

# CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

No. 12/05

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## INCOME TAX

### I. Taxation Laws (Amendment) Act 2005

The Government has passed the Taxation Laws (Amendment) Act, 2005 on 28.12.2005 to replace the corresponding Ordinance w.e.f. 31.10.2005. The salient features of the Ordinance were reported in the Corporate Update for the month of November, 2005.

The amending Act now passed contains the following additional amendments:

#### A. Amendments to section 28 of the Income Tax Act, 1961

The scope of income chargeable under the head "Profit & gains from business or profession" has been widened by introduction of clause (iiid) and (iiie) after clause (iiic) of section 28 of the Income Tax Act, 1961. As per the new clauses, profit

earned from sale or transfer of Duty Entitlement Passbook Scheme and Duty Free Replenishment Certificate will now be taxed under 'Profit & Gains from business or profession', retrospectively from 01.04.1998 and 01.04.2001 respectively.

#### B. Amendment to Section 80HHC of the Income Tax Act, 1961

- (i) The deduction allowable u/s 80HHC of the Income Tax Act, 1961 on profits retained for export business has been increased to cover profit on transfer of Duty Entitlement Passbook Scheme and Duty Free Replenishment Certificate in the following manner: -

<p>90% (Profit on transfer of Duty Entitlement Passbook Scheme and Duty Free Replenishment Certificate) * <math>\frac{\text{Export turnover}}{\text{Total turnover}}</math></p> <p>However, for an assessee having export turnover exceeding Rs. 10 crores, the above deduction would be available, if he has necessary &amp; sufficient evidence to prove that:</p> <ul style="list-style-type: none"> <li>• he had an option to choose either the Duty Drawback or Duty Entitlement Pass Book Scheme / Duty Free Replenishment Certificate, being a Duty Remission Scheme and;</li> <li>• the rate of drawback credit attributable to the customs duty was higher than the Duty Entitlement Pass Book Scheme / Duty Free Replenishment Certificate.</li> </ul> <p>The amendment is effective from 01.04.1998.</p> <p>(ii). W.e.f. 1.04.1992, where the computation of deduction under sub clause (a), (b) or (c) of section 80HHC (3) results in a loss, such loss shall be set off against the below mentioned amounts:</p> <p style="text-align: center;">90% of (A+B+C+D+E) * <math>\frac{\text{Export turnover}}{\text{Total Turnover}}</math></p>	<p>Where,</p> <p>A = Profit on sale of a license granted under the Imports (Control) Order</p> <p>B = Cash assistance received or receivable by any person against exports</p> <p>C = Duty of customs or excise re-paid or re- payable as drawback against exports under the Customs and Central Excise Duties Drawback Rules, 1971</p> <p>D = Profit earned from sale or transfer of Duty Entitlement Passbook Scheme</p> <p>E = Profit earned from sale of Duty Free Replenishment Certificate</p> <p>The above amendments in section 28 and section 80HHC puts at rest the disputes between assessee and the Income Tax Department in this regard.</p> <p><b>II. No penalty / Interest due to amendment in Section 80HHC</b></p> <p>The CBDT has issued Circular No. 2/2006 on 17.01.2006. According to the Circular, no Penalty will be levied nor any interest will be charged in respect of any fresh demand raised as a result</p>
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of retrospective amendment in Section 28 and Section 80 HHC made by the Taxation Laws (Amendment) Act, 2005.

Further the circular also lays down guidelines concerning waiving interest / penalty already charged / levied.

The circular is reproduced on page no. 7 for information.

### **III. Data Structure for making corrections in quarterly statements of TDS/TCS filed on computer media notified**

For making corrections in the quarterly statements of Tax deducted at source (TDS) or Tax collected at source (TCS) filed in form no. 24Q, 26Q, 27Q and 27EQ, the data structure has been notified vide notification F.No. SW/9/3/2003-04 dated 29.11.2005.

### **IV. Due date for filing of quarterly returns u/s 206A(1) extended**

The due date for filing of quarterly returns of payment of interest to residents without deduction of tax at source for the quarter ending 30.06.2005 and 30.09.2005 has been further extended to 31.01.2006 vide order no. 385/35/2005 dated 29.12.2005.

## **NATIONAL TAX TRIBUNAL ACT, 2005**

Presently under the Direct and Indirect Tax laws, an appeal against the Income Tax Appellate Tribunal (ITAT) and Customs, Excise or Service Tax Appellate Tribunal [CESTAT] lies to the High Court on a substantial question of law. Due to the pendency of large number of cases in the High Court leading to blockage of revenue, the Govt. had decided to set up a separate national tribunal providing adjudication relating to disputes. To achieve this object, the Parliament has enacted "National Tax Tribunal Act, 2005" enabling the Central Govt. to constitute a 'National Tax Tribunal' (NTT). The Act is effective from 28<sup>th</sup> December, 2005. The salient features of the Act, in brief are as follows:

### **1. Purpose**

The purpose of the Act is to provide adjudication by the National Tax Tribunal of the following disputes:

- Disputes with respect to levy, assessment, collection and enforcement of direct taxes;
- Disputes with respect to determination of the rates of duties of customs and central excise on

<p>goods and the valuation of such goods for assessment for duties;</p> <ul style="list-style-type: none"><li>• Disputes with respect to levy of tax on service,</li></ul> <p>and for matters connected therewith or incidental thereto.</p> <p><b>2. Establishment of National Tax Tribunal</b></p> <p>The Act empowers the Central Govt. to establish a Tax Tribunal to be known as the National Tax Tribunal (NTT) to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under the Act. In exercise of such powers, the Central Govt. has vide notification no. SO 25(E), dated 6.1.2006 established the NTT, with immediate effect i.e. w.e.f. 6.1.2006.</p> <p><b>3. Appeal to National Tax Tribunal</b></p> <p>a. An appeal can be filed to the NTT on a substantial question of law, from every order passed in appeal by the following authorities:</p> <ul style="list-style-type: none"><li>• Income Tax Appellate Tribunal and</li><li>• Customs, Excise and Service Tax Appellate Tribunal</li></ul>	<p>b. An appeal can be filed by the following, who are aggrieved by the order of the above mentioned authorities:</p> <ul style="list-style-type: none"><li>• Chief Commissioner or Commissioner of Income Tax ;</li><li>• Chief Commissioner or Commissioner of Customs &amp; Central Excise;</li><li>• Assessee, aggrieved by any order passed by the Income Tax Appellate Tribunal ;</li><li>• Any person aggrieved by any order passed by the Custom, Excise and Service Tax Appellate Tribunal.</li></ul> <p>c. The appeal is to be filed within 120 days from the date on which the order appealed against is received by the assessee or the aggrieved person or the Chief Commissioner or Commissioner, as the case may be. However, in exceptional case, the time limit may be extended by another 60 days by NTT.</p> <p>d. An appeal can be preferred by an assessee or the aggrieved person as the case may be after deposit of atleast 25% of tax or duty payable on the basis of order appealed against.</p>
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**4. Appearance before National Tax Tribunal**

A party to an appeal, other than Government may either appear in person or authorise one or more Chartered Accountants or Legal Practitioners or any person duly authorised by him or it to present his or its case before the NTT. The Govt. may authorise one or more legal practitioners or any of its officers to present its case before NTT.

**5. Powers of National Tax Tribunal**

- a. The NTT , for the purposes of discharging its function under this Act, will have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit.
  
- b. All proceedings before the NTT shall be deemed to be judicial proceedings. The NTT shall be deemed to be a Civil Court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

**6. Order of National Tax Tribunal**

The NTT , after giving the parties to any proceedings before it, an opportunity of being heard, pass such orders thereon as it thinks fit.

**7. Appeal to Supreme Court**

Any person, including any department of the Government, aggrieved by any decision or order of the NTT can file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the NTT to him.

**8. Transfer of Pending Cases from High Court**

On and from such date as the Central Government may, by notification specify, all matters and proceedings including appeals and references under the direct taxes and indirect taxes pending before any High Court immediately before that date shall stand transferred to the NTT.

**DATES TO REMEMBER**

1. The due date for deposit of the third installment of advance fringe benefit tax for the quarter ending 31.03.2006 is 15<sup>th</sup> March, 2006.
2. The due date for deposit of the next installment of advance tax for the financial year 2005-06 for all assesses is 15<sup>th</sup> March, 2006.

**INCOME TAX CIRCULAR**  
**No. 2/2006**  
**Date 17<sup>th</sup> January, 2006**

**Amendment of section 80-HHC**  
**by Taxation Laws (Amendment) Act, 2005-**  
**Imposition of penalty/recovery of taxes**

Section 80-HHC read with section 28 of the Income-tax Act, 1961 has been amended by the Taxation Laws (Amendment) Act, 2005. The section 80-HHC so amended, inter-alia, provides that –

Profits on sale of Duty Entitlement Pass Book Scheme (DEPB) credits or Duty Free Replenishment Certificate (DFRC) will be treated at par with duty drawback for the purposes of proportionate increase of profits derived from exports computed under clause (a) or clause (b) or clause (c) of sub-section (3) of section 80-HHC in the case of, -

- (i) an exporter having export turnover not exceeding Rs. 10 crores ;
  - (ii) in the case of an exporter having export turnover exceeding Rs. 10 crores if –
    - (a) he had an option to choose either duty drawback or duty entitlement pass book scheme; and
    - (b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under duty entitlement pass book scheme.
- OR
- (c) he had an option to choose either duty drawback or duty free replenishment certificate; and
  - (d) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under duty free replenishment certificate.

2. The amendments relating to Duty Entitlement Pass Book Scheme and Duty Replenishment Certificate have been brought into the statute with retrospective effect. Therefore, it has been decided that no penalty shall be levied or interest shall be charged in respect of any fresh demand raised consequent to the enactment of Taxation Laws (Amendment) Act, 2005, on account of variation in the returned/assessed income attributable to profits on sale of DEPB credits or DFRC. Further, in such cases where assessments have already been completed and, -

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- (i) interest has been charged, the Chief Commissioner of Income-tax shall waive the interest relating to claim of profit on sale of DEPB credits or DFRC for deduction u/s 80-HHC;
- (ii) penalty has been levied, the Chief Commissioner of Income-tax shall waive the penalty relating to claim of profit on sale of DEPB credits or DFRC for deduction u/s 80-HHC; or
- (iii) penalty relating to claim of profit on sale of DEPB credits or DFRC for deduction u/s 80-HHC, has been initiated but not levied, the penalty proceedings shall be dropped.

3. Further, it is also directed that such demand shall be recovered over a period of 5 years. For this purpose, every Assessing Officer raising such a demand will maintain the details of such demand in a separate register so that the information can be furnished to the Board as and when required. These registers shall be kept in the custody of the Assessing Officers who will hand it over to their successors at the time of their transfer.

***F. No. 142/1/2006-TPL***

**Sd/-**  
**(Sobhan Kar)**  
**Under Secretary to the Govt. of India**

**Issued by:**  
**Ministry of Finance**  
**Department of Revenue**  
**Central Board of Direct Taxes**  
**New Delhi**

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