

The Interest Tax Act, 1974

February 22, 2013

1. Short title and extent

[ACT NO. 45 OF 1974]

An Act to impose a special tax on interest in certain cases Be it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows :-

(1) This Act may be called the **Interest-tax Act, 1974¹**.

(2) It extends to the whole of India.

1. See also Circular No. 159, dated 31-12-1974.

2. Definitions

In this Act, unless the context otherwise requires,—

(1) “assessee” means a person by whom interest-tax, or any other sum of money is payable under this Act and includes—

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his chargeable interest or of the amount of refund due to him or of the chargeable interest of any other person in respect of which he is assessable or of the amount of refund due to such other person;

(b) every person who is deemed to be an assessee in default under any provision of this Act;

(2) “assessment” includes reassessment;

(3) “assessment year” means the period of twelve months commencing on the 1st day of April, every year;

(4) “Board” means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(5) “chargeable interest” means the total amount of interest referred to in section 5, computed in the manner laid down in section 6;

¹(5A) “credit institution” means,—

(i) a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) ²[* * *];

(ii) a public financial institution as defined in section 4A³ of the Companies Act, 1956 (1 of 1956);

(iii) a State Financial Corporation established under section 3 or section 3A or an institution notified under section 46⁴ of the State Financial Corporations Act, 1951 (63 of 1951); and



(iv) any other financial company;

(5B) "financial company" means a company, other than a company referred to in sub-clause (i), (ii) or (iii) of clause (5A), being—

(i) a hire-purchase finance company, that is to say, a company which carries on, as its principal business, hire-purchase transactions or the financing of such transactions;

(ii) an investment company, that is to say, a company which carries on, as its principal business, the acquisition of shares, stock, bonds, debentures, debenture stock, or securities issued by the Government or a local authority, or other marketable securities of a like nature;

(iii) a housing finance company, that is to say, a company which carries on, as its principal business, the business of the financing of acquisition or construction of houses including acquisition or development of land in connection therewith;

(iv) a loan company, that is to say, a company [not being a company referred to in sub-clauses (i) to (iii)] which carries on, as its principal business, the business of providing finance, whether by making loans or advances or otherwise;

(v) a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A⁵ of the Companies Act, 1956 (1 of 1956), to be a Nidhi or Mutual Benefit Society; ⁶[* * *]

⁷[(va) a residuary non-banking company [other than a financial company referred to in sub-clause (i), (ii), (iii), (iv) or (v)], that is to say, a company which receives any deposit under any scheme or arrangement, by whatever name called, in one lump sum or in instalments by way of contributions or subscriptions or by sale of units or certificates or other instruments or in any other manner; or]

(vi) a miscellaneous finance company, that is to say, a company which carries on exclusively, or almost exclusively, two or more classes of business referred to in the preceding sub-clauses;]

(6) "Income-tax Act" means the Income-tax Act, 1961 (43 of 1961);

⁸⁹(7) "interest" means interest on loans and advances made in India and includes—

(a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India; and

(b) discount on promissory notes and bills of exchange drawn or made in India,

but does not include—

(i) interest referred to in sub-section (1B) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);

(ii) discount on treasury bills;]

(8) "prescribed" means prescribed by rules made under this Act;

(9) ¹⁰[* * *]



(10) all other words and expressions used herein but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

1. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

2. Words "or a co-operative society engaged in carrying on the business of banking not being a co-operative society providing credit facilities to farmers or village artisans" omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

3. Section 4A of the Companies Act, 1956, lays down as under :

"4A. Public financial institutions.—(1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely :—

(i) the Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);

(ii) the Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);

(iii) the Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(iv) the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(v) the Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution :

Provided that no institution shall be so specified unless—

(i) it has been established or constituted by or under any Central Act, or

(ii) not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government."

4. Section 46 of the State Financial Corporations Act, 1951, lays down as under :

"46. Power to apply Act to certain financial institutions in existence at commencement of Act.—(1) The Central Government may, by notification in the Official Gazette, direct that all or any of the provisions of this Act shall, subject to such exceptions and restrictions as may be specified, apply to any institution in existence at the commencement of this Act which has for its object the financing of industrial concerns, and on the issue of such notification, the institution shall be deemed to be a financial corporation established by the State Government for the State within the meaning of this Act, and the provisions of this Act shall become applicable thereto according to the tenor of the notification.



(2) Any notification issued under sub-section (1) may suspend the operation of any enactment applicable to any such institution immediately before the issue of the notification."

5. Section 620A of the Companies Act, 1956, lays down as under :

'620A. Power to modify Act in its application to Nidhis, etc.—(1) In this section, "Nidhi" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a Nidhi or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification—

(a) shall not apply to any Nidhi or Mutual Benefit Society, or

(b) shall apply to any Nidhi or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.'

6. Word "or" omitted by the Finance Act, 1992, w.e.f. 1-4-1993.

7. Inserted by the Finance Act, 1992, w.e.f. 1-4-1993.

8. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Prior to substitution, clause (7), as amended by the Finance Act, 1976, w.e.f. 1-4-1977, Finance (No. 2) Act, 1980, w.e.f. 1-9-1980 and Finance Act, 1982, w.e.f. 1-4-1983, read as under :

'(7) "interest" means interest on loans and advances made in India and includes—

(a) commitment charges on unutilised portion of any credit sanctioned for being availed of in India; and

(b) discount on promissory notes and bills of exchange drawn or made in India, but does not include—

(i) any amount chargeable to income-tax, under the Income-tax Act, under the head "Interest on securities";

(ia) interest referred to in sub-section (1B) of section 42 of the Reserve Bank of India Act, 1934 (2 of 1934);

(ii) discount on treasury bills; and

(iii) interest on any term loan sanctioned before the 18th day of June, 1980 where the agreement under which such loan has been sanctioned provides for the repayment thereof during a period of not less than three years.

Explanation

For the purposes of this sub-clause, "term loan" means a loan which is not repayable on demand;



(iv) interest on any deferred credit (that is to say, credit on the terms that the payment is to be deferred) sanctioned by a scheduled bank in connection with the export of capital plant and machinery outside India;

(v) interest on any loan in foreign currency sanctioned by any corporation or bank referred to in sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (9) for the import of capital plant and machinery from a country outside India.'

See also CIT v. Federal Bank Ltd. [1991] 189 ITR 117 (Ker.), State Bank of Mysore v. CIT [1988] 41 Taxman 275 (Kar.), CIT v. Karnataka Bank Ltd. [1986] 157 ITR 512 (Kar.), CIT v. State Bank of Indore [1988] 172 ITR 24 (MP), CIT v. Vijaya Bank [1988] 41 Taxman 34 (Kar.) and CIT v. Canara Bank [1989] 44 Taxman 254 (Kar.).

9. See also Circular No. 738, dated 25-3-1996 and Circular No. 760, dated 13-1-1998.

10. Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Prior to its omission it read as under :

'(9) "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or any other bank, being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), and includes—

(a) the Industrial Finance Corporation of India established under the Industrial Finance Corporation Act, 1948 (15 of 1948);

(b) the Industrial Development Bank of India, established under the Industrial Development Bank of India Act, 1964 (18 of 1964);

(c) the Industrial Reconstruction Corporation of India Limited; and

(d) the Industrial Credit and Investment Corporation of India Limited.

3. Tax authorities

¹[(1) The income-tax authorities specified in section 116 of the Income-tax Act shall be the interest-tax authorities for the purposes of this Act.

(1A) Every such authority shall exercise the powers and perform the functions of an interest-tax authority under this Act in respect of any person within his jurisdiction.

(1B) The jurisdiction of an interest-tax authority under this Act shall be the same as he has under the Income-tax Act by virtue of orders or directions issued under section 120 of that Act (including orders or directions assigning the concurrent jurisdiction) or under any other provision of that Act.

(1C) The interest-tax authority having jurisdiction in relation to a credit institution which has no income assessable to income-tax under the Income-tax Act shall be the interest-tax authority having jurisdiction in respect of the area in which that institution carries on its business or has its principal place of business.

(1D) Section 118 of the Income-tax Act and any notification issued thereunder shall apply in relation to the control of interest-tax authorities as they apply in relation to the control of the



corresponding income-tax authorities, except to the extent to which the Board may, by notification in the Official Gazette, otherwise direct in respect of any interest-tax authority.]

(2) All officers and persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board :

Provided that no such orders, instructions or directions shall be issued—

(a) so as to require any tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the ²[Commissioner (Appeals)] in the exercise of his appellate functions.

(3) Every Income-tax Officer ³[or Assistant Commissioner] ⁴[or Deputy Commissioner] employed in the execution of this Act shall observe and follow the orders, instructions and directions issued for his guidance by the ⁵[Director] or by the Commissioner or by the ⁶[Additional Commissioner of Income-tax or the ⁷[Joint Commissioner]] within whose jurisdiction he performs his functions.

1. Substituted for sub-section (1) by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Prior to substitution, sub-section (1), as amended by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, read as under :

“(1) Every Director of Inspection, Commissioner of Income-tax, Commissioner of Income-tax (Appeals), Additional Commissioner of Income-tax, Inspecting Assistant Commissioner of Income-tax, Income-tax Officer and Inspector of Income-tax, shall have the like powers and perform the like functions, under this Act, as he has and performs under the Income-tax Act, and for the exercise of his powers and the performance of his functions, his jurisdiction under this Act shall be the same as he has under the Income-tax Act.”

2. Substituted for “Appellate Assistant Commissioner” by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

3. Inserted by the Finance Act, 1994, w.e.f. 1-6-1994.

4. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

5. Substituted for “Director of Inspection”, by the Finance Act, 1994 w.e.f. 1-6-1994.

6. Substituted for “Inspecting Assistant Commissioner”, by the Finance Act, 1994, w.e.f. 1-6-1994.

7. Substituted for “Deputy Commissioner” by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

4. Charge of tax

¹[(1)] Subject to the provisions of this Act, there shall be charged on every scheduled bank for every assessment year commencing on or after the 1st day of April, 1975, a tax in this Act referred to as interest-tax in respect of its chargeable interest of the previous year at the rate of seven per cent of such chargeable interest :

²[Provided that the rate at which interest-tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 1983 shall be three and a half per cent of such chargeable interest.]

³[(2) Notwithstanding anything contained in sub-section (1) but subject to the other provisions of this Act, there shall be charged on every credit institution for every assessment year commencing on and from the 1st day of April, 1992, interest-tax in respect of its chargeable interest of the previous year at the rate of three per cent of such chargeable interest :]

⁴[Provided that the rate at which interest-tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 1997 shall be two per cent of such chargeable interest.]

The following sub-section (3) shall be inserted after subsection (2) in section 4 by the Finance Act, 2000, w.e.f. 1-4-2001.

(3) Notwithstanding anything contained in sub-sections (1) and (2), no interest tax shall be charged in respect of any chargeable interest accruing or arising after the 31st day of March, 2000.

1. Renumbered by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

2. Inserted by the Finance Act, 1983, w.e.f. 1-4-1983.

3. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

4. Inserted by the Finance Act, 1997, w.e.f. 1-4-1998.



5. Scope of chargeable interest

¹[Scope of chargeable interest. Subject to the provisions of this Act, the chargeable interest of any previous year of a credit institution shall be the total amount of interest (other than interest on loans and advances made to other credit institutions ²[or to any co-operative society engaged in carrying on the business of banking], accruing or arising to the credit institution in that previous year :]

Provided that any interest in relation to categories of bad or doubtful debts referred to in section 43D of the Income-tax Act shall be deemed to accrue or arise to the credit institution in the previous year in which it is credited by the credit institution to its profit and loss account for that year or, as the case may be, in which it is actually received by the credit institution, whichever is earlier.]

1. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Prior to substitution, section 5 read as under :

“Scope of chargeable interest.—Subject to the provisions of this Act, the chargeable interest of any previous year of a scheduled bank shall be the total amount of interest (other than interest on loans and advances made to scheduled banks) accruing or arising to the bank in that previous year.”

2. Inserted by the Finance Act, 1992, w.r.e.f. 1-10-1991.

6. Computation of chargeable interest

(1) Subject to the provisions of sub-section (2), in computing the chargeable interest of a previous year, there shall be allowed from the total amount of interest (other than interest on loans and advances made to ¹[credit institutions]) accruing or arising to the assessee in the previous year, a deduction in respect of the amount of interest which is established to have become a bad debt during the previous year :

Provided that such interest has been taken into account in computing the chargeable interest of the assessee of an earlier previous year and the amount has been written off as irrecoverable in the accounts of the assessee for the previous year during which it is established to have become a bad debt.

Explanation

For the removal of doubts, it is hereby declared that in computing the chargeable interest of a previous year, no deduction, other than the deduction specified in this sub-section shall be allowed from the total amount of interest accruing or arising to the assessee.

(2) In computing the chargeable interest of a previous year, the amount of interest which accrues or arises to the assessee ²[before the 1st day of August, 1974, or] ³[during the period commencing on the 1st day of March, 1978, and ending with the 30th day of June, 1980,] ⁴[or ⁵[during the period commencing on the 1st day of April, 1985 and ending with the 30th day of September, 1991]], shall not be taken into account.

1. Substituted for "scheduled banks" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

2. Substituted for "before the 1st day of August, 1974" by the Finance Act, 1978, w.e.f. 1-4-1979.

3. Substituted for "after the 28th day of February, 1978" by the Finance (No. 2) Act, 1980, w.e.f. 1-9-1980.

4. Inserted by the Finance Act, 1985, w.e.f. 1-4-1985.

5. Substituted for "after the 31st day of March, 1985" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

7. Return of chargeable interest

(1) In the case of every credit institution, its principal officer, or where in the case of a non-resident credit institution any person has been treated as its agent under section 163 of the Income-tax Act, such person, shall furnish a return of the chargeable interest of the credit institution of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, before the 31st day of December, of the assessment year.

(2) Without prejudice to the provisions of sub-section (1), the Assessing Officer may, before the end of the relevant assessment year, serve a notice upon the principal officer of any credit



institution, or where in the case of a non-resident credit institution any person has been treated as its agent under section 163 of the Income-tax Act, upon such person, requiring him to furnish within thirty days from the date of service of the notice a return of the chargeable interest of the credit institution of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(3) Any assessee who has not furnished a return within the time allowed under sub-section (1) or sub-section (2), or having furnished a return under sub-section (1) or sub-section (2), discovers any omission or wrong statement therein, may furnish a return or a revised return, as the case may be, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

8. Assessment

(1) For the purposes of making an assessment under this Act, the ¹[Assessing] Officer may serve on any person who has furnished a return under section 7 or upon whom a notice has been served under sub-section (2) of section 7 (whether a return has been furnished or not) a notice requiring him on a date therein to be specified to produce or cause to be produced such accounts or documents or evidence as the ¹[Assessing] Officer may require for the purposes of this Act and may, from time to time, serve further notices requiring the production of such further accounts or documents or other evidence as he may require.

(2) The ¹[Assessing] Officer, after considering such accounts, documents or evidence, if any, as he has obtained under sub-section (1) and after taking into account any relevant material which he has gathered, shall, by an order in writing, assess the chargeable interest and the amount of the interest-tax payable on the basis of such assessment.

²[(3) If any person—

(a) fails to make a return as required under sub-section (1) of section 7 and has not made a return or a revised return under sub-section (3) of that section, or

(b) fails to comply with all the terms of notice under sub-section (2) of that section,

the Assessing Officer shall, after taking into account all the relevant material which he has gathered and after giving the assessee an opportunity of being heard, make the assessment of the total chargeable interest to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment :

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) has been issued prior to the making of an assessment under this section.]

1. Substituted for "Income-tax", by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

2. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

9. Self-assessment



(1) Where interest-tax is payable on the basis of any return required to be furnished under section 7 or section 10, after taking into account the amount of interest-tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such interest-tax, together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance interest-tax, before furnishing the return and the return shall be accompanied by proof of payment of such interest-tax and interest.

Explanation

Where the amount paid by the assessee under this sub-section falls short of the aggregate of the interest-tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the interest-tax payable.

(2) After the assessment under section 8 has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such assessment.

(3) If any assessee fails to pay the whole or any part of interest-tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the interest-tax or interest or both remaining unpaid, and all the provisions of this Act shall apply accordingly.

10. Interest escaping assessment

Interest escaping assessment.¹ If—

(a) the ²[Assessing] Officer has reason to believe that by reason of the omission or failure on the part of the assessee to make a return under section 7 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for any assessment year, chargeable interest for that year has escaped assessment or has been under-assessed or has been made the subject of excessive relief under this Act, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the ²[Assessing] Officer has, in consequence of information in his possession, reason to believe that chargeable interest assessable for any assessment year has escaped assessment or has been under-assessed or has been the subject of excessive relief under this Act,

he may, in cases falling under clause (a), at any time, and in cases falling under clause (b), at any time within four years of the end of that assessment year, serve on the assessee a notice containing all or any of the requirements which may be included in a notice under section 7, and may proceed to assess or reassess the amount chargeable to interest-tax and the provisions of this Act shall, so far as may be, apply, as if the notice were a notice issued under that section.

1. Section should be amended in lieu of section 147 of the Income-tax Act.

2. Substituted for "Income-tax" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

10A. Time limit for completion of assessments and reassessments

¹[Time limit for completion of assessments and reassessments. (1) No order of assessment shall be made under section 8 at any time after the expiry of two years from the end of the assessment year in which the interest was first assessable.

(2) No order of assessment or reassessment shall be made under section 10 after the expiry of two years from the end of the financial year in which the notice under that section was served.

(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order passed under section 15, section 16, section 19 or section 20, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order under section 15 or section 16 is received by the Commissioner or, as the case may be, the order under section 19 or section 20 is passed by the Commissioner.

(4) The provisions of sub-sections (1) and (2) shall not apply to the assessment or reassessment made in consequence of, or to give effect to, any finding or direction contained in an order under section 15 or section 16 or section 19 or section 20 of this Act or section 256 or section 260 of the Income-tax Act as applicable to this Act by virtue of section 21 of this Act or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act and such assessment or reassessment may, subject to the provisions of sub-section (3), be completed at any time.

Explanation 1

In computing the period of limitation for the purposes of this section—

(i) the time taken in reopening the whole or any part of the proceeding; or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court, shall be excluded.

Explanation 2

Where, by an order referred to in sub-section (4), any interest is excluded from the chargeable interest for an assessment year in respect of an assessee, then, an assessment of such interest for another assessment year shall, for the purposes of section 10 and this section, be deemed to be one made in consequence of, or to give effect to, any finding or direction contained in the said order.]

1. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

11. Advance payment of interest-tax

(1) Interest-tax shall be payable in advance during the financial year in respect of the chargeable interest for the assessment year immediately following that financial year in accordance with the provision of this section.

(2) Interest-tax shall be payable in advance in three instalments during each financial year, the due date of, and the amount payable in, each such instalment being as specified in the following Table :

TABLE

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Due date of instalment	Amount payable
On or before the 15th September	Not less than twenty per cent of such interest-tax payable in advance.
On or before the 15th December	Not less than fifty per cent of such interest-tax payable in advance, as reduced by the amount, if any, paid in the earlier instalment.
On or before the 15th March	The whole amount of such interest-tax payable in advance as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments :

Provided that any amount paid by way of interest-tax payable in advance on or before the 31st day of March shall also be treated as interest-tax paid in advance during the financial year ending on that day for all the purposes of this Act.

12. Interest for default in furnishing return of chargeable interest

(1) Where the return of chargeable interest for any assessment year under sub-section (1) of section 7, or in response to a notice under sub-section (2) of that section, is furnished after the due date, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period commencing on the date immediately following the due date, and,—

(a) where the return is furnished after the due date, ending on the date of the furnishing of the return; or

(b) where no return has been furnished, ending on the date of completion of assessment under sub-section (3) of section 8,

on the amount of the interest-tax on the chargeable interest as determined under sub-section (2) or sub-section (3) of section 8 as reduced by the interest-tax paid in advance.

Explanation 1

In this section, "due date" means the 31st day of December of the relevant assessment year or, as the case may be, the date on which return in response to a notice under sub-section (2) of section 7 is due to be filed.

Explanation 2

Where in relation to an assessment year, an assessment is made for the first time under section 10, the assessment so made shall be regarded as assessment made under sub-section (2), or, as the case may be, sub-section (3) of section 8.

Explanation 3

For the purposes of computing the interest payable under section 9, interest-tax on the chargeable interest declared in the return shall be deemed to be the interest-tax on total chargeable interest determined under sub-section (2) or sub-section (3) of section 8.

(2) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 9 towards the interest chargeable under this section.



(3) Where the return of chargeable interest for any assessment year, required by a notice under section 10 issued after the completion of assessment under sub-section (2) or sub-section (3) of section 8 or section 10 is furnished after the expiry of the time allowed under such notice or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period commencing on the date immediately following the expiry of time allowed as aforesaid, and,—

(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, ending on the day of completion of the reassessment under section 10,

on the amount by which the interest-tax on the chargeable interest as determined on the basis of such reassessment exceeds the interest-tax on chargeable interest on the basis of earlier assessment aforesaid.

(4) Where, as a result of an order under section 15 or section 17 of this Act or section 254 or section 260 or section 262 of the Income-tax Act, as applicable to this Act by virtue of section 21 of this Act, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form¹ specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 of the Income-tax Act as applicable to this Act by virtue of section 21, and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1992 and subsequent years.

1. See rule 7 and Form No. 6

12A. Interest for default in payment of interest-tax in advance

(1) Subject to the other provisions of this section, where in any financial year, an assessee, who is liable to pay interest-tax in advance under section 11 has failed to pay such tax, or where the interest-tax paid in advance by such assessee is less than ninety per cent of the assessed interest-tax, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period from the 1st day of April next following such financial year to the date of determination of chargeable interest under sub-section (2) or, as the case may be, sub-section (3) of section 8 on an amount equal to the assessed interest-tax or, as the case may be, on the amount by which the interest-tax payable in advance falls short of the assessed interest-tax.

Explanation 1

In this section, "assessed interest-tax" means—

(a) for the purpose of computing the interest payable under section 9, the interest-tax on the chargeable interest as declared in the return referred to in that section;



(b) in any other case, interest-tax on chargeable interest as determined under sub-section (2) or, as the case may be, sub-section (3) of section 8.

Explanation 2

Where, in relation to an assessment year, an assessment is made for the first time under section 10, the assessment so made shall be regarded as assessment made under sub-section (2) or, as the case may be, sub-section (3) of section 8.

(2) Where, before the date of completion of assessment under sub-section (2) or sub-section (3) of section 8, interest-tax is paid by the assessee under section 9 or otherwise,—

(i) interest shall be calculated in accordance with the foregoing provisions of this section up to the date on which the tax is so paid, and reduced by the interest, if any, paid under section 9 towards the interest chargeable under this section;

(ii) thereafter, interest shall be calculated at the rate aforesaid on the amount by which the tax so paid together with interest-tax paid in advance falls short of the assessed interest-tax.

(3) Where, as a result of an order of reassessment under section 10, the amount on which the interest was payable under sub-section (1) is increased, the assessee shall be liable to pay simple interest at the rate of two per cent for every month or part of a month comprised in the period commencing on the day following the completion of the assessment under sub-section (2) or, as the case may be, sub-section (3) of section 8 referred to in sub-section (1) and ending on the date of reassessment under section 10, on the amount by which the interest-tax on the basis of the reassessment exceeds the interest-tax on the chargeable interest determined on the basis of assessment under sub-section (2) or, as the case may be, sub-section (3) of section 8.

(4) Where, as a result of an order under section 15 or section 17 of this Act or section 254 or section 260 or section 262 of the Income-tax Act as applicable to this Act by virtue of section 21 of this Act, the amount on which interest was payable under sub-section (1) or sub-section (3) has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and—

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form¹ specifying the sum payable and such notice of demand shall be deemed to be a notice under section 156 of the Income-tax Act as applicable to this Act by virtue of section 21 of this Act, and provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

(5) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1992 and subsequent assessment years.

1. See rule 7 and Form No. 6.

12B. Interest for deferment of interest-tax payable in advance

(1) Where in any financial year, the assessee who is liable to pay interest-tax in advance under section 11 has failed to pay the interest-tax and where such tax paid by the assessee on his chargeable interest on or before the 15th day of September is less than twenty per cent of the interest-tax due on the returned chargeable interest or the amount of such interest-tax paid on or before the 15th day of December is less than fifty per cent of the tax due on the returned



chargeable interest, then, the assessee shall be liable to pay simple interest at the rate of one and one-half per cent per month of the shortfall for a period of three months on the amount of shortfall from twenty per cent or, as the case may be, fifty per cent of the interest-tax due on the returned chargeable interest.

(2) The provisions of this section shall apply in respect of assessments for the assessment year commencing on the 1st day of April, 1992 and subsequent assessment years.

13. Penalty for concealment of chargeable interest

If the Assessing Officer or the Commissioner (Appeals) in the course of any proceeding under this Act, is satisfied that any person has concealed the particulars of chargeable interest or has furnished inaccurate particulars of such interest, he may direct that such person shall pay by way of penalty, in addition to any interest-tax payable by him, a sum which shall not be less than, but shall not exceed three times, the amount of interest-tax sought to be evaded by reason of the concealment of particulars of his chargeable interest or the furnishing of inaccurate particulars of such chargeable interest.

14. Opportunity of being heard

No order imposing a penalty under section 12 or section 13 shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard.

15. Appeals to the Commissioner (Appeals)

(1) Any person objecting to the amount of interest-tax for which he is assessed by the ²[Assessing] Officer or denying his liability to be assessed under this Act, or objecting to any penalty or fine imposed by the ²[Assessing] Officer, or to the amount allowed by the ²[Assessing] Officer by way of any relief under any provision of this Act, or to any refusal by the ²[Assessing] Officer to grant relief or to an order of rectification having the effect of enhancing the assessment or reducing the refund, or to an order refusing to allow the claim made by the assessee for a rectification under section 17, may appeal to the ¹[Commissioner (Appeals)].

³[(2) Every appeal filed on or after the 1st day of October, 1998 shall be in the prescribed form⁴ and shall be verified in the prescribed manner and shall be accompanied by a fee of two hundred and fifty rupees.]

(3) An appeal shall be presented within thirty days of the following date, that is to say,—

(a) where the appeal relates to assessment or penalty or fine, the date of service of the notice of demand relating to the assessment or penalty or fine, or

(b) in any other case, the date on which the intimation of the order sought to be appealed against is served :

Provided that the ¹[Commissioner (Appeals)] may admit an appeal after the expiration of the said period if he is satisfied that the appellant had sufficient cause for not presenting it within that period.

(4) The ¹[Commissioner (Appeals)] shall hear and determine the appeal and, subject to the provisions of this Act, pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty :



Provided that an order enhancing the assessment or penalty shall not be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(5) The procedure to be adopted in the hearing and determination of the appeals shall, with any necessary modification, be in accordance with the procedure applicable in relation to income-tax.

1. Substituted for "Appellate Assistant Commissioner" by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

2. Substituted for "Income-tax" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

3. Substituted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Prior to its substitution it read as under :

"(2) Every appeal shall be in the prescribed form and shall be verified in the prescribed manner."

4. See rule 5 and Form No. 3.

15A. Transfer of certain pending appeals

¹15A. Transfer of certain pending appeals. [Omitted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.]

1. Prior to omission, section 15A, as inserted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978, read as under :

'15A. Transfer of certain pending appeals.—Every appeal under this Act which is pending immediately before the appointed day before an Appellate Assistant Commissioner or a Commissioner and any matter arising out of or connected with such appeal and which is so pending shall stand transferred on that day to the Commissioner (Appeals) and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was on that day :

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be re-heard.

Explanation

In this section "appointed day" means the date appointed under section 39 of the Finance (No. 2) Act, 1977.'

16. Appeals to Appellate Tribunal

(1) Any assessee aggrieved by an order passed by a Commissioner under section 19, or an order passed by ¹[a Commissioner (Appeals)] under any provision of this Act, may appeal² to the Appellate Tribunal against such order.



(2) The Commissioner may, if he objects to any order passed by the ³[Commissioner (Appeals)] under any provision of this Act, direct the ⁴[Assessing] Officer to appeal² to the Appellate Tribunal against the order.

(3) Every appeal under sub-section (1) or sub-section (2) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the assessee or to the Commissioner, as the case may be.

(4) The ⁴[Assessing] Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the ³[Commissioner (Appeals)] has been preferred under sub-section (1) or sub-section (2) by the other party may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross-objections⁵ verified in the prescribed manner, against any part of the order of the ³[Commissioner (Appeals)], and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (3).

(5) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (3) or sub-section (4), if it is satisfied that there was sufficient cause for not presenting it within that period.

⁶(6) An appeal to the Appellate Tribunal shall be in the prescribed form⁷ and shall be verified in the prescribed manner and, shall, except in the case of an appeal referred to in sub-section (2) or a memorandum of cross-objections referred to in sub-section (4), be accompanied by a fee of ⁸one thousand rupees in the case of an appeal filed on or after the 1st day of October, 1998].

(7) Subject to the provisions of this Act, in hearing and making an order on any appeal under this section, the Appellate Tribunal shall exercise the same powers and follow the same procedure as it exercises and follows in hearing and making an order on any appeal under the Income-tax Act.

1. Substituted for "an Appellate Assistant Commissioner" by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

2. See rule 6(1) and Form No. 4.

3. Substituted for "Appellate Assistant Commissioner" by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

4. Substituted for "Income-tax" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

5. See rule 6(2) and Form No. 5.

6. See also Circular No. 308, dated 29-6-1981.

7. See rule 6(1) and Form No. 4.

8. Substituted for "two hundred rupees" by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998. Earlier "two hundred rupees" was substituted for "one hundred and twenty-five rupees" by the Finance Act, 1981, w.e.f. 1-6-1981.

17. Rectification of mistakes



¹17. Rectification of mistakes. (1) With a view to rectifying any mistake apparent from the record, the Commissioner, the ²[Assessing] Officer, the ³[Commissioner (Appeals)] and the Appellate Tribunal may, of his, or its, own motion or on an application by the assessee in this behalf, amend any order passed by him or it in any proceeding under this Act ⁴[within four years from the end of the financial year in which such order was passed].

(2) An amendment which has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the assessee shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(3) Where an amendment is made under this section, the order shall be passed in writing by the authority concerned.

⁵(4) Subject to the other provisions of this Act, where any such amendment has the effect of reducing the assessment, the ²[Assessing] Officer shall make any refund which may be due to such assessee.

(5) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made, the ²[Assessing] Officer shall serve on the assessee a notice of demand,⁶ in the prescribed form specifying the sum payable.

1. See also Circular No. 394, dated 14-9-1984.

2. Substituted for "Income-tax" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

3. Substituted for "Appellate Assistant Commissioner" by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

4. Substituted for "within four years of the date on which such order was passed" by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984.

5. See rule 8 and Form No. 7.

6. See rule 7 and Form No. 6.

18. Interest-tax deductible in computing total income under the Income-tax Act

¹[Interest-tax deductible in computing total income under the Income-tax Act. Notwithstanding anything contained in the Income-tax Act, in computing the income of a credit institution chargeable to income-tax under the head "Profits and gains of business or profession" or, under the head "Income from other sources", the interest-tax payable by the credit institution for any assessment year shall be deductible from the income, under the respective heads, of the credit institution assessable for that assessment year.]

1. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Prior to substitution, section 18 read as under :



'18. Interest-tax deductible in computing total income under Income-tax Act.— Notwithstanding anything contained in the Income-tax Act, in computing the income of a scheduled bank chargeable to income-tax under the head "Profits and gains of business or profession", the interest-tax payable by the scheduled bank for any assessment year shall be deductible from the profits and gains of the bank assessable for that assessment year.'

19. Revision of order prejudicial to revenue

¹19. Revision of order prejudicial to revenue. (1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the ²[Assessing] Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

³[Explanation

For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) "record" shall include and shall be deemed always to have included all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(b) where any order referred to in this sub-section is the subject-matter of any appeal, the power of the Commissioner under this sub-section shall extend to all such matters as had not been considered and decided in such appeal.]

⁴[(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

(3) Notwithstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the ⁶[the National Tax Tribunal], the High Court or the Supreme Court.

Explanation

In computing the period of limitation for the purposes of sub-section (2), ⁵[the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 of the Income-tax Act, as applicable to this Act by virtue of section 21 of this Act, and] any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

1. See also Circular No. 394, dated 14-9-1984.

2. Substituted for "Income-tax" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

3. Substituted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991. Prior to substitution, Explanation, as inserted by the Taxation Laws (Amdt.) Act, 1984, w.e.f. 1-10-1984, read as under :

"Explanation

For the removal of doubts, it is hereby declared that, for the purposes of this sub-section, an order passed by the Income-tax Officer shall include an order passed by the Inspecting Assistant Commissioner in exercise of the powers of an Income-tax Officer conferred on him under clause (a) of sub-section (1) of section 125 of the Income-tax Act as applied by section 21 of this Act."

4. Substituted for the following by the Taxation Laws (Amendment) Act, 1984, w.e.f. 1-10-1984 :

"(2) No order shall be made under sub-section (1)—

(a) to revise an order of reassessment made under section 10, or

(b) after the expiry of two years from the date of the order sought to be revised."

5. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

6. Inserted by Act No. 49 of 2005 w.e.f. 20-12-2005.

20. Revision of orders by Commissioner

(1) The Commissioner may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act which has been taken by an ¹[Assessing] Officer ²[* * *] subordinate to him and may make such enquiry or cause such enquiry to be made and, subject to the provisions of this Act, may pass such order thereon, not being an order prejudicial to the assessee, as he thinks fit.

(2) The Commissioner shall not of his own motion revise any order under this section if the order has been made more than one year previously.

(3) In the case of an application for revision under this section by the assessee, the application shall be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise came to know of it, whichever is earlier :

Provided that the Commissioner may, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period, admit an application made after the expiry of that period.

(4) The Commissioner shall not revise any order under this section in the following cases—

³[(a) where an appeal against the order lies ⁴[to the Commissioner (Appeals) or to the Appellate Tribunal] but has not been made and the time within which such appeal may be made has not expired, or the assessee has not waived his right of appeal; or

(b) where the order has been made the subject of an appeal ⁴[to the Commissioner (Appeals) or to the Appellate Tribunal]].

(5) Every application by an assessee for revision under this section shall be accompanied by a fee of twenty-five rupees.

⁵[(6) On every application by an assessee for revision under this sub-section, made on or after the 1st day of October, 1998, an order shall be passed within one year from the end of the financial year in which such application is made by the assessee for revision.

Explanation



In computing the period of limitation for the purposes of this sub-section, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 21 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

(7) Notwithstanding anything contained in sub-section (6), an order in revision under sub-section (6) may be passed at any time in consequences of or to give effect to any finding or direction contained in an order of the ⁶[the National Tax Tribunal], High Court or the Supreme Court.]

Explanation 1

An order by the Commissioner declining to interfere shall, for the purposes of this section, be deemed not to be an order prejudicial to the assessee.

Explanation 2

[Omitted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.]

1. Substituted for "Income-tax", by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

2. "or Appellate Assistant Commissioner" omitted by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

3. Substituted for clauses (a), (b) and (c), by the Finance (No. 2) Act, 1977, w.e.f. 10-7-1978.

4. Substituted for "to the Commissioner (Appeals)" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

5. Inserted by the Finance (No. 2) Act, 1998, w.e.f. 1-10-1998.

6. Inserted by Act No. 49 of 2005 w.e.f. 20-12-2005.

21. Application of provisions of Income-tax Act

The provisions of the following sections and Schedules of the Income-tax Act and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to interest-tax instead of to income-tax :—

¹[2(44) ²[, 119], 129, 131 132, 132A, 132B, 133 to 136] (both inclusive), 138, 140, 145, 156, 160, 161, 162, 163, 166, 167, 170, 173, 175, 176, 178, 179, 220 to 227 (both inclusive), 228A, 229, 232, 237 to 245 (both inclusive), 254 to 262 (both inclusive), 265, 266, 268, 269, 281, 281B, 282, 284, 287, 288, 288A, 288B, 289 to 293 (both inclusive), the Second Schedule and the Third Schedule :]

Provided that references in the said provisions and the rules to the "assessee" shall be construed as references to an assessee as defined in this Act.

<>

1. Substituted for the following by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991 :

"2(43B) and (44), 118, 125, 129, 130, 130A, 131, 132, 132A, 133 to 136 (both inclusive), 138, 140, 156, 160, 161, 162, 163, 166, 167, 170, 173, 175, 176, 178, 179, 220 to 227 (both inclusive), 228A, 229, 231, 232, 237 to 242 (both inclusive), 244, 245, 254 to 262 (both inclusive), 265, 266, 268, 269, 281, 282, 284, 287, 288, 288A, 288B, 289 to 293 (both inclusive), the Second Schedule and the Third Schedule :"

2. Inserted by the Finance Act, 1997, w.r.e.f. 1-10-1991.

22. Income-tax papers to be available for the purposes of this Act

(1) Notwithstanding anything contained in the Income-tax Act, all information contained in any statement or return made or furnished under the provisions of that Act or obtained or collected for the purposes of that Act may be used for the purposes of this Act.

(2) All information contained in any statement or return made or furnished under the provisions of this Act or obtained or collected for the purposes of this Act may be used for the purposes of the Income-tax Act.

23. Failure to comply with notices

If any person fails, without reasonable cause, to produce or cause to be produced, any accounts or documents required to be produced under section 8, he shall pay by way of penalty, a sum which shall not be less than one thousand rupees, but which may extend to twenty-five thousand rupees for each such failure.



24. False statements

If a person makes a statement in any verification under this Act or any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

25. Wilful attempt to evade tax, etc

If a person willfully attempts in any manner whatsoever to evade any interest-tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

Explanation

For the purposes of this section, a willful attempt to evade any interest-tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person –

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) willfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstances to exist which will have the effect of enabling such person to evade any interest-tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

26. Abetment of false returns, etc

If a person abets or induces in any manner another person to make and deliver any account or a statement or declaration relating to any chargeable interest which is false and which he either knows or believes to be false or does not believe to be true or to commit an offence under section 25, he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.

26A. Offences by credit institutions

(1) Where an offence under this Act has been committed by a credit institution, every person who, at the time the offence was committed, was in charge of, and was responsible to, the credit institution for the conduct of the business of the credit institution as well as the credit institution shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a credit institution and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the credit institution, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation

For the purposes of this section, "director", in relation to a co-operative society, means any member controlling the affairs thereof.

26B. Institution of proceedings and composition of offences

(1) A person shall not be proceeded against for any offence under section 24 or section 25 or section 26 or for any offence under the Indian Penal Code, except with the previous sanction of the Commissioner or Commissioner (Appeals) :

Provided that the Chief Commissioner or, as the case may be, Director General may issue such instructions or directions to the aforesaid interest-tax authorities as he may deem fit for institution of proceedings under this sub-section.

(2) Any offence under the sections referred to in sub-section (1) may, either before or after the institution of proceedings, be compounded by the Chief Commissioner or Director General.



Explanation

For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other interest-tax authorities for the proper composition of offences under this section.

26C. Power of credit institutions to vary certain agreements

Notwithstanding anything contained in any agreement under which any term loan has been sanctioned by the credit institution before the 1st day of October, 1991, it shall be lawful for the credit institution to vary the agreement so as to increase the rate of interest stipulated therein to the extent to which such institution is liable to pay the interest-tax under this Act in relation to the amount of interest on the term loan which is due to the credit institution.

Explanation

For the purposes of this section, "term loan" means a loan which is not repayable on demand.

27. Power to make rules

(1) The Board may, subject to the control of the Central Government, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the form in which returns under section 7 may be furnished and the manner in which they may be verified;

(b) the form in which appeals under section 15 or section 16 may be filed and the manner in which they may be verified;

(c) the procedure to be followed on applications for rectification of mistakes and applications for refunds;

(d) any other matter which by this Act is to be, or may be, prescribed.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof include the power to give retrospective effect to the rules or any of them from a date not earlier than the date of commencement of this Act.

(4) The Central Government shall cause every rule made under this section to be laid, as soon as may be, after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

28. Power to exempt



Where the Central Government is of the opinion that it is necessary or expedient so to do either in the public interest or having regard to the peculiar circumstances of the case, it may, by notification, and subject to conditions, if any, as may be specified in the notification, exempt ¹[any credit institution or any class of credit institutions or any interest on any category of loans or advances] from the levy of interest-tax :

Provided that no such exemption shall be made except on the recommendation of the Reserve Bank of India.

1. Substituted for "any scheduled bank or any class of scheduled banks" by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

29. Power to remove difficulty

¹[(1)] If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty

Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

²[(2)] If any difficulty arises in giving effect to the provisions of this Act, as amended by the Finance (No. 2) Act, 1991, the Central Government may, by order, do anything not inconsistent with such provisions for the purpose of removing the difficulty :

Provided that no such order shall be made after the expiry of two years from the 1st day of October, 1991.

(3) Every order made under sub-section (2) shall be laid before each House of Parliament.]

1. Renumbered by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

2. Inserted by the Finance (No. 2) Act, 1991, w.e.f. 1-10-1991.

30. Consequential amendments

(1) In section 2 of the Central Boards of Revenue Act, 1963 (54 of 1963), in sub-clause (1) of clause (c),—

(a) in item (vi), the word "and" occurring at the end shall be omitted; and

(b) after item (vi) as so amended, the following item shall be inserted, namely :—

"(vii) the Interest-tax Act, 1974; and".

(2) In the Economic Offences (Inapplicability of Limitation) Act, 1974 (12 of 1974), in the Schedule, after entry 2 relating to the Income-tax Act, 1961 (43 of 1961), the following entry shall be inserted, namely :—

"2A. The Interest-tax Act, 1974."



31. APPENDIX

TEXT OF RELEVANT CIRCULARS/NOTIFICATIONS CLARIFICATION ON APPLICABILITY OF INTEREST-TAX ACT TO HIRE PURCHASE TRANSACTIONS

1. The Board have received representations seeking clarification about chargeability of interest-tax on finance charges accruing or arising to hire purchase finance companies.
2. The matter has been examined in consultation with the Ministry of Law. The Finance (No. 2) Act, 1991, extended the scope of interest-tax so as to cover "credit institutions" which include financial companies and in particular hire purchase finance companies carrying on their principal business as hire purchase transactions or the financing of such transactions.
3. Hire purchase transactions are generally in the nature of finance transactions entered into by the companies engaged in the business of financing.
4. The Board are of the view that the finance charges accruing or arising to hire purchase finance companies are in the nature of interest as defined in section 2(7) of Interest-tax Act and, therefore, chargeable to interest-tax.
5. The above clarification may be brought to the notice of all the officers concerned.

Circular No. 738, dated 25-3-1996.

CLARIFICATION I

In Board's Circular No. 738, dated 25-3-1996 it was stated that hire-purchase transactions entered into by the hire-purchase companies and other credit institution are generally in the nature of financing transactions and hence the hire charges earned in the transactions would be in the nature of interest chargeable to tax under the Interest-tax Act, 1974. Acting under these instructions, the Assessing Officers have been treating all the hire-purchase transactions as mere financing transaction without distinguishing between a true hire-purchase transaction and a financing transaction in the form of a hire-purchase transaction.

2. The Board have since considered the issue and are advised that in the case of transactions which are, in substance, in the nature of hire-purchase, the receipts of hire charges would not be in the nature of interest. On the other hand, if the transactions are in substance in the nature of financing transactions, the hire charges should be treated as interest subject to interest-tax.

3. As to what constitutes a transaction in the nature of hire-purchase, the Assessing Officer should consider the issue of merits taking into account inter alia the following facts and circumstances :

- (i) The terms of the agreement.
- (ii) The nature of the arrangement between the supplier of the asset, the hire-purchase company and the end-user of the asset.
- (iii) The intention of the parties which manifests itself in the fixation of the initial payment, the method of determination of hire-purchase price, etc.

When a hirer is the real purchaser of the asset but does not pay the full purchase price and the hire-purchase company pays the price or a substantial part thereof on behalf of such hirer, and a hire-purchase agreement is entered into merely as an arrangement, then such agreement is a security for repayment of the loan and is essentially a loan transaction.

4. In this connection, the Assessing Officer should keep in mind the tests laid down by the Supreme Court in the case of Sundaram Finance v. State of Kerala AIR 1996 SC 1178 wherein it has been held as under—

“If there is a bona fide and completed sale of goods evidenced by documents, anterior to and independent of subsequent and distinct hiring to the vendor, the transaction may not be regarded as a loan transaction even though the reason for which it was entered into was to raise money. the intention of the appellant in obtaining the hire-purchase and the allied agreements was to secure the return of loan advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants. The transactions were merely financing transactions. . . .”

5. Accordingly, instead of routinely treating all hire-purchase transaction as mere financing transactions, the Assessing Officers may be advised to examine each transaction in the above light and charge interest-tax in such of those transactions which are not in the nature of hire-purchase.

Circular No. 760, dated 13-1-1998.

TEXT OF NOTIFICATIONS ISSUED UNDER SECTION 28 OF THE INTEREST-TAX ACT

I

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion that it is necessary and expedient so to do in the public interest, hereby exempts North-Eastern Development Finance Corporation Ltd., Guwahati from levy of interest-tax for a period of ten assessment years commencing from the assessment year 1996-97.

Notification No. SO 365(E), dated 2-5-1997.

II

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of opinion that it is necessary and expedient so to do having regard to the peculiar circumstances of the case and in public interest, hereby exempts the banking companies to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) from the levy of interest-tax in respect of their income from interest on securities with effect from the financial year 1995-96.

Notification No. 9858 [F. No. 160/2/94-IT(A)], dated 11-9-1995.

III

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion that it is necessary and expedient so to do in the public interest, hereby exempts interest, accruing or arising on or after the 1st day of April, 1993, to any banking company referred to in sub-clause (i) of clause (5A) of section 2 of the said Act on loan and advances made by it, having regard to the guidelines issued by the Reserve Bank of India, to any exporter as export credit, from levy of interest-tax.

SO 161(E), dated 10-3-1993.



IV

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion that it is necessary and expedient so to do in the public interest, hereby exempts the interest on foreign currency loans by foreign lenders granted to, and received by, Indian parties outside India from the levy of interest-tax.

SO 1775, dated 7-6-1993.

V

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion that it is necessary and expedient so to do in the public interest, hereby exempts the National Co-operative Development Corporation, New Delhi from the levy of interest-tax in respect of the loans and advances made either directly or through State Governments to non-banking co-operative societies.

Notification No. 9403 [F. No. 160/2/93-IT(A-I)], dated 9-11-1993.

VI

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion that it is necessary or expedient so to do having regard to the peculiar circumstances of the case, hereby exempts State co-operative banks included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934), from the levy of interest-tax in respect of their income from interest on the borrowings of the Central Co-operative Banks which qualify for rebate under the scheme for the financial year 1974-75 and for the period beginning on the 1st day of April, 1975, and ending with the 30th day of June, 1975.

Explanation

In this notification, the expressions "Central co-operative bank" and "State co-operative bank" shall have the same meaning assigned to them in the Reserve Bank of India Act, 1934 (2 of 1934).

Notification No. SO 2214, dated 15-5-1976.

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3. Hire purchase transactions are generally in the nature of finance transactions entered into by the companies engaged in the business of financing.

4. The Board are of the view that the finance charges accruing or arising to hire purchase finance companies are in the nature of interest as defined in section 2(7) of Interest-tax Act and, therefore, chargeable to interest-tax.

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2. The Board have since considered the issue and are advised that in the case of transactions which are, in substance, in the nature of hire-purchase, the receipts of hire charges would not be in the nature of interest. On the other hand, if the transactions are in substance in the nature of financing transactions, the hire charges should be treated as interest subject to interest-tax.

3. As to what constitutes a transaction in the nature of hire-purchase, the Assessing Officer should consider the issue of merits taking into account inter alia the following facts and circumstances :

(i) The terms of the agreement.

(ii) The nature of the arrangement between the supplier of the asset, the hire-purchase company and the end-user of the asset.

(iii) The intention of the parties which manifests itself in the fixation of the initial payment, the method of determination of hire-purchase price, etc.

When a hirer is the real purchaser of the asset but does not pay the full purchase price and the hire-purchase company pays the price or a substantial part thereof on behalf of such hirer, and a hire-purchase agreement is entered into merely as an arrangement, then such agreement is a security for repayment of the loan and is essentially a loan transaction.

4. In this connection, the Assessing Officer should keep in mind the tests laid down by the Supreme Court in the case of Sundaram Finance v. State of Kerala AIR 1996 SC 1178 wherein it has been held as under—

"If there is a bona fide and completed sale of goods evidenced by documents, anterior to and independent of subsequent and distinct hiring to the vendor, the transaction may not be regarded as a loan transaction even though the reason for which it was entered into was to raise money. . . . the intention of the appellant in obtaining the hire-purchase and the allied agreements was to secure the return of loan advanced to their customers, and no real sale of the vehicle was intended by the customer to the appellants. The transactions were merely financing transactions. . . ."

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Notification No. SO 365(E), dated 2-5-1997.

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In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of opinion that it is necessary and expedient so to do having regard to the peculiar circumstances of the case and in public interest, hereby exempts the banking companies to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act) from the levy of interest-tax in respect of their income from interest on securities with effect from the financial year 1995-96.

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III

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion that it is necessary and expedient so to do in the public interest, hereby exempts interest, accruing or arising on or after the 1st day of April, 1993, to any banking company referred to in sub-clause (i) of clause (5A) of section 2 of the said Act on loan and advances made by it, having regard to the guidelines issued by the Reserve Bank of India, to any exporter as export credit, from levy of interest-tax.

SO 161(E), dated 10-3-1993.

IV

In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion that it is necessary and expedient so to do in the public interest, hereby exempts the interest on foreign currency loans by foreign lenders granted to, and received by, Indian parties outside India from the levy of interest-tax.

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In exercise of the powers conferred by section 28 of the Interest-tax Act, 1974 (45 of 1974), the Central Government, on the recommendation of the Reserve Bank of India, being of the opinion



that it is necessary and expedient so to do in the public interest, hereby exempts the National Co-operative Development Corporation, New Delhi from the levy of interest-tax in respect of the loans and advances made either directly or through State Governments to non-banking co-operative societies.

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