

MEMORANDUM REGARDING DELEGATED LEGISLATION

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

The proposed amendment seeks to insert a new clause (22AAA) in the said section to define an “electoral trust” to mean a trust so approved by the Board in accordance with the scheme made in this regard by the central Government.

Accordingly, it is proposed to empower the Central Government to frame the scheme in this regard for the purposes of this clause.

Clause 8 of the Bill seeks to insert a new section 13B which contains provisions relating to voluntary contributions received by electoral trusts.

The proposed new section provides that any voluntary contribution received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if-

(a) such electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951, during the said previous year, ninety-five per cent. of the aggregate donations received by it during the said previous year alongwith the surplus, if any, brought forward from any earlier previous year; and

(b) such electoral trust functions in accordance with the rules made by the Central Government.

Accordingly, it is proposed to empower the Central Government to make rules in this regard for the purposes of this section.

Clause 9 of the Bill seeks to amend section 17 of the Income-tax Act which defines the expressions “salary”, “perquisite” and “profits in lieu of salary”.

The proposed amendment seeks to substitute sub-clause (vi) to clause (2) of section 17 so as to provide that perquisite will include, the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee. It is also proposed to insert clause (vii) so as to provide that perquisite will include the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees. It is further proposed to insert clause (viii) so as to provide that perquisite will include the value of any other fringe benefit or amenity as may be prescribed.

The value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from the assessee. The “fair market value” means the value determined in accordance with the method as may be prescribed.

It is, therefore, proposed to empower the Board to make rules, -

(i) prescribing the method in accordance with which the fair market value will be determined; and

(ii) providing for the value of any other fringe benefit or amenity.

Clause 13 of the Bill seeks to insert a new section 35AD in the Income-tax Act relating to deductions in respect of expenditure on specified business.

The proposed new section provides that an assessee shall be allowed a deduction in respect of the whole of any expenditure of

capital nature incurred for the specified business carried on by him during the previous year in which such expenditure is incurred by him.

The said section 35AD applies to specified business, which fulfills the conditions specified therein and also any other conditions as may be prescribed by the Board.

Accordingly, it is proposed to empower the Board to make the rules providing for any other conditions to be fulfilled for the purpose of the said section.

Clause 26 of the Bill seeks to amend section 56 of the Income-tax Act relating to taxation of income from other sources.

The proposed amendment seeks to provide, inter alia, that where an individual or a Hindu undivided family receives from any person on or after the 1st day of October, 2009, any property other than immovable property without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, then the whole of the aggregate fair market value of such property shall be taxed in the hands of the recipient. It further provides that, if such property is received for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration shall be taxed in the hands of the recipient.

The Explanation to the proposed section provides that the “fair market value” of a property other than an immovable property means the value determined in accordance with the method as may be prescribed.

It is, therefore, proposed to empower the Board to make rules providing for methods for determining the fair market value of such property.

Clause 39 of the Bill seeks to substitute section 90 of the Income tax Act relating to agreement with foreign countries or specified territories.

The proposed amendment seeks to substitute section 90 of the Income tax Act, so as to empower the Central Government to enter into an agreement with the Government of any country outside India or a specified territory outside India, *inter alia*, for avoidance of double taxation of income. For this purpose, the Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the said agreement.

It is, therefore, proposed to empower the Central Government to notify such provisions as necessary for implementing the said agreement.

Sub-section (3) of the said section provides that any term used but not defined in the Act or in the agreement referred to in the proposed sub-section (1) shall, unless the context otherwise requires and is not inconsistent with the provisions of the Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazettee in this behalf.

It is, therefore, proposed to empower the Central Government to notify certain terms for the purpose of aforesaid section.

Explanation 2 of the proposed section provides that “specified territory” means any area outside India which may be notified as such by the Central Government.

Accordingly, it is proposed to empower the Central Government to notify the “specified territory” for the purposes of the said section.

Clause 41 of the Bill seeks to insert a new section 92CB of the Income-tax Act relating to power of Board to make safe harbour rules.

Sub-section (1) of the said section provides that the determination of arm's length price under section 92C or section 92CA shall be subject to safe harbour rules. Accordingly, sub-section (2) of said section confers power upon the Board to make the safe harbour rules.

Clause 55 of the Bill seeks to insert a new section 144C relating to reference to Dispute Resolution Panel.

The proposed new section provides for a dispute resolution mechanism for the purpose of speedy disposal of the objections raised by the eligible assessee under this new section.

Accordingly, it is proposed to empower the Board to make rules for the efficient functioning of the Dispute Resolution Panel for expeditious disposal of the objections filed by the eligible assessee.

Clause 60 of the Bill seeks to amend section 194C relating to payments to contractors.

The proposed sub-section (6) of the said section provides that no deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.

It is proposed to empower the Board to make rules providing for the form and the time for furnishing the particulars by the person responsible for paying or crediting aforesaid sum to the account of the contractor during the course of the business of plying, hiring or leasing goods carriages.

Clause 63 of the Bill seeks to amend section 200 of the Income-tax Act relating to duty of person deducting tax.

The existing provisions contained in sub-section (3) of the said section provide that any person deducting any sum under the said sub-section shall after paying the tax deducted to the credit of the Central Government within the prescribed time, prepare the quarterly statement for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year.

The proposed amendment seeks to empower the Board to make rules prescribing the statements and the period of such statements which the person responsible under sub-section (3) shall furnish.

Clause 67 of the Bill seeks to amend section 206A of the Income-tax Act relating to furnishing of quarterly return in respect of payment of Interest to residents without deduction of tax.

Sub-sections (1) and (2) of the said section proposed to insert the words "or such statements for such periods as may be prescribed" after the words quarterly returns as provided in the said section.

The proposed amendment seeks to empower the Board to make rules prescribing the statements and the period of such statements which the person responsible under the said section shall furnish.

Clause 69 of the Bill seeks 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 empower the Board to make rules providing for the statements and the period of such statements which the person collecting tax from the business of trading in alcoholic liquor, forest produce, scrap, etc shall furnish.

Clause 76 of the Bill seeks to amend section 282 of the Income-tax Act relating to service of notice generally.

Clause (d) of the said section 282 confers power upon the Board to make rules providing for any other means of transmission of documents in addition to the means of transmission provided therein for the purpose of service of a notice or summon etc.

Sub-section (2) of the said section also empowers the Board to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which the communication referred to in the said sections may be delivered or transmitted to the person therein named.

Clause 83 of the Bill seeks to substitute the words "any country outside India or any territory outside India" for the words "any country" in the Explanation to section 44A of the Wealth-tax Act which defines the expression "reciprocating country".

Section 44A empowers the Central Government to enter into an agreement with the Government of any reciprocating country. It further provides that the Central Government may, by notification in the Official Gazette, make necessary provisions for implementing such agreement with the reciprocating country.

It is, therefore, proposed to empower the Central Government to make rules necessary for implementing the said agreement.

Explanation to section 44A of the Wealth-tax Act provides that Central Government may notify "reciprocating countries" which means any country outside India or any territory outside India.

It is, therefore, proposed to empower the Central Government to notify the "reciprocating country" for the purposes of the said section.

Clause 84 of the Bill proposes to insert a new section 26A in the Customs Act relating to refund of import duty in certain cases. Clause (d) of sub-section (1) of the said section empowers the Board to make regulations for laying down the manner of export of goods, relinquishment of title to the goods and abandoning to customs, and destruction or rendering of imported goods commercially valueless in the presence of proper officer and sub-section (2) of the said section empowers the Board to make regulations for laying down the form and manner of making an application for refund of such import duty.

Clause 88 of the Bill proposes to amend section 137 of the Customs Act. Sub-section (3) of the said section seeks to empower the Central Government to make rules to provide for manner of compounding of offences.

Clause 103 of the Bill proposes to amend section 9A of the Central Excise Act. Sub-section (2) of the said section seeks to empower the Central Government to make rules to provide for the manner of compounding of offences.

Clause 112 of the Bill proposes to amend Chapter V of the Finance Act, 1994. Sub-clause (E) of said clause proposes to amend section 94 which empowers the Central Government to make rules for the date for determination of rate of service tax and the place of provision of taxable service.

The matters in respect of which notifications may be issued or rules or regulations 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.