thirty per cent. on any income distributed to any other person by a fund other than a money market mutual fund or a liquid fund.

These amendments will take effect from 1st June, 2011.

*Clause 21* of the Bill seeks to amend section 131 of the Income-tax Act relating to power regarding discovery, production of evidence, etc.

Under the existing provisions contained in section 131, certain income-tax authorities have been conferred the same power, as available to a Civil Court while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions.

It is proposed to insert a new sub-section (2) in the aforesaid section to provide that for the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

It is further proposed to amend sub-section (3), so as to empower the aforesaid authority as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.

These amendments will take effect from 1st June, 2011.

*Clause 22* of the Bill seeks to amend section 133 of the Income-tax Act relating to power to call for information.

Under the existing provisions contained in section 133, the income-tax authorities referred to in that section have been empowered to call for information which is useful for or relevant to, any proceeding under the Act.

It is proposed to insert a new proviso after the second proviso to the aforesaid section so as to provide that for the purposes of an agreement referred to in section 90 or section 90A, an income-tax authority notified under sub-section (2) of section 131 may exercise all the powers conferred under section 133, notwithstanding that no proceedings are pending before it or any other income-tax authority.

This amendment will take effect from 1st June, 2011.

*Clause 23* of the Bill seeks to amend section 139 of the Income-tax Act relating to return of income.

Under the existing provisions contained in clause (a) of *Explanation 2* to sub-section (1) of the said section, the due date for filing return of income, in the case of a company; or a person (other than a company) whose accounts are required to be audited under the Income-tax Act or under any other law for the time being in force; or a working partner of a firm whose accounts are required to be audited under the Income-tax Act or under any other law for the time being in force, shall be the 30th day of September of the assessment year.

Section 92E of the Income-tax Act contains provisions for furnishing a report from an accountant by a person entering into international transactions.

It is proposed to amend sub-clause (i) of clause (a) to the said *Explanation 2* and to insert a new clause (aa) after the said clause (a) so as to provide that for filing a return of income in case of an assessee being a company, which is required to furnish a report referred to in the said section 92E, the due date shall be the 30th day of November of the assessment year.

This amendment will take effect retrospectively from 1st April, 2011.

Under the existing provisions contained in sub-section (1) of the aforesaid section, every person, if his total income or the total income of any other person in respect of which he is assessable

under the Income-tax Act during the previous year exceeds the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or the income of such other person during the previous year.

It is proposed to insert a new sub-section (1C) in the aforesaid section so as to empower the Central Government to exempt by notification in the Official Gazette any class or classes of persons from the requirement of furnishing a return of income having regard to such conditions as may be specified in that notification.

This amendment will take effect from 1st June, 2011.

Under the existing provisions contained in sub-section (4C) of section 139, every entity referred to therein shall, if the total income in respect of such entity (without giving effect to the provisions of section 10) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year.

It is proposed to amend the aforesaid sub-section to insert therein new clauses (g) and (h) in order to require that any body or authority or Board or Trust or Commission referred to in clause (46) of section 10 and infrastructure debt fund referred to in clause (47) of section 10, respectively, shall also furnish a return of income.

This amendment will take effect from 1st June, 2011.

*Clause 24* of the Bill seeks to amend section 143 of the Income-tax Act relating to assessment.

Under the existing provisions contained in sub-section (1B) of the aforesaid section, the Central Government may, save as otherwise expressly provided, for the purpose of giving effect to the scheme made under sub-section (1A) of that section, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, so, however, that no direction shall be issued after the 31st day of March, 2011.

It is proposed to amend sub-section (1B) of the aforesaid section to extend the said time limit to the 31st day of March, 2012.

This amendment will take effect retrospectively from 1st April, 2011.

*Clause 25* of the Bill seeks to amend section 153 of the Income-tax Act relating to time limit for completion of assessments and re-assessments.

Under the existing provisions contained in *Explanation 1* to the said section, certain periods specified therein are to be excluded while computing the period of limitation laid down in sub-sections (1), (2) and (2A) of the said section for completion of assessments and re-assessments.

It is proposed to insert a new clause (viii) in *Explanation 1* to the said section so as to provide that the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of six months, whichever is less, shall also be excluded.

This amendment will take effect from 1st June, 2011.

*Clause 26* of the Bill seeks to amend section 153B of the Income-tax Act relating to time limit for completion of assessment under section 153A.

Under the existing provisions contained in the *Explanation* to section 153B, certain periods specified therein are to be excluded while computing the period of limitation laid down in sub-section (1) of the said section for completion of assessment under section 153A.

It is proposed to insert a new clause (viii) in the *Explanation* to the said section 153B so as to provide that the period commencing from the date on which a reference for exchange of information is

made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner or a period of six months, whichever is less, shall also be excluded.

This amendment will take effect from 1st June, 2011.

*Clause 27* of the Bill seeks to insert a new section 194LB in the Income-tax Act relating to income by way of interest from an infrastructure debt fund.

The proposed new section seeks to provide that where any income by way of interest is payable to a non-resident, not being a company, or to a foreign company, by an infrastructure debt fund referred to in clause (47) of section 10, the person responsible for making the payment shall, at the time of credit of such income to the account of payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of five per cent.

This amendment will take effect from 1st June, 2011.

*Clause 28* of the Bill seeks to amend section 245C of the Income-tax Act relating to application for settlement of cases.

The existing provisions contained in the proviso to sub-section (1) of the aforesaid section provide that, no application shall be made before the Settlement Commission unless the proceedings under section 153A or under section 153C have been initiated against the applicant and the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees and in other cases if the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.

It is proposed to insert a new clause (ia) in the proviso to sub-section (1) of the aforesaid section. It provides that no application shall be made unless, in a case where the applicant is related to the person referred to in clause (i) who has filed an application [referred as "specified person"]; and the proceedings for assessment or re-assessment for any of the assessment years referred to in clause (b) of sub-section (1) of section 153A or clause (b) of sub-section (1) of section 153B in case of the applicant, being a person referred to in section 153A or section 153C, have been initiated, the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.

It is further proposed to insert an *Explanation* after the said proviso defining the expressions "applicant in relation to the specified person" and "substantial interest" for the purposes of the new clause (ia).

This amendment will take effect from 1st June, 2011.

*Clause 29* of the Bill seeks to amend section 245D of the Income-tax Act relating to procedure on receipt of an application under section 245C.

The existing provisions contained in sub-section (4) of the aforesaid section 245D provide that the Settlement Commission may pass orders on the matters covered by the applications received by it.

It is proposed to insert a new sub-section (6B) so as to provide that the Settlement Commission may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4). It further provides that an amendment which has the effect of modifying the liability of the applicant, shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

This amendment will take effect from 1st June, 2011.

*Clause 30* of the Bill seeks to omit section 282B of the Income-tax Act relating to allotment of Document Identification Number.

Under the existing provisions contained in the said section 282B, every income-tax authority shall, on or after the 1st day of July, 2011, allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

It is proposed to omit the aforesaid section.

This amendment will take effect retrospectively from 1st April, 2011.

*Clause 31* of the Bill seeks to insert a new section 285 [in place of said section which was omitted by the Finance Act, 1987] in the Income-tax Act relating to the submission of statement by a non-resident having liaison office.

The proposed new section provides that every person, being a non-resident having liaison office in India, set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall in respect of its activities in a financial year, prepare and deliver or cause to be delivered to the Assessing Officer having jurisdiction, within sixty days from the end of such financial year, a statement in such form and containing such particulars as may be prescribed.

This amendment will take effect from 1st June, 2011.

*Clause 32* of the Bill seeks to amend section 296 of the Income-tax Act relating to rules and certain notifications to be placed before Parliament.

As proposed, clause 23 of the Bill seeks to insert sub-section (1C) in section 139 of the Income-tax Act so as to empower the Central Government to exempt, by notification, any class or classes of persons from the requirement of furnishing a return of income having regard to such conditions as may be specified in that notification.

It is proposed to amend section 296 of the Income-tax Act so as to provide that every notification issued under sub-section (1C) of section 139 shall be laid before Parliament.

This amendment will take effect from 1st June, 2011.

*Clause 33* of the Bill seeks to amend Part A of the Fourth Schedule to the Income-tax Act, relating to recognised provident funds.

Rule 3 in Part A of the Fourth Schedule provides that the Chief Commissioner or Commissioner may accord recognition to any provident fund which, in his opinion, satisfies the conditions specified under rule 4 in Part A of the said Schedule and the conditions, which the Board may specify by rules.

The first proviso to sub-rule (1) of the said rule 3 provides that in a case where recognition has been accorded to any provident fund on or before the 31st day of March, 2006, the same shall be withdrawn, if such fund does not satisfy, on or before the 31st day of December, 2010, the conditions set out in clause (ea) of said rule 4, and any other conditions which the Board may, by rules, specify in this behalf.

It is proposed to amend the said proviso to sub-rule (1), so as to extend the said time limit to the 31st day of March, 2012.

This amendment will take effect retrospectively from 1st January, 2011.

#### *Wealth-tax*

*Clause 34* of the Bill seeks to amend section 22D of the Wealth-tax Act, 1957 relating to procedure on receipt of the application under section 22C.

The existing provisions contained in sub-section (4) of the aforesaid section 22D provide that the Settlement Commission may pass orders on the matters covered by the applications received by it.

It is proposed to insert a new sub-section (6B) in the said section so as to provide that the Settlement Commission may, at any time within a period of six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (4).

It further provides that an amendment which has the effect of modifying liability of the applicant, shall not be made under this sub-section unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

This amendment will take effect from 1st June, 2011.

#### *Customs*

*Clause 35* of the Bill seeks to amend section 2 of the Customs Act relating to definitions. Clause (2) of the said section defines the expression "assessment" and the said definition is proposed to be re-defined so as to introduce therein "self-assessment" also.

*Clause 36* of the Bill seeks to amend section 3 of the Customs Act so as to omit the reference to the Deputy Commissioner in clause (e) thereof.

*Clause 37* of the Bill seeks to substitute a new section for section 17 of the Customs Act relating to assessment of duty to make the provisions consistent with the proposed scheme of "self-assessment".

*Clause 38* of the Bill seeks to amend section 18 of the Customs Act relating to provisional assessment of duty. In case an importer or exporter is unable to make self-assessment, he may request customs officer to assess the goods by following the procedure of provisional assessment.

*Clause 39* of the Bill seeks to amend section 19 of the Customs Act relating to determination of duty where goods consist of articles liable to different rates of duty so as to align the same with the proposed scheme of self-assessment provided by section 17 of the aforesaid Act.

*Clause 40* of the Bill seeks to substitute sub-section (1) of section 27 of the Customs Act relating to claim for refund of duty or interest so as to provide for uniform limitation period of one year, as opposed to six months or one year for different classes of imports or exports.

*Clause 41* of the Bill seeks to substitute a new section for section 28 of the Customs Act relating to recovery of duties not levied or short-levied or erroneously refunded so as to make the provisions more coherent and clear.

*Clause 42* of the Bill seeks to substitute a new section 28AA for sections 28AA and 28AB of the Customs Act relating to interest on delayed payment of duty so as to make the provisions simple, more coherent and clear.

*Clause 43* of the Bill seeks to amend section 46 of the Customs Act relating to entry of goods on importation so as to provide for filing of entry electronically and also to provide that the Commissioner of Customs may, where it is not feasible to make an entry electronically, allow an entry to be presented in any other manner.

*Clause 44* of the Bill seeks to amend section 50 of the Customs Act relating to entry of goods for exportation so as to provide for filing of entry electronically and also to provide that the Commissioner of Customs may, where it is not feasible to make an entry electronically, allow an entry to be presented in any other manner.

*Clause 45* of the Bill seeks to amend section 75 of the Customs Act so as to empower the Central Government to provide for the circumstances or conditions under which the amount of drawback of customs duty shall not be recovered, even if the sale proceeds are not realised by the exporter.

*Clause 46* of the Bill seeks to amend section 110A of the Customs Act relating to provisional release of goods, documents and things seized pending adjudication so as to empower the adjudicating authority to allow release of seized goods instead of the Commissioner of Customs, as at present.

*Clause 47* of the Bill seeks to amend section 124 of the Customs Act relating to issue of show cause notice before confiscation of goods, etc., so as to provide for issuance of notice with the prior approval of the officer of customs not below the rank of an Assistant Commissioner of Customs instead of the Deputy Commissioner of Customs as at present. This amendment will align with the relevant provisions of the Central Excise laws.

*Clause 48* of the Bill seeks to insert a new section 131D in the Customs Act relating to filing of appeal by Commissioner of Customs in certain cases.

The proposed section seeks to provide that the Central Board of Excise and Customs may, from time to time, issue orders, instructions or directions to Commissioner of Customs fixing such monetary limit as it may deem fit for the purpose of regulating filing of appeal, application, revision or reference by Commissioner of Customs under the provisions of Chapter XV.

It is further proposed to provide that where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Commissioner of Customs has not filed any appeal application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Commissioner of Customs from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

It is also proposed to provide that notwithstanding that no appeal, application, revision or reference has been filed by Commissioner of Customs pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Commissioner of Customs has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

It is also proposed to provide that the Appellate Tribunal or Court hearing such appeal, application, revision or reference shall have regard to the orders or instructions or directions issued under sub-section (1) and the circumstances under which appeal, application, revision or reference was not filed by the Commissioner of Customs.

It is also proposed to provide that every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

This amendment will take effect retrospectively from the 20th day of October, 2010.

*Clause 49* of the Bill seeks to insert a new section 142A relating to liability under Act to be first charge so as to provide that notwithstanding anything to the contrary contained in any Central Act or State Act, any amount of duty, penalty, interest, or any other sum payable by an assessee or any other person under this Act, shall, save for the provisions contained in section 529A of the

Companies Act, 1956, the Recovery of Debts Due to Banks and the Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and the Enforcement of Security Interest Act, 2002 be the first charge on the property of the assessee or the person as the case may be.

*Clause 50* of the Bill seeks to amend section 150 of the Customs Act relating to procedure for sale of goods and application of sale proceeds so as to insert a proviso in sub-section (2) to provide that in case of goods remaining un-cleared and subsequently sold in auction and where the owner of the imported goods cannot be paid, the balance of sale proceeds shall be paid to the Central Government.

*Clause 51* of the Bill seeks to amend section 151A of the Customs Act relating to instructions to officers of customs so as to empower the Board to issue order, instruction or direction for implementation of any other provision of the Act or of any other law in so far as they relate to any prohibition, restriction or procedure for import or export of goods.

*Clause 52* of the Bill seeks to amend section 157 of the Customs Act relating to general power to make regulations by inserting a new clause (d) in sub-section (2) so as to empower the Board to specify the manner of conducting audit of assessment including at the premises of the importer or exporter.

*Clause 53* of the Bill seeks to amend certain notifications issued under sub-section (1) of section 25 of the Customs Act, 1962 so as to allow benefits of reward schemes, namely, "Served From India Scheme", "Vishesh Krishi and Gram Udyog Yojana (Special Agriculture and Village Product Scheme)", "Focus market Scheme" and "Focus Product Scheme", on goods exported towards fulfilment of export obligation under Export Promotion Capital Goods Scheme, with retrospective effect in the manner specified in Second Schedule.

*Clause 54* of the Bill seeks to make special provision for exempting fresh garlic imported by the National Consumer Co-operative Federation and Madhya Pradesh State Co-operative Marketing Federation under an import licence issued by the Government and cleared after the 15th day of January, 2003 from the so much of duty of Customs as is in excess of thirty per cent. *ad valorem* retrospectively with effect from 15th January, 2003 as specified in Third Schedule.

#### *Customs tariff*

*Clause 55* of the Bill seeks to amend section 3 of the Customs Tariff Act so as to substitute with effect from 1st March, 2011, the reference to the Standards of Weights and Measures Act, 1976 by a reference to the Legal Metrology Act, 2009 as the former Act has been repealed by the latter.

*Clause 56* of the Bill seeks to amend section 9AA of the Customs Tariff Act so as to confer power upon the Central Government to reduce the anti-dumping duty imposed under the provisions of sub-section (1) of section 9A of the Customs Tariff Act on an article where the importer of such article proves to the satisfaction of the Central Government that he has paid anti-dumping duty in excess of his actual margin of dumping determined in relation to the article.

*Clause 57* of the Bill seeks to amend the First Schedule and the Second Schedule to the Customs Tariff Act.

Item (i) of sub-clause (a) of said clause 57 seeks to amend the First Schedule in the manner provided in the Fourth Schedule so as to substitute the description against the heading 9804 to cover all dutiable articles, intended for personal use, imported by post or air and to prescribe a rate of 35 per cent. against tariff items 9804 10 00 and 9804 90 00 of Chapter 98.

Item (ii) of sub-clause (a) of said clause 57 seeks to amend the First Schedule in the manner specified in the Fifth Schedule so as to incorporate the amendments approved by the Customs Co-operation Council (World Customs Organisation) in the legal text

of the International Convention on the Harmonised Commodity Description and Harmonised Coding System to align the said Schedule with the Harmonised System of Nomenclature with effect from 1st day of January, 2012.

Sub-clause (b) of said clause 57 seeks to substitute the Second Schedule to the Customs Tariff Act in the manner specified in the Sixth Schedule to align it with the Harmonised System of Nomenclature.

It is proposed to give reference of Chapter, heading, sub-heading and tariff item in the proposed new Second Schedule and to insert,—

(a) a new entry relating to de-oiled rice bran oil cake with a rate of duty of fifteen per cent., and

(b) to provide for enhanced tariff rate in respect of iron ore (Agglomerated and Non-Agglomerated) of thirty per cent.

*Clause 58* of the Bill seeks to make special provision for imposing safeguard duty on caustic soda lye retrospectively for the period from 4th December, 2009 up to the period of 3rd March, 2010 (both days inclusive) as specified in Seventh Schedule.

Government of India in the Ministry of Finance (Department of Revenue) vide notification No. 131/2009-Customs [G.S.R. 861 (E)], dated the 4th December, 2009, imposed provisional safeguard duty on import of Caustic Soda Lye. The Director-General (Safeguard) in its final finding published vide number G.S.R. 306 (E), dated the 9th April, 2010 came to the conclusion that increased imports of Caustic Soda Lye into India has threatened to cause further serious injuries to the domestic producers and recommended the imposition of safeguard duty on imports of Caustic Soda Lye into India. Sub-clause (1) proposes to impose final safeguard duty at the rate of fifteen per cent. *ad valorem*, with retrospective effect for the period from 4th December, 2009 to 3rd March, 2010 (both days inclusive) as per the details given in the Seventh Schedule.

#### *Central excise*

*Clause 59* of the Bill seeks to amend section 4A of the Central Excise Act so as to substitute the Standards of Weights and Measures Act, 1976 by a reference to the Legal Metrology Act, 2009 as the former Act has been repealed by the latter.

*Clause 60* of the Bill seeks to substitute section 11A of the Central Excise Act relating to recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded, so as to make the provisions more coherent and clear and also to insert a new category of cases in respect of which notice can be issued within a period of five years with waiver of notice and abatement of penalty amount if the duty along with interest is paid before issue of notice.

*Clause 61* of the Bill seeks to substitute a new section 11AA for sections 11AA and 11AB of the Central Excise Act relating to interest on delayed payment of duty, so as to make the provisions more coherent and clear.

*Clause 62* of the Bill seeks to substitute section 11AC to provide that for the new category of cases the general penalty shall be fifty per cent. of the duty and also to confine the remission of penalty only to the new category of cases inserted in section 11A.

*Clause 63* of the Bill seeks to insert a new section 11E in the Central Excise Act so as to create a first charge on the property of the defaulter for recovery of any amount due under this Act except as provided under section 529A of the Companies Act, the Recovery of Debt due to Bank and the Financial Institution Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

*Clause 64* of the Bill seeks to amend section 12 of the Central Excise Act so as to insert reference to section 3A with effect from

the date of insertion of section 3A in the said Act with the exception that the offences and penalties shall not apply retrospectively.

*Clause 65* of the Bill seeks to insert section 12F to the Central Excise Act so as to empower the Joint Commissioners or the Additional Commissioners of the Central Excise to conduct the search or seizure either by himself or to authorise any officer subordinate to him for search and seizure. The provision of the Code of Criminal Procedure, 1973 relating to search and seizure shall so far as may apply to search and seizure under the aforesaid Act.

*Clause 66* of the Bill seeks to insert a new section 35R in the Central Excise Act relating to filing of appeal by Central Excise Officers in certain case.

The proposed section seeks to provide that the Central Board of Excise and Customs may, from time to time, issue orders, instructions or directions to Central Excise Officers fixing such monetary limit as it may deem fit for the purpose of regulating filing of appeal, application, revision or reference by Central Excise Officers under the provisions of Chapter VIA.

It is further proposed to provide that where, in pursuance of the orders or instructions or directions, issued under sub-section (1), the Central Excise Officer has not filed any appeal, application, revision or reference against any decision or order passed under the provisions of this Act, it shall not preclude such Central Excise Officer from filing appeal, application, revision or reference in any other case involving the same or similar issues or questions of law.

It is also proposed to provide that notwithstanding that no appeal, application, revision or reference has been filed by Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

It is also proposed to provide that the Appellate Tribunal or Court hearing such appeal, application, revision or reference shall have regard to the orders or instructions or directions issued under sub-section (1) and the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer.

It is also proposed to provide that every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1), and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

This amendment will take effect retrospectively from the 20th day of October, 2010.

*Clause 67* of the Bill seeks to amend sub-section (2) of section 38 of the Central Excise Act with a view to insert words therein so as to make its provisions applicable to the notification issued under section 5B of the said Act.

*Clause 68* of the Bill seeks to amend rule 3 of the CENVAT Credit Rules, 2004 in the manner specified in the Eighth Schedule with retrospective effect from the 18th April, 2006 so as to incorporate the provisions for CENVAT Credit of service tax paid on services received from outside India.

*Clause 69* of the Bill seeks to amend notifications issued under sub-section (1) of section 5A of the Central Excise Act, 1944 bearing number G.S.R. 679(E), dated 25th August, 2003, number G.S.R. 90(E), dated 21st January, 2004 and number G.S.R. 419(E), dated 9th July 2004 in the manner specified in the Ninth Schedule so as to retrospectively extend the time specified for making investment in units located in the States of Arunachal Pradesh, Assam,

Manipur, Meghalaya, Mizoram, Nagaland and Tripura and to carry out appraisal by the Investment Appraisal Committee.

#### *Excise tariff*

*Clause 70* of the Bill seeks to amend the First Schedule and the Third Schedule to the Central Excise Tariff Act.

Item (i) of sub-clause (a) of said clause 69 seeks to amend the First Schedule in the manner provided in the Tenth Schedule so as to,-

(i) amend Note 5 of Chapter 15 so as to insert headings 1501, 1502, 1503, 1504 and 1505 and tariff item 1516 10 00 therein;

(ii) enhance the tariff rate in respect of certain goods falling in Chapter 14, 15, 16, 19, 21, 22, 27, 30, 32, 38, 39, 46, 47, 48, 49 56, 58, 69, 70, 71, 84, 88, 89, 90, 93, 94 and 96;

(iii) insert a new Note 7 in Chapter 22 so as to provide that in relation to products of this Chapter, labelling or relabelling of containers or packing or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture";

(iv) insert a new Note 4 in Chapter 26 to provide that the process of converting ores into concentrates shall amount to manufacture;

(v) prescribe a tariff rate of 10% against tariff items 5307 10 10, 5307 10 90 and 5307 20 00;

(vi) insert two new Notes 4 and 5 in Chapter 63 so as to provide that affixing a brand name on the product, labelling or re-labelling, or repacking from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer, shall amount to "manufacture" and to define the expression "brand name";

(vii) insert a new Note 14 in Chapter 71 to provide that the process of refining of dore bar shall amount to "manufacture";

(viii) specify a tariff rate of 10% against tariff items 7106 10 00, 7106 91 00 and 7106 92 90.

Item (ii) of sub-clause (a) of said clause 69 seeks to amend the First Schedule to the Central Excise Tariff Act to incorporate therein the amendments approved by the Customs Co-operation Council (World Customs Organisation) in the legal text of the International Convention on the Harmonised Commodity Description and Harmonised Coding System to align the said Schedule with effect from the 1st day of January, 2012, with the Harmonised System of Nomenclature in the manner specified in Eleventh Schedule.

Sub-clause (b) of the said clause 69 seeks to amend the Third Schedule to the Central Excise Tariff Act so as to include specified goods which have been notified for levy of excise duty under section 4A of the said Act with retrospective effect from the dates on which they were so notified as specified in Twelfth Schedule.

#### *Service Tax*

*Clause 71* of the Bill seeks to amend Chapter V of the Finance Act, 1994 relating to service tax in the following manner:—

Sub-clause (A) seeks to amend section 65 so as to,—

(a) define the term "clinical establishment", omit the definition of "authorised service station" and amend the definitions of "club or association", "commercial training and coaching centre" and "support services of business or commerce";

(b) specify or expand the scope of the following taxable services—

(i) service provided in relation to repair, etc., of motor vehicle;

(ii) life insurance service;

(iii) service provided by clubs or associations;

(iv) (a) services provided by a business entity to individuals in relation to advice, consultancy or assistance in any branch of law;

(b) representational service before a judicial or quasi-judicial authority provided by any person to a business entity;

(c) include arbitration service provided to any business entity by an arbitral tribunal;

(v) services provided by clinical establishments and doctors of such establishments;

(vi) services provided by air-conditioned restaurants also having licence to serve alcoholic beverages;

(vii) service relating to providing of short-term accommodation by hotels and similar establishments;

Sub-clause (B) seeks to amend section 66 of the said Act, *inter alia*, to specify the following services as taxable services, namely:—

(a) representational services excluding the services provided to an individual by way of appearance before any court, tribunal or authority;

(b) services provided by an arbitral tribunal;

(c) services provided by an air-conditioned restaurant in relation to serving of food or beverages;

(d) services provided by hotel, etc., in relation to accommodation provided for a period of less than three months;

Sub-clause (C) seeks to amend section 70 of the said Act with a view to enhance the maximum late fee for non-filing of returns from two thousand rupees to twenty thousand rupees;

Sub-clause (D) seeks to amend section 73 with a view to omit sub-section (1A) and provisos to sub-section (2) and to insert a new sub-section (4A) to provide for mitigation of penalty;

Sub-clause (E) seeks to amend section 73B with a view to insert a proviso therein to provide concessional rate of interest for certain specified category of service providers;

Sub-clause (F) seeks to amend section 75 with a view to provide for concessional rate of interest for certain category of service providers whose service tax payments are delayed;

Sub-clause (G) seeks to amend section 76 with a view to reduce maximum penalty for failure to pay service tax from hundred per cent. to fifty per cent. of tax payable;

Sub-clause (H) seeks to amend section 77 with a view to enhance the maximum penalty from five thousand rupees to ten thousand rupees, in the cases of certain specified offences for which penalty is not specifically provided in the Act;

Sub-clause (I) seeks to substitute a new section for section 78 relating to penalty for suppressing, etc., of value of taxable services with a view to rationalise penalty in the case of serious offences, as equal to tax evaded.

The proposed section 78 provides that in case of certain specified offences penalty will be fifty per cent. and if such penalty is paid along with service tax and interest, within thirty days from the date of order, penalty will be further reduced to twenty-five per cent. and for specified category of service providers, ninety days from the date of order will be available for settling the tax dues, penalty and interest;

Sub-clause (J) seeks to amend section 80 with view to omit penalty waiver for serious offences but the same will be provided for certain specified offences;

Sub-clause (K) seeks to amend section 82 with a view to substitute certain words;

Sub-clause (L) seeks to amend section 83 with a view to make applicable certain provisions of Central Excise Act to service tax;

Sub-clause (M) seeks to insert new sections 88 and 89. Section 88 seeks to provide for liability under Act to be first charge and section 89 seeks to provide for offences and penalties to enable prosecution of certain specified offences involving service tax evasion. The power to prosecute offenders rests with the Chief Commissioner of Central Excise and the prosecution would be done only with the previous sanction of the Chief Commissioner of Central Excise;

Sub-clause (N) seeks to amend section 93A of the Finance Act, 1994 so as to empower the Central Government to make rules to provide for the circumstances or conditions under which the amount of rebate granted in respect of service tax paid on taxable services which are used as input services for manufacturing the exported goods or for providing the exported services shall not be recovered, even if the sale proceeds are not realised by the exporter.

Sub-clause (O) seeks to amend section 95 of the said Act so as to empower the Central Government to issue orders for removal of difficulty in case of implementing, classifying or assessing the value of any taxable service incorporated by the proposed legislation in this Chapter, up to one year from the date of enactment of the Finance Bill, 2011.

Sub-clause (P) seeks to insert a new section 96J in the Finance Act, 1994. Under the existing provision of section 66 in respect of, any service provided or to be provided to its members by any club or association in relation to provisions of services, facilities or advantages for a subscription or for any other amounts, service tax shall be chargeable.

It is proposed to exempt retrospectively the associations formed for representing the industry or commerce from payment of service tax in respect of membership fee collected by such club or associations during the period from 16th June, 2005 to 31st March, 2008. Refund will be made of all service tax collected in respect of the exempted period.

Clause 72 of the Bill seeks to give retrospective effect to the notification of the Government of India number G.S.R.492(E), dated the 7th July, 2009, from the 1st day of April, 2000, so as to allow the exemption to a tour operator having a contract carriage permit for inter-State or intra-State transportation of passengers, excluding tourism, conducted tour, charter or hire service, under the said notification.

#### Miscellaneous

Clause 73 of the Bill seeks to amend *Explanation III* of the Schedule to Medicinal and Toilet Preparations (Excise Duties) Act, 1955 so as to substitute the reference to the Standards of Weights and Measures Act, 1976 (60 of 1976) with Legal Metrology Act, 2009 (1 of 2010).

Clause 74 of the Bill seeks to amend section 15 of the Central Sales Tax Act, 1956 so as to increase the ceiling imposed through the Central sales tax on the power of the States to levy VAT on "declared goods" from four per cent. to five per cent.

*Clause 75* of the Bill seeks to amend the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 in the manner specified in Thirteenth Schedule so as to take out sugar and textile from the purview of the said Act to enable the States to levy VAT on those goods, by omitting the following:-

(a) heading 1701 and all sub-headings and tariff items thereof and the entries relating thereto;

(b) tariff item 1702 90 10 and the entries relating thereto;

(c) headings 5007, 5111, 5112, 5208, 5209, 5210, 5211, 5212, 5407, 5408, 5512, 5513, 5514, 5515, 5516, 5801, 5802, 5803, 5804, 5806, 5810, 5901, 5902, 5903, 5907, 6001, 6002, 6003, 6004, 6005 and 6006 and all sub-headings and tariff items thereof and the entries relating thereto.

*Clause 76* of the Bill seeks to amend the Second Schedule to the Special Economic Zones Act, 2005.

The aforesaid Schedule contains certain modifications to the provisions of the Income-tax Act, 1961 in its application of, to or in relation to, the Developer or entrepreneur for carrying on the authorised operations in a Special Economic Zone or unit.

The existing provisions contained in clause (C) of paragraph (a) provide that the dividend referred to in section 115-O of the Income-tax Act shall not be included in the total income of the assessee, being a Developer or entrepreneur.

It is proposed to omit the aforesaid clause (C).

This amendment will take effect from 1st June, 2011.

The existing provisions contained in paragraph (h) of the aforesaid Second Schedule provide that the provisions of section 115JB of the Income-tax Act shall not apply to the income accrued or arising on or after the 1st day of April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.

It is further proposed to omit the aforesaid paragraph (h).

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-2013 and subsequent years.

The existing provisions contained in paragraph (i) of the aforesaid Second Schedule provide that notwithstanding anything contained in section 115-O of the Income-tax Act, no tax on distributed profits shall be chargeable in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2005 out of its current income either in the hands of the Developer or enterprise or the person receiving such dividend not falling under clause (23G) of section 10 of the Income-tax Act, 1961.

It is also proposed to omit the aforesaid paragraph (i).

This amendment will take effect from 1st June, 2011.