

# CORPORATE UPDATE

FOR CLIENT CIRCULATION ONLY

No. 08/04

30<sup>th</sup> September, 2004

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## INCOME TAX

### I. Finance (No. 2) Act & 2004

Finance (No. 2) Act 2004 was enacted by the Parliament on 10.09.2004 after obtaining approval from the President of India.

Following are the gist of the various amendments to the proposals in the Finance (No. 2) Bill, 2004 relating to income tax which were carried out in the Act. Please note that amendments to the proposals relating to service tax will be circulated shortly.

#### Individual Taxation

1. Under Finance (No. 2) Act, 2004, marginal relief from income tax has been provided to resident individuals falling in the income bracket

Rs. 100,000 - Rs. 111,250. Under the earlier proposals of Finance (No. 2) Bill, 2004, 100% rebate was provided to individuals resident in India having income not exceeding Rs. 100,000/- without any marginal relief.

2. The proposal to withdraw exemption from interest income to non-resident from the non-resident external account as well as on deposits in foreign currency from 01.09.2004, has been deferred till 01.04.2005 (Assessment year 2006-07). Accordingly, interest on these deposits till 31.03.2005 shall not be taxable.
3. The proposal to tax gifts in the hands of the donor have been substantially modified. As per the new scheme of taxation, any sum of money exceeding Rs. 25,000 received

without consideration by an individual / HUF from any person other than a relative, on or after 01.09.2004 shall be considered as income from other sources. Hence, it will be a sum of money which is received without consideration will be taxable. Accordingly, gifts received in kind will not get covered by the above provisions. Further, where the money is received for a consideration, the same will not be liable to tax. Money received on the occasion of marriage of the individual or under a will or by way of inheritance or in contemplation of death shall not be taxable.

**Corporate Taxation**

1. It has been clarified that where a housing project has been approved by the local authority before 01.04.2004, exemption u/s 80IB (10) shall be available in case the same is completed before 31.03.2008. However, where a housing project has been approved by a local authority on or after 01.04.2004, exemption shall be available if the same is completed within four years from the end of the financial year in which the housing project is approved. Further, the benefit of exemption in respect of reconstruction or redevelopment of existing building shall be available only to those areas which

have been declared to be slum areas under any law for the time being in force and such scheme is notified by the board in this behalf.

2. Proposal to withdraw tax exemption on payment made by an Indian company to acquire an aircraft or an aircraft engine on lease from a foreign state or a foreign enterprise has been deferred till 01.04.2005.

**Capital Gains**

**Securities Transaction Tax – (STT)**

The provisions relating to Security Transaction Tax (STT) are contained in Chapter VII of the Finance (No. 2) Act 2004, and shall take effect from 1<sup>st</sup> October, 2004, the date on which Chapter VII of the said Act has been notified by Ministry of Finance vide Notification No. 247/2004 dated 28<sup>th</sup> September, 2004. These provisions form a separate legislation and are not part of Income Tax Act.

Exemption of long term capital gains from transfer of listed security and 10% tax on Short Term capital gains on such securities shall be applicable on or after Chapter VII of the Finance Act (No2)2004 on STT is notified i.e 1<sup>st</sup> October, 2004.

In terms of Notification No. 247/2004 dated 28<sup>th</sup> September, 2004, the rates of STT have been amended as under:

1. Those who are now paying capital gain tax

(a) **Delivery based Trade** -The security transaction tax shall be levied at the rate of 0.075 per cent both on the purchaser as well as the seller when the transaction of equity shares in a company or a unit of equity-oriented fund is entered into a recognized stock exchange and the contract for the purchase or sale is settled by actual delivery or transfer of such shares or unit.

(b) Further in case a unit of the equity-oriented mutual fund is sold outside the recognized stock exchange, i.e. it is surrendered back to the mutual fund itself, then the seller shall be required to pay 0.15 per cent security transaction tax.

2. Those who are now paying income tax on business profits

(c) **Day traders and Arbitrageurs**-The security transaction tax shall be leviable at the rate of 0.015 per cent where the contract for the sale or purchase is settled without actual

delivery and such transaction is entered into a recognized stock exchange. It is to be noted that the obligation to pay security transaction tax at the rate of 0.015 per cent in respect of speculative transaction stated above is only on the seller, not on the buyer.

(d) **Derivative Traders**-The security transaction tax shall be levied at the rate of 0.01 per cent on the seller at the time of entering the transaction in a recognized stock exchange.

3. Further, a new section 88E has been inserted to allow credit of the security transaction tax where the income from the transaction is chargeable under the head 'Profit and gains of business or profession'. The credit/rebate under this section shall be an amount equal to the security transaction tax paid by him. However, the rebate shall not exceed the amount of the income tax payable on such income. For the purpose of determination of tax payable on such income, the same shall be calculated by applying the average rate of income tax on such income. Further, the assessee shall be required to submit evidence of payment of security transaction tax in the prescribed form.

<p>The implication of the above amendment is that no refund shall be claimed in respect of security transaction tax. In case the tax liability of such income is more than the security transaction tax, the taxpayer shall be required to pay the additional amount of tax.</p> <p>4. Further it is to be noted that the security transaction tax paid shall not be considered as part of the cost while computing capital gain under Section 48 of the Act. Security transaction tax will also not be eligible for deduction while computing business income.</p> <p>5. Buying and selling of bonds, including Government bonds, will be completely exempt from STT. Similarly units of Mutual funds other than equity oriented funds will be exempt from STT.</p> <p>6. Where STT is not attracted or exempted, the normal capital gains regime shall apply.</p> <p>7. Ministry of Finance, Govt. of India has vide Notification No. 248/2004 dated 28<sup>th</sup> September, 2004, notified</p>	<p>Securities Transaction Tax Rules, 2004 for carrying out the provisions of Chapter VII of the said Act. These rules shall come into force on 1<sup>st</sup> day of October, 2004. The said Notification is attached on page no. 5.</p> <p><b><u>Tax Deduction at source (TDS)</u></b></p> <p>1. Section 40(a)(i) has been substituted by the Finance (No. 2) Act, 2004. As per the changed provisions of section 40(a)(i), no deduction will be allowed if tax has not been deducted on payments made outside India or in India to a non-resident, which are chargeable under the Income Tax Act or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under section 200(1).</p> <p>However, where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under section 200(1), such sum shall be allowed as a deduction in computing the income for the previous year in which such tax has been paid.</p>
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<p>2. Further, sub-clause (ia) to section 40(a), inserted by the Finance (No. 2) Bill, 2004, has also been partially modified. As per the modification no deduction shall be allowed in respect of any interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVIIIB and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under section 200(1).</p> <p>However, where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under section (1) of section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.</p>	<p><b><u>Miscellaneous</u></b></p> <p>1. Provisions relating to annual information report have been modified to clarify that an annual information return u/s 285 BA of the Income Tax Act, 1961 is to be filed by certain agencies and assesseees who are required to maintain books of account. The information is to be furnished with regard to certain transactions to be prescribed in the Income Tax Rules.</p> <p>2. It was proposed in the Finance (No. 2) Bill, 2004, that falsification of books or documents by a person to induce or abet any other person to evade any tax, penalty or interest chargeable under the Income Tax Act would be punishable with rigorous imprisonment. It is now clarified in the Act that for the purposes of establishing the charge, it shall not be necessary to prove evasion of tax, penalty or interest by the other person.</p>
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**II. Salaried Tax payers in 12 cities can get refunds directly credited in respective bank accounts**

The Income-tax Department has introduced Electronic Clearance Scheme (ECS) for refunds up to Rs. 25,000 in cases of salaried taxpayers filing returns in Form 2E (Naya Saral). This Scheme is available to taxpayers in 12 cities, namely, New Delhi, Mumbai, Chennai, Ahmedabad, Bhubaneshwar, Nagpur, Kanpur, Bangalore, Hyderabad, Patna, Kolkata and Thiruvanthapuram. Once the return is processed, the refund (if any) will be credited directly to the bank account indicated in the return of income. Taxpayers wishing to avail of this Scheme should indicate required bank details on the return of income. To this end, the Central Board of Direct Taxes has recently notified modified Form 2E for salary returns that contains columns for providing details of bank accounts. Modified Form 2E may be downloaded from the website or obtained on fax or email from Aaykar Sampark Kendra (ASK) by dialing 0124-2438000.

**Date to Remember**

The last date for filing of Income tax return for Financial Year 2003-04 by all assesseees is 31<sup>st</sup> October, 2004.

**[TO BE PUBLISHED IN THE GAZETTE OF INDIA (EXTRAORDINARY) PART II,  
SECTION 3, SUB-SECTION (ii) DATED 28th SEPTEMBER, 2004]**

**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE**

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**New Delhi, the 28th September, 2004**

**NOTIFICATION  
SECURITIES TRANSACTION TAX RULES, 2004**

S.O. 1059(E).- In exercise of the powers conferred by sub-section (1) read with subsection (2) of section 114 of the Finance (No.2) Act, 2004 (23 of 2004), the Central Government hereby makes the following rules for carrying out the provisions of Chapter VII of the said Act relating to securities transaction tax, namely:-

**Short title and commencement.**

1. (1) These rules may be called the Securities Transaction Tax Rules, 2004.
- (2) They shall come into force on the 1st day of October, 2004.

**Definitions.**

2. (1) In these rules, unless the context otherwise requires,-
  - (a) "Act" means the Finance (No.2) Act, 2004 ( 23 of 2004);
  - (b) "authorised bank" means any bank as may be appointed by the Reserve Bank of India as its agent under the provisions of sub-section (1) of section 45 of the Reserve Bank of India Act, 1934 (2 of 1934);
  - (c) "Form" means a Form set out in the Appendix to these rules.

- (2) Words and expressions used and not defined in these rules but defined in the Act, or the Securities Contracts (Regulation) Act, 1956, or the Income-tax Act, 1961, shall have the meanings respectively assigned to them in those Acts.

**Value of taxable securities transaction .**

3. For the purposes of clause (c) of section 99 of the Act, the value of a taxable securities transaction, being a purchase or sale of an equity share in a company or a unit of an equity oriented<sup>1</sup> fund, entered into in a recognised stock exchange, shall be determined in the following manner, namely:-
- (a) where the equity share or unit is purchased or sold by a person on a trading day in the netted settlement mode,-
    - (i) the quantity of shares or units purchased or sold in each trade in that equity share or unit executed by the person on that day, shall be multiplied by the price at which the trade is executed, to determine the trade value of each such trade;
    - (ii) the aggregate trade value of all trades in the equity share or unit by the person on that day shall be arrived at by totalling the trade values determined under sub-clause (i);
    - (iii) the aggregate trade value arrived at under sub-clause (ii), shall be divided by the total quantity of the equity share or unit traded by the person on that day, to determine the volume weighted average price of that equity share or unit for that person for that day;
    - (iv) such volume weighted average price (rounded off to the nearest paisa) shall be taken to be the value of the taxable securities transaction relating to the

equity share or unit.

Explanation.- For the purposes of this clause, the determination of the value of taxable securities transaction in a case where the equity share or unit is purchased or sold through a member of the stock exchange, shall be made with reference to the trades executed in the equity share or unit under a particular client Code through that member;

- (b) where the equity share or unit is purchased or sold by a person in the trade-fortrade settlement mode, the value of the taxable securities transaction shall be the price at which the equity share or unit is purchased or sold;
- (c) where the equity share or unit is purchased in the auction settlement mode, the value of the taxable securities transaction shall be the volume weighted average price of the equity share or unit, determined in the manner specified in clause (a), in respect of all trades in that equity share or unit carried out in the auction session;
- (d) where the equity share or unit is sold in the auction settlement mode, the value of the taxable securities transaction shall be the price at which the equity share or unit is sold.

Explanation.- For the purposes of this rule –

- (i) “netted settlement mode” means a mode of settlement of transactions in a recognised stock exchange where the quantity of an equity share or unit purchased by a person on a trading day is set off against the quantity of that equity share or unit sold by him on that day and actual delivery is required to be taken or given by him as the case may be, only in respect of the net quantity purchased or sold as has not been so set off;

- (ii) “trade-for-trade settlement mode” means a mode of settlement of transactions in a recognised stock exchange where each trade is compulsorily required to be settled by actual delivery;
- (iii) “auction settlement mode” means a mode of settlement, in a stock exchange, of transactions carried out in the auction session, being a trading session in which the stock exchange makes purchases of equity shares or units through an auction process initiated by it, so as to settle transactions where there has been a failure to deliver such equity shares or units which were required to be delivered.

**Rounding off value of taxable securities transaction, securities transaction tax, etc.**

- 4. The value of taxable securities transaction and the amount of securities transaction tax, interest and penalty payable, and the amount of refund due, under the provisions of Chapter VII of the Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

**Person responsible for collection and payment of securities transaction tax in case of a Mutual Fund.**

- 5. In the case of a Mutual Fund, the person responsible for collection and payment of securities transaction tax in accordance with sub-sections (2), (3) and (4) of section 100 of the Act, shall be the trustee of the Fund, or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.

**Payment of Securities Transaction Tax.**

- 6. Every recognised stock exchange, or, as the case may be, the trustee of every Mutual Fund or such other person managing the affairs of the mutual fund as may be duly

authorised by the trustee in this behalf, who is required to collect and pay securities transaction tax under section 100, shall pay the amount of such tax to the credit of the Central Government by remitting it into any branch of the Reserve Bank of India or of the State Bank of India or of any authorized bank accompanied by a securities transaction tax challan.

**Return of taxable securities transactions.**

7. (1) The return of taxable securities transactions required to be furnished under sub-section (1) of section 101 of the Act shall, -
- (a) in the case of a recognised stock exchange, be in Form No. 1 and be verified in the manner indicated therein;
  - (b) in the case of a Mutual Fund, be in Form No. 2 and be verified in the manner indicated therein.
- (2) The particulars required to be furnished in the schedules to Form No. 1 and Form No. 2 referred to in sub-rule (1) shall be furnished on a computer media, in accordance with the following, -
- (a) the computer media conforms to the following specifications:-
    - i) CD ROM of 650 MB capacity or higher capacity; or
    - ii) 4mm 2GB/ 4GB (90M/ 120M) DAT Cartridge, or
    - iii) Digital Video Disc;
  - (b) if the data relating to the schedules is copied using data compression or backup software utility, the corresponding software utility or procedure for its decompression or restoration shall also be furnished;

- (c) the return shall be accompanied by a certificate regarding clean and virus free data.
- (3) In the case of a Mutual Fund, the return referred to in sub-rule (1) shall be furnished by the trustee of the Fund, or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.
- (4) The return of taxable securities transaction entered into during a financial year shall be furnished on or before the 30th June immediately following that financial year.

**Return by whom to be signed.**

- 8. The return under sub-section (1) of section 101 of the Act shall be signed and verified –
  - (a) in the case of a recognised stock exchange –
    - (i) being a company, by the managing director or a director thereof;
    - (ii) in any other case, by the principal officer thereof.
  - (b) in the case of a Mutual Fund, by the trustee or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.

**Time limit to be specified in the notice calling for return of taxable securities transaction.**

- 9. Where an assessee fails to furnish the return under sub-section (1) of section 101 of the Act within the time specified in sub-rule (4) of rule 7, the Assessing Officer may issue a notice to such person requiring him to furnish, within thirty days from the date of service of the notice, a return in the Form prescribed in rule 7 as applicable to him and verified in the manner indicated therein.

**Notice of demand.**

10. Where any tax, interest or penalty is payable in consequence of any order passed under the provisions of Chapter VII of the Act, the Assessing Officer shall serve upon the assessee a notice of demand in Form No. 3 specifying the sum so payable.

**Prescribed time for refund of tax to the person from whom such amount was collected.**

11. Every assessee, in case any amount is refunded to it on assessment under sub-section (2) of section 102 of the Act, shall, within thirty days from the date of receipt of such amount, refund the same to the concerned person from whom it was collected.

**Form of appeal to Commissioner of Income-tax (Appeals).**

12. (1) An appeal under sub-section (1) of section 110 to the Commissioner (Appeals) shall be made in Form No. 4.1
- (2) The form of appeal prescribed by sub-rule (1), the grounds of appeal and the form of verification appended thereto relating to an assessee shall be signed and verified by the person who is authorised to sign the return of taxable securities transactions under rule 8, as applicable to the assessee.

**Form of appeal to Appellate Tribunal.**

13. An appeal under sub-section (1) or sub-section (2) of section 111 of the Act to the Appellate Tribunal shall be made in Form No. 5, and where the appeal is made by the assessee, the form of appeal, the grounds of appeal and the form of verification appended thereto shall be signed by the person specified in rule 8.

**[Notification No. 248/2004 F.No. 142/23/2004-TPL]**

**Sharat Chandra,  
Director**

**August, 2004**

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