

The Taxation Laws (Amendment) Act, 2005

UNION OF INDIA

India

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Act 55 of 2005

- Published on 1 January 2005
- Commenced on 1 January 2005
- [This is the version of this document from 1 January 2005.]
- [Note: The original publication document is not available and this content could not be verified.]

An Act further to amend the Income- tax Act, 1961 and the Finance Act, 2005. BE it enacted by Parliament in the Fifty- sixth Year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title and commencement.-

(1) This Act may be called the Taxation Laws (Amendment) Act, 2005 .(2) It shall be deemed to have come into force on the 31st day of October, 2005 .

Chapter II

AMENDMENTS TO THE INCOME- TAX ACT, 1961

2. Amendment of section 10.-

In section 10 of the Income- tax Act, 1961 (43 of 1961) (hereafter in this Chapter referred to as the Income- tax Act), with effect from the 1st day of April, 2006 ,-(a) in clause (6BB), for the words, figures and letters" or entered into after the 30th day of September, 2005 and approved by the Central Government in this behalf", the words, figures and letters" or entered into after the 31st day of March, 2006 and approved by the Central Government in this behalf" shall be substituted;(b) in clause (15A), in the proviso, for the words, figures and letters" the 1st day of October, 2005 ", the words, figures and letters" the 1st day of April, 2006 " shall be substituted;(c) after clause (38), the following clauses shall be inserted, namely:-' (39) any specified income, arising from any international sporting event held in India, to the person or persons notified by the Central Government in the Official Gazette, if such international sporting event-(a) is approved by the

international body regulating the international sport relating to such event;(b)has participation by more than two countries;(c)is notified by the Central Government in the Official Gazette for the purposes of this clause. Explanation.- For the purposes of this clause," the specified income" means the income, of the nature and to the extent, arising from the international sporting event, which the Central Government may notify in this behalf;(40) any income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation: Provided that the provisions of this clause shall apply if reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under sub- clause (a) of clause (v) of sub- section (4) of section 80-IA;(41)any income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power where such transfer is effected on or before the 31st day of March, 2006 , to the Indian company notified under sub- clause (a) of clause (v) of sub- section (4) of section 80-IA.'

3. Amendment of section 28.-

In section 28 of the Income- tax Act,-(a) after clause (iiic), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1998 , namely:-" (iiid) any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);";(b)after clause (iiid) as so inserted, the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2001 , namely:-" (iiie) any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);".

4. Amendment of section 80HHC.-

In section 80-HHC of the Income- tax Act,-(i)in sub- section (3),-(A) after the proviso, the following provisos shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1998 , namely:-' Provided further that in the case of an assessee having export turnover not exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub- section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent. of any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee:Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub- section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent. of any sum referred to in clause (iiid) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee

has necessary and sufficient evidence to prove that, -(a) he had an option to choose either the duty drawback or the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme; and (b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Entitlement Pass Book Scheme, being the Duty Remission Scheme: Provided also that in the case of an assessee having export turnover exceeding rupees ten crores during the previous year, the profits computed under clause (a) or clause (b) or clause (c) of this sub-section or after giving effect to the first proviso, as the case may be, shall be further increased by the amount which bears to ninety per cent. of any sum referred to in clause (iiie) of section 28, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee, if the assessee has necessary and sufficient evidence to prove that, -(a) he had an option to choose either the duty drawback or the Duty Free Replenishment Certificate, being the Duty Remission Scheme; and (b) the rate of drawback credit attributable to the customs duty was higher than the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme. Explanation.- For the purposes of this clause, "rate of credit allowable" means the rate of credit allowable under the Duty Free Replenishment Certificate, being the Duty Remission Scheme calculated in the manner as may be notified by the Central Government: (B) after the fourth proviso as so inserted, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1992, namely:- "Provided also that in case the computation under clause (a) or clause (b) or clause (c) of this sub-section is a loss, such loss shall be set off against the amount which bears to ninety per cent. of -(a) any sum referred to in clause (iiia) or clause (iiib) or clause (iiic), as the case may be, or (b) any sum referred to in clause (iiid) or clause (iiie), as the case may be, of section 28, as applicable in the case of an assessee referred to in the second or the third or the fourth proviso, as the case may be, the same proportion as the export turnover bears to the total turnover of the business carried on by the assessee."; (ii) in the Explanation occurring at the end, with effect from the 1st day of April, 1998, -(I) in the proviso to clause (ba), for the word, brackets, figures and letter" and (iiic)", the brackets, figures, letters and word" (iiic), (iiid) and (iiie)" shall be substituted and shall be deemed to have been substituted; (II) in clause (baa), in sub-clause (I), for the word, brackets, figures and letter" and (iiic)", the brackets, figures, letters and word" (iiic), (iiid) and (iiie)" shall be substituted and shall be deemed to have been substituted.

5. Amendment of section 80-IA.-

In section 80-IA of the Income-tax Act, in sub-section (4), after clause (iv), the following clause shall be inserted with effect from the 1st day of April, 2006, namely:- "(v) an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if -(a) such Indian company is formed before the 30th day of November, 2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant and such Indian company is notified before the 31st day of December, 2005 by the Central Government for the purposes of this clause; (b) such undertaking begins to generate or transmit or distribute power before the 31st day of March, 2007."

6. Amendment of section 115W.-

In section 115W of the Income- tax Act, in clause (a), with effect from the 1st day of April, 2006 ,-(a)for sub- clause (iii), the following sub- clause shall be substituted, namely:- " (iii) an association of persons or a body of individuals, whether incorporated or not;" ;(b)after sub- clause (v), the following proviso shall be inserted, namely:- " Provided that any person eligible for exemption under clause (23C) of section 10 or registered under section 12AA or a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951) shall not be deemed to be an employer for the purposes of this Chapter;" .

Chapter III

AMENDMENTS TO THE FINANCE ACT, 2005

7. Amendment of section 94.-

In Chapter VII of the Finance Act, 2005 (18 of 2005) (hereafter in this Chapter referred to as the Finance Act), in section 94, with effect from the 1st day of June, 2005 ,-(a)after clause (3), the following clause shall be inserted and shall be deemed to have been inserted, namely:- '(3A)" banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank referred to in section 51 of that Act;' ;(b)after clause (4), the following clause shall be inserted and shall be deemed to have been inserted, namely:- ' (4A)" co- operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);' .

8. Insertion of new section 112A.-

In Chapter VII of the Finance Act, after section 112, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of June, 2005 , namely:- " 112A. This Chapter not to apply in certain cases.-The provisions of this Chapter shall not apply to, or in relation to, the taxable banking transactions entered into on or after the 1st day of June, 2005 ,-(a) between a scheduled bank and a banking company or a co- operative bank; or(b)between a scheduled bank and another scheduled bank." .

Chapter IV

REPEAL AND SAVING

9. Repeal and saving.-

(1)The Taxation Laws (Amendment) Ordinance, 2005 (Ord. 4 of 2005) is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken under the Income- tax Act, 1961 (43 of 1961) and the Finance Act, 2005 (18 of 2005) , as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of those Acts, as

amended by this Act.