

## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill seeks to insert sections 35CCC and 35CCD in the Income-tax Act relating to "Expenditure on agricultural extension project" and "Expenditure on skill development project".

The proposed new section 35CCC seeks to provide that where an assessee incurs any expenditure on agricultural extension project notified by the Board in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure.

Accordingly, it is proposed to confer power upon the Board to notify the "agricultural extension project" and to empower the Board to make rules relating to guidelines for the purposes of the said section.

The proposed new section 35CCD seeks to provide that where a company incurs an expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project notified by the Board in accordance with the guidelines as may be prescribed, then, there shall be allowed a deduction of a sum equal to one and one-half times of such expenditure.

Accordingly, it is proposed to confer power upon the Board to notify the "skill development project" and to empower the Board to make rules relating to guidelines for the purposes of the said section.

Clause 21 of the Bill seeks to amend section 56 of the Income-tax Act relating to income from other sources.

The proposed amendment seeks to insert a new clause (viib) with an explanation in sub-section (2) of the said section. The explanation to the said new clause provides that the fair market value of the shares shall be the value as may be determined in accordance with such method as may be prescribed.

Accordingly, the proposed amendment empowers the Board to make the rules so as to determine the fair market value of the shares.

Clause 31 of the Bill seeks to amend section 90 of the Income-tax Act relating to agreement with foreign countries or specified territories.

The proposed amendment seeks to insert a new sub-section (4) in the aforesaid section 90 so as to provide that an assessee, not being a resident, to whom an agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory.

The proposed amendment empowers the Board to make rules for specifying the particulars with respect to the certificate to be obtained by the assessee from the Government of that country or specified territory.

Clause 32 of the Bill seeks to amend section 90A of the Income-tax Act relating to adoption by Central Government of agreement between specified associations for double taxation relief.

The proposed amendment seeks to insert a new sub-section (4) in the aforesaid section 90A so as to provide that an assessee, not being a resident, to whom the agreement referred to in sub-section (1) applies, shall not be entitled to claim any relief under such agreement unless a certificate, containing such particulars as may be prescribed, of his being a resident in any specified

territory outside India is obtained by him from the Government of that specified territory.

The proposed amendment empowers the Board to make rules for specifying the particulars with respect to the certificate to be obtained by the assessee from the Government of that specified territory.

Clause 35 of the Bill seeks to insert a new section 92BA in the Income-tax Act relating to meaning of specified domestic transaction.

Clause (vi) of the proposed new section empowers the Board to make rules relating to any other specified domestic transaction not being an international transaction.

Clause 39 of the Bill seeks to insert new sections 92CC and 92CD in the Income-tax Act relating to advanced pricing agreement and effect to advance pricing agreement.

Sub-section (9) of the proposed new section 92CC empowers the Board to make rules relating to the scheme specifying therein the manner, form, procedure and any other matter generally in respect of the advance pricing agreement.

Clause 40 of the Bill seeks to insert a new Chapter-XA in the Income-tax Act relating to General anti-avoidance rule.

Section 101 of the aforesaid Chapter seeks to provide that the provisions of the said Chapter shall be applied in accordance with such guidelines and subject to such conditions and the manner as may be prescribed.

It is proposed to empower the Board to make rules relating to guidelines for application of the provisions of the said Chapter.

Clause 48 of the Bill seeks to substitute a new section for section 115JC of the Income-tax Act relating to special provisions for payment of tax by certain persons other than a company.

Sub-section (3) of the aforesaid new section 115JC seeks to provide that every person to whom section 115JC applies shall obtain a report, in such form as may be prescribed from an accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of furnishing of return of income under sub-section (1) of section 139.

Accordingly, the Board is empowered to make rules for the purposes of the said section.

Clause 56 of the Bill seeks to amend section 139 of the Income-tax Act relating to return of income.

Sub-clause (a) of the said clause seeks to insert a proviso in sub-section (1) of the said section so as to provide that a person, being a resident, who is not required to furnish a return under this sub-section and who during the previous year has any asset (including any financial interest in any entity) located outside India or signing authority in any account located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed.

Accordingly, the Board is empowered to make rules for the purposes of the said section.

Clause 59 of the Bill seeks to insert a new section 144BA in the Income-tax Act relating to reference to Commissioner in certain cases.

Sub-section (15) of the new section 144BA empowers the Board to make rules for the purposes of the efficient functioning of the approving panel and expeditious disposal of the references received under sub-section (4) of the said section.

Clause 64 of the Bill seeks to amend section 153A of the Income-tax Act relating to assessment in case of search or requisition.

The proposed amendment seeks to insert a proviso in sub-section (1) of the aforesaid section so as to provide that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

Accordingly, the proposed amendment empowers the Central Government to make rules for the purposes of the said section.

Clause 66 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

The proposed amendment seeks to insert a proviso in sub-section (1) of the aforesaid section so as to provide that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

Accordingly, the proposed amendment empowers the Central Government to make rules for the purposes of the said section.

Clause 73 of the Bill seeks to insert new section 194LAA in the Income-tax Act relating to payment of transfer of certain immovable property other than agricultural land.

Sub-section (4) of the proposed new section seeks to provide that notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of sub-clause (a) to clause (e) of sub-section (1) or sub-section (1A) of section 17 of the Indian Registration Act, 1908, purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any immovable property and in respect of which tax is required to be deducted under sub-section (1), no registering officer shall register any such document, unless the transferee furnishes the proof of deduction of income-tax in accordance with the provisions of this section and payment of sum so deducted to the credit of the Central Government in the prescribed form.

Accordingly, the proposed amendment empowers the Central Government to make rules for the purposes of the said section.

Clause 75 of the Bill proposes to amend section 195 of the Income-tax Act relating to other sums.

The proposed amendment seeks to insert sub-section (7) in the said section so as to provide that the Board may by notification in the Official Gazette, specify a class of persons or cases, where the person responsible for paying to a non-resident, not being a company, or to a foreign company, any sum, whether or not chargeable under the provisions of this Act, shall make an application to the Assessing Officer to determine, by general or special order, the appropriate proportion of sum chargeable, and

upon such determination, tax shall be deducted under sub-section (1) on that proportion of the sum which is so chargeable.

The proposed amendment, therefore, empowers the Board to issue a notification for the purposes of the said section.

Clause 77 of the Bill proposes to amend section 201 of the Income-tax Act relating to consequences of failure to deduct or pay.

The proposed amendment seeks to insert a new proviso in sub-section (1) of the said section so as to provide that any person including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on the sum paid to a resident or on the sum credited to the account of a resident shall not be an assessee in default in respect of such tax if such resident has furnished his return of income under section 139; has taken into account such sum for computing income in such return of income; and has paid the tax due on the income declared by him in such return of income; and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

The proposed amendment, therefore, empowers the Board to make rules for the purposes of the said section.

Clause 79 of the Bill proposes to amend section 206C of the Income-tax Act relating to profits and gains from the business of trading in alcoholic liquor, forest produce, scrap, etc.

The proposed amendment seeks to insert a new proviso in sub-section (6A) of the said section so as to provide that any person, other than a person referred to in sub-section (1D), responsible for collecting tax in accordance with the provisions of this section, who fails to collect the whole or any part of the tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee shall not be deemed to be an assessee in default in respect of such tax, if such buyer or licensee or lessee has furnished his return of income under section 139; has taken into account such amount for computing income in such return of income; and has paid the tax due on the income declared by him in such return of income and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.

Accordingly, the proposed amendment empowers the Board to make rules for the purposes of the said section.

Clause 106 of the Bill seeks to insert the new section 280A in Chapter XXII of the Income-tax Act relating to Special Courts.

The proposed new section 280A seeks to provide that the Central Government, in consultation with the Chief Justice of the High Court, may, for trial of offences punishable under this Chapter, by notification, designate one or more courts of Magistrate of first class as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification.

The proposed new section is, therefore, empowers the Central Government to issue a notification for the purposes of the said section.

Clause 118 of the Bill seeks to amend section 47 of the Customs Act relating to clearance of goods for home consumption.

Sub-clause (a) of the said clause seeks to insert a new proviso in sub-section (2) empowering the Central Government by notification, in the Official Gazette, to specify the class or classes of importers who shall pay the import duty electronically.

Clause 143 of the Bill seeks to amend Chapter V of the Finance Act, 1994 relating to Service tax.

Sub-clause (A) of said clause seeks to insert a proviso in section 65 so as to provide that the provisions of section 65 shall not apply

with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (B) of aforesaid clause seeks to insert a new section 65A so as to provide that the provisions of section 65A shall not apply with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (C) of aforesaid clause seeks to insert a new section 65B to provide for interpretation of various expressions, with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (D) of aforesaid clause seeks to insert a proviso in section 66 so as to provide that the provisions of section 66 shall not apply with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (E) of aforesaid clause seeks to insert a new sub-section (3) in section 66A so as to provide that the provisions of section 66A shall not apply with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (F) of aforesaid clause seeks to insert new sections 66B, 66C, 66D, 66E and 66F therein with effect from such date as the Central Government may, by notification, appoint.

The proposed section 66B empowers the Central Government to make rules in respect of the manner of collection of service tax.

The proposed new section 66C seeks to provide for determination of place of provision of service. Sub-clause (1) thereof seeks to provide that the Central Government may, having regard to the nature and description of various services, by rules made in this regard, determine the place where such services are provided or deemed to have been provided or agreed to be provided or deemed to have been agreed to be provided.

Sub-clause (G) of aforesaid clause seeks to omit sub-clause (b) in the *Explanation* to section 67, with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (I) of aforesaid clause seeks to amend section 68 thereof relating to payment of service tax.

Item (i) of the said sub-clause (I) seeks to amend sub-section (2) so as to substitute the words "any taxable service notified" appearing in sub-section (2) of section 68, with the words "such taxable services as may be notified", with effect from such date as the Central Government may, by notification, appoint.

Item (ii) of the said sub-clause (I) seeks to insert a new proviso in the said sub-section (2), with effect from such date as the Central Government may, by notification, appoint.

Sub-clause (T) of aforesaid clause seeks to amend sub-section (2) of section 94 thereof.

Accordingly, the said section 94 empowers the Central Government to make rules.

Item (iii) of the said sub-clause (T) seeks to insert—

(a) a new clause (i) so as to empower the Central Government to provide for the amount to be paid for compounding and the manner of compounding of offences;

(b) a new clause (j) so as to empower the Central Government to provide for the settlement of cases in accordance with sections 31, 32 and 32A to 32P (both inclusive) in Chapter V of the Central Excise Act, 1944 as made applicable to service tax *vide* section 83.

Clause 147 of the Bill proposes to amend section 3 of the Fiscal Responsibility and Budget Management Act, 2003 relating to "fiscal policy statement" to be laid before Parliament.

The proposed amendment seeks to insert a new sub-section (6A) in the said section. Clause (a) of sub-section (6A) of said section seeks to provide that the Medium-term Expenditure Framework Statement shall set forth a three-year rolling target for prescribed expenditure indicators with specifications of underlying assumptions and risk involved.

Accordingly, the proposed amendment confers power upon the Central Government to make rules with respect to the expenditure indicators with specifications of underlying assumptions and risks involved under clause (a) of sub-section (6A) of section 3.

Clause 148 of the Bill proposes to amend section 4 of the Fiscal Responsibility and Budget Management Act, 2003 relating to "fiscal management principles".

The proposed amendment seeks to substitute sub-section (1) of the aforesaid section so as to provide that the Central Government shall take appropriate measures to reduce the fiscal deficit, revenue deficit and effective revenue deficit to eliminate the effective revenue deficit by the 31st March, 2009 and thereafter build up adequate effective revenue surplus and also to reach revenue deficit of not more than two per cent. of Gross Domestic Product by the 31st March, 2005 and thereafter as may be prescribed by the rules made by the Central Government.

Accordingly, the proposed amendment confers power upon the Central Government to make rules so as to enhance the existing time period from 31st March, 2009 to 31st March, 2015 for the purpose of eliminating revenue deficit.

The matters in respect of which notifications may be issued or rules may be made in accordance with the provisions of the Bill are matters of procedure and 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.