

Background Material

Seminar

On

Limited Liability Partnership, Section 25 Company, Tax Audit & Fringe Benefit Tax



May 23, 2009

**Hotel the Park, Parliament Street,
New Delhi**

Organised by

**Northern India Regional Council of
The Institute of Chartered Accountants of India**



Dear professional brethren,

Namaskaram!!

I am pleased to dedicate the Background Material on Limited Liability Partnership, Section 25 Company, Issues in Tax Audit and FBT to all the esteemed members who are participating in the Seminar.

Friends, A limited liability partnership (LLP) has elements of partnerships and corporations. It is a partnership in which some or all partners (depending on the country) have limited liability. In an LLP one partner is not responsible or liable for another partner's misconduct or negligence. In some countries, an LLP must also have at least one 'general partner' with unlimited liability. Unlike corporate shareholders, the partners have the right to manage the business directly. As opposed to that, corporate shareholders have to elect a board of directors under the laws of various state charters. The board organizes itself (also under the laws of the various state charters) and hires corporate officers who then have as 'corporate' individuals the legal responsibility to manage the corporation in the corporation's best interest. An LLP also contains a different level of tax liability than a corporation. Limited liability partnerships are distinct from limited liabilities in some countries, which may allow all LLP partners to have limited liability, while a limited partnership may require at least one unlimited partner and allow others to assume the role of a passive and limited liability investor. As a result, in these countries the LLP is more suited for businesses where all investors wish to take an active role in management.

As we know that LLP came into existence on 31st March 2009, the undersigned is strongly in view of that, organizing a Seminar on the subject would be an apt one to equip our fellow members with the unique wisdom and knowledge which would go a long way in not only dealing the issue with great expertise but also impart the knowledge to all concerned.

In this context, I also personally felt the pressing need to equip and also brush the memories of our esteemed colleagues on topics like on Section 25 Company, Fringe Benefit Tax (FBT) and Tax Audit. I strongly believe that a Seminar if organized on the subject will enable my dear brother and sister members to deal with the subject in a more able and professional manner eradicating the slightest possible of doubts, skepticism.

The contributors have spent their precious time to compile the data. I appreciate and compliment them for their brilliant effort. I want to personally offer my heartiest gratitude to CA. Ashish Makhija, CS. Rajeev Goel, CA. Rakesh Gupta and Dr. Ravi Gupta. I am also thankful to Shri Man Mohan Junejan ji, Hon'ble Registrar of Companies, Delhi & Haryana for his valuable guidance. I believe that this background material will surely find a suitable place in the library which would be used as a guide & referencer in cases of any required information, doubts.

I put on record the words of appreciation for the cooperation of all of my office bearers and Executive Members of NIRC in bringing this Background material.

With Warm Regards & Best of Luck.

A handwritten signature in black ink, appearing to be 'Bhagwan Das Gupta', written in a cursive style.

(CA. Bhagwan Das Gupta)
(Mob – 9811152662)

Seminar

On

**Limited Liability
Partnership**

Guest Speaker:

CA. Ashish Makhija

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?

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The Concept

The world over Limited Liability Partnerships offer alternative business medium and India, a transforming economy, cannot be far behind. Of late, India is considered to be a superpower in service sector having achieved phenomenal growth. The share of service sector in India's GDP growth is there for all to see and the dominant role played by the professionals cannot be denied. The professionals, hitherto, were operating in traditional environment of partnerships under the Partnership Act of 1932. The need to provide corporate form to the professionals was felt and the demand for making available the alternative of limited liability partnership echoed all around. The LLP, as it is commonly known, is a global phenomenon and India has been able to introduce this concept in line with the need of working populace.

Background

The Government of India was up to the task and introduced the Limited Liability Partnership Bill way back in 2006. The Bill was, however, referred to the Parliament Standing Committee, which submitted its report to the Lok Sabha on

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?
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27th November, 2007. The Government chose to withdraw the Bill of 2006 and re-introduced it in 2008 after taking into consideration the recommendations of the Committee. The Limited Liability Partnership Bill, 2008 was passed by the Parliament and received the assent of the President on 7th January, 2009 and it became Limited Liability Partnership Act, 2008. The Act has been notified to be effective from 31st March, 2009. The LLP rules have also been notified effective from 1st April, 2009.

Global Model

India is not the first country to introduce LLP. In US the concept was introduced in 1996 whereas UK adopted the model in the year 2000. Later on countries like Japan and Singapore brought out legislations for LLP in 2005. The global model, particularly the US model, has worked well for all these years. In India, this concept was launched looking at the potential for growth of the service sector and the dominant role played by the professionals in India's economy. The LLP legislation emerged in India based upon the recommendations of Abid Hussain Committee (1997), Naresh Chandra Committee on Corporate Governance (2003) and Dr. Jamshed J. Irani Committee on New Company Law (2005). The Indian LLP Act, 2008 is based upon UK and Singapore LLP Act.

Features of LLP

The LLP can be called as hybrid of corporate and partnership. It is assimilation of features of the company and partnership form of business entity. The salient feature of LLP is the limited liability as the name also suggests. LLP being

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?

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clothed with a separate legal entity and enjoying perpetual succession also makes it distinct with partnership firms under the Partnership Act, 1932. The longevity of the LLP does not depend upon the Partnership Deed. The LLP continues till it is wound up in accordance with the process established by law. The separate legal entity of LLP is a concept hitherto known to corporate and the LLP enjoys right to enter agreements in its own name and is entitled to sue and be sued in its own name. The LLP has retained flexible management structure and flexible profit distribution of the partnership. The flexibility of management means that there are no mandatory board meetings or general meeting and there are few legal and procedural requirements to be followed by LLP. The provisions of Indian partnership Act, 1932 do not apply to LLP's. The LLP Act, 2008 has not superceded the Indian Partnership Act, 1932 and partnership firms can continued to be formed and governed under the said Act.

Outline of LLP Act, 2008

The LLP Act, 2008 contains 14 chapters and 4 schedules. The entire law is spread over 81 sections and 7 sections of the Companies Act, 1956 (266A to 266G) apply mutatis mutandis to LLP Act. These sections relate to Director Identification Number and they are applicable to Designated Partner Identity Number. All sections have been notified w.e.f 31.03.2009 except 11 sections, namely, clauses (c) and (u) of sub-section (1) of Section 2, sections 53, 55, 56, 57, 58, 63, 64, 65, 72 and 73. Out of the four schedules, only First Schedule has been notified. The LLP rules have also been notified on 1st April, 2009 except Rules 32, 33, 38 to 40. There are 31 Forms attached to the Rules.

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?
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Who can be a partner in LLP?

The LLP can be formed by any individual and/or a body corporate provided the individual is of sound mind and is neither an undischarged insolvent nor has applied to be adjudicated as an insolvent. The body corporate can also be a partner of LLP. The body corporate has been defined to mean a company under the Companies Act, 1956. The definition of body corporate is *inclusive* and includes LLP registered under LLP Act, 2008, LLP incorporated outside India and a company incorporated outside India. The presence of the word 'inclusive' in the definition assumes significance. The word 'include', whenever used, is used 'in order to enlarge the meaning of words and phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also such things which the interpretation clause declares that they shall include.¹ A significant question that arises from the 'inclusive' definition of body corporate is whether Hindu Undivided Family (HUF) or a partnership firm can be a partner in LLP. The answer is contingent upon whether HUF or Firm falls under the definition of body corporate. The objective behind the definition of body corporate seems that the entities enjoying separate legal entity should be treated as such. Applying this interpretation, it seems that HUF and/or Firm cannot be a partner in LLP though they have not been specifically excluded from the definition of body corporate. The exclusions relate to a

¹ Dilworth vs. Commissioner of Stamps (1899) A.C.99, per Lord Watson at pp. 105,106.

corporation sole, a co-operative society registered under law for the time being in force and any other body corporate as notified by the Central Government.

LLPIN and D-PIN

The LLP upon incorporation will be allocated a unique identity number called as Limited Liability Partnership Identity Number (LLPIN), similar to Corporate Identity Number allotted upon registration/incorporation of a company. In a company, it is mandatory for each director to obtain Director Identification Number (DIN). However, each partner in LLP need not obtain any identification number. Only designated partners are liable to obtain unique identification number called as Designated Partner Identification Number (DPIN). Upon submission of application on the portal www.llp.gov.in, a provisional DPIN shall be allotted and after the application duly signed alongwith the necessary documents, as laid down in Rule 10, is filed with the Registrar, Delhi & Haryana, the provisional number shall be confirmed.

Concept of Designated Partners

LLP Act, 2008 has introduced the concept of Designated Partners. Each LLP must have a minimum of *two designated partners* and only an *individual* can be a designated partner. This leads to a question that in case there are only two partners in a LLP and both the partners are body corporate or one partner is a body corporate, then who shall be regarded as designated partner? In such a case, the body corporate, which is a partner in LLP, shall nominate an individual to act as a designated partner. The nominated person need not be a director,

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?

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shareholder or partner of body corporate but can be any individual who is duly authorized and nominated in this regard by way of a resolution of the body corporate.

The LLP Act further provides that one of the designated partners must necessarily be resident in India, that is, the person has stayed in India for a period of 182 days during immediately preceding one year. The 'immediately preceding one year' has to be reckoned from the date of appointment and no reference be made to financial year or calendar year. The other question, which remains to be answered, is whether the above condition is to be satisfied at the time of appointment or throughout the period of appointment. The solution is not easy to be found, as there are strong arguments for and against the proposition. The position of resident in India can change from day-to-day. It can be argued that the condition is to be satisfied on the date of appointment alone on the basis of a similar provision/ clause being contained in Part A of Schedule XIII attached to the Companies Act, 1956. On the other hand, it can be stated that if the condition is not seen on day-to-day basis, the purpose for which the provision has been incorporated shall stand defeated. The purpose is primarily to make responsible a person who is accessible to legal arm of the country. The weighty argument against the proposition leads to a conclusion, in the opinion of the author, that the condition must be seen on day-to-day basis. However, the proposition needs to test the legal waters in Indian courts.

The designated partner has a major role to play in LLP. Insofar as law is concerned, the designated partner shall be responsible for doing all acts, matters and things as are required to be done by LLP as per the Act or as specified in LLP

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?

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Agreement. A major provision relates to making the designated partner liable for all penalties imposed on LLP for any contravention of the provisions of the Act or LLP Agreement. Effectively, this leads to the conclusion that the designated partners are, in reality, the managing partners.

Incorporation of LLP

It is permitted to incorporate a LLP only for *“a lawful business with a view to profit”*. LLP cannot, therefore, be incorporated for charitable purposes unlike Section 25 companies under the Companies Act, 1956. The language used in the LLP Act suggests that the phrase *“a lawful business with a view to profit”* has been borrowed from the India Partnership Act, 1932. Incorporation Document containing name of LLP, business to be carried on by LLP, Address of registered office of LLP, Details of first partners and designated partners of LLP, Details of contribution and subscription clause has to be filed with the Registrar. Upon incorporation, Registrar will issue a Certificate of Incorporation, which will be conclusive evidence that LLP is incorporated. The procedure of incorporation is quite similar to that of incorporation of companies under the Companies Act. The LLP must use the words *“Limited Liability Partnership”* or acronym *“LLP”* as last words to its name. The LLP must have a minimum of 2 partners and can have unlimited number of partners.

LLP Agreement

The LLP Agreement, subject to the provisions of the LLP Act, will govern the relationship of partners inter se and with LLP. In an event the partners and LLP

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?
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do not have any LLP Agreement, the mutual rights and duties of the partners and LLP will be determined by First Schedule to the LLP Act which contain provisions relating to sharing of profits, indemnification, management of LLP, introduction of new partners, majority decision by the partners etc. LLP Act provides considerable flexibility in so far as management and administration of the LLP is concerned. LLP Act blends the company form and partnership and allows flexibility of a partnership firm while clothing it with a corporate personality. LLP Act mandates that each partner of LLP is an agent of LLP but not of other partners in clear contradistinction to the partnership firms under the Indian Partnership Act, 1932.

Whistle Blowing

The statute books, for the first time, carry a mention of whistle blowing and LLP Act stipulates reduction or even waiver of penalty which may be levied upon any partner or employee of LLP upon its satisfaction that a) the partner or employee has provided useful information during investigation or b) the information provided leads to conviction of the LLP or any of the partner. The LLP Act also provides for protection of the partner or employee turned approver against discrimination. The provision contained in the LLP Act is a welcome provision and would go a long way in encouraging partners and employees to bring out the unlawful activities and dealings of LLP and its partners. All partners shall be morally bound to adhere to laws of the country. The other statutes like Companies Act, 1956 etc. need to follow suit.

Contribution by Partners

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?
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The LLP Act allows contribution by a partner in the form of tangible, intangible, movable or immovable property or other benefit to LLP including cash and contract for services performed or to be performed. In the books of account, the monetary value of the consideration of each partner will be accounted for and disclosed. The contribution of partners is to be determined by the LLP Agreement. The significance of the total contribution lies in the fact that the registration fee to be paid at the time of incorporation depends upon the contribution. Similarly, the application fee for filing of any document or application depends upon the total contribution in LLP.

Assignment and Transfer of Partnership Rights

The LLP Act provides part of complete transfer of rights of a partner to receive share of profits and losses of LLP and also to receive distribution of assets. The transferability is a legal right conferred by the statute and LLP Agreement cannot take away such a right. The transferee or assignee, however, does not entitle him or her to participate in the management or conduct of the activities of LLP or access information concerning the transactions of LLP. The provision relating to assignment and transfer of Partnership Rights is a welcome step and provides flexibility to the partners. The tax treatment of such a transferable right is, however, a matter of debate.

Financial Disclosures

The Act mandates maintenance of proper books of account containing moneys received and expended, record of assets and liabilities, statement of cost of goods purchased either on cash basis or accrual basis in accordance with double entry system. The accounts are to be maintained on financial year basis, which has been defined to mean the year starting from 1st of April of any year and ending on 31st of March of following year. Thus, LLP Act has introduced the concept of uniform financial year for all LLPs. In case of new LLP, the month of incorporation determines the length of the financial year. Any LLP incorporated after 30th of September in any year, the first financial year may end on 31st March of next following year. The LLP is obligated to file Statement of Account and Solvency within 30 days from the end of six months of the financial year to which the Statement of Account and Solvency relates. The Act also postulates filing of Annual Return by LLP within sixty days from the close of the financial year.

Audit/Auditor

The audit of LLP is mandatory unless the turnover of LLP does not exceed forty lakh rupees or contribution does not exceed twenty-five lakh rupees. The power to appoint auditors lies with designated partners at least 30 days prior to the end of each financial year. In case of new LLP, the auditor is to be appointed before the close of the first financial year. The power to appoint auditor swings to the partners in the event designated partners, having power to appoint, fail to exercise the power. The LLP Act has failed to protect the independence of the auditor as the power to remove the auditor any time lies with the partners in accordance with LLP Agreement or with the consent of all the partners. The

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provisions relating to removal of auditor are liable to be abused and misused. The significance of independence of auditor need no explanation and particularly after the Satyam fiasco.

Inspection & Investigation

The Central Government has retained a right to carry out inspection or investigation into the books of account or affairs of LLP. The inspectors and investigators possess the rights to call for production of documents and books of account besides retaining custody of the books and papers for thirty days. The power of seizure also lies with the inspector subject, however, to the order of Judicial Magistrate of First Class. The extent of powers for inspection and investigation are elaborate and could be used to harass the partners or any LLP.

Conversion to LLP

The Act also provides the provision to convert the existing firm (registered under the Indian Partnership Act, 1932), a private limited company or an unlisted public limited company into a LLP. The provisions are contained in 3 schedules, namely, Second Schedule, Third Schedule and Fourth Schedule attached to LLP Act. The continuation of the activities of such a firm, private limited company and unlisted public company is not affected.

Merger/Amalgamation of LLP

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The LLP Act provides the facility of merger, amalgamation and arrangement of LLPs. The power to order merger lies with the National Company Law Tribunal as defined under the Companies Act, 1956. The provisions are similar to as those contained in the Companies Act, 1956.

Winding up and Dissolution

The LLP may be wound up voluntarily or compulsorily by the Tribunal. The compulsory winding up may be ordered by the Tribunal, inter alia, on the ground of inability to pay debts or on just and equitable ground. The Registrar has retained the power to strike off defunct LLPs.

“By the time a partnership dissolves, it has dissolved”

John Updike 1932-, American Novelist, Critic

Tax treatment of LLP

There is no clarity on the tax treatment of profit earned by LLP. The Income Tax Act, 1996 is silent on the taxability of income accruing to LLP. Initially, based upon the global experience, the tax treatment sections were also contained in the LLP Act making it a complete code. The Limited Liability Partnership Act 2000 of UK contains section 10 relating to taxation of income and gains of LLP. The provisions contained in the concept paper provided for pass through tax treatment of income. Under pass through tax treatment, no tax was proposed to be levied upon LLP and the income was deemed to have passed on the partners for taxation purposes in accordance with their share of profit. However, on

Limited Liability Partnership Act, 2008 – A Case of Unlimited Ambiguity?

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objections from the Finance Ministry, such provisions were deleted and it was left to the wisdom of the Finance Ministry to specify the provisions and rules relating to taxability of income of LLP and its partners. Though the LLP Act has been notified but the tax treatment provisions are still not in place. The lack of clarity on this aspect is an impediment towards the decision to incorporate LLPs as an alternative mode of doing business.

Conclusion

The LLP Act is undoubtedly a step forward. With the opening up of the Indian economy, the services sector has demonstrated that it has the potential to contribute handsomely to the GDP and the growth of the economy. The LLP immense benefits to the professionals in terms of limited liability and flexibility of operations. On the negative side, heavy penalties for non-compliance of the provisions of LLP, filing of Statement of Account containing financial figures and availability of such a document for inspection by public, stringent provisions relating to inspection and investigation, bureaucratic provisions relating to merger, amalgamation and dissolution are some of the deterrent acting as disincentive to persons otherwise inclined to adopt corporate structure of LLP. Non-clearance of the air on the tax treatment of LLPs is another major factor of unenthusiastic approach towards the LLP Act. The professionals are also unclear about the permissibility of incorporating LLP by them in the absence of guidelines from the professional bodies governing them. To conclude, the concept of LLP is excellent but the practical aspects leave much to be desired to encourage small business houses and the professionals to incorporate LLP.

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Seminar

On

**Section 25
Company**

Guest Speaker:

CS. Rajeev Goel

SECTION 25 COMPANY

Legal Provisions under Section 25 of the Companies Act, 1956

- **Grant of license to new association:** Central Government may issue license to the association to be registered as a company with limited liability, without the addition to its name of the word "Limited" or "Private Limited" if an association:
 - a) is to be formed for promoting commerce, art , science, religion, charity or any other useful object and
 - b) intends to apply its profits in promoting its objects and prohibit the payment of any dividend to its members.
- On registration, the association shall enjoy all the privileges and be subject to all the obligations of limited companies.
- **Grant of license to an existing company:** Central Government by license authorize the company by a special resolution to change its name, by omitting the word "Limited" or "Private Limited" if it is proved that:
 - a) the objects of the Company are restricted to for promoting commerce, art , science, religion, charity or any other useful object and
 - b) by its constitution the company is required to apply its profit in promoting its objects and is prohibited from paying any dividend to its members.
- A firm may be a member of any association or company licensed u/s 25.
- The license may be revoked by the Central Government by giving an opportunity of being heard and upon revocation, the registrar shall enter the word "Limited" or "Private Limited" at the end of the name & the body shall cease to enjoy the exemption granted by this section.
- The company registered u/s 25 shall not alter the provisions of its Memorandum with respect to its objects except with the previous approval of the Central Government.

Powers of Central Government under this section are delegated to Regional Director.

Distinguishing Features of Section 25 companies

- License to drop the word "Limited" from the name of the company and yet enjoy the protection of limited liability is an advantage to the company in itself.
- Officers & Members of Section 25 Company enjoy immunity from personal Liability.
- Section 25 companies are allowed to admit to membership even a partnership firm.
- Section 25 companies enjoy certain exemptions from the operative provisions of the Companies Act.

INCORPORATION OF SECTION 25 COMPANY

Ist Step: Name Availability

- Application has to be made in Form 1A by one or more Promoters.
- Six names have to be proposed in the order of preference by the applicant (s).
- Names will be considered for approval in the same order in which they are listed in Form 1A. Therefore, if the first name is not available, the Registrar will move to the next name on the list.
- Name will not be approved if in the opinion of the Central Government (ROC) it is undesirable. Name is deemed to be undesirable if:
 - a) The name is *identical* with the name of a company in existence which has been previously registered.
 - b) The name too nearly *resembles* the name by which a company in existence has been previously registered.
 - c) The name is *identical* with, or too nearly *resembles* a registered trademark or a trademark which is subject of an application for registration under the Trade Marks Act, 1999.
- Where a proposed name is approved, it is valid for 60 days only.

2nd Step: RD Approval

- Application shall be made to Regional Director in writing for a license under section 25.
- Application shall be accompanied with the following documents, namely:-
 - a) 3 copies of the draft Memorandum & Articles of Association.
 - b) A declaration by an advocate, attorney or a pleader or Chartered Accountant or Company Secretary practicing in India that the Memorandum & Articles of Association have been drawn up in conformity with the provisions of the Act.

- c) 3 copies of the list of the names, descriptions, addresses and occupations of:-
 - the promoters
 - where a firm is the promoter each partner of the firm
 - all members of the proposed board of directors
 - Manager or secretary, if any
- d) List of name of companies in which such promoters & members of the proposed board of directors are directors or hold responsible positions, if any.
- e) A Statement showing in details of the assets (with the estimated values thereof) and the liabilities of the association as on the date of application or within 7 days of that date.
- f) An estimate of the future annual income & expenditure of the proposed company, specifying the source of the income & objects of the expenditure.
- g) A Statement specifying briefly the grounds on which the application is made.
- h) A Statement giving briefly description of work done or proposed to be done.
- i) Declaration by each of the applicant in the form set out in Annexure V to the Companies Regulations, 1956.
- j) Treasury Challan or draft evidencing payment of fees paid in accordance with Rule 2 of the Companies (Fees on Applications) Rules, 1999.
- k) Copy of e-Form 24A filed with MCA.

Copy of the above application & documents shall also be filed with ROC

- A notice of the application made to the Regional Director pursuant to Regulation 11 of the "Companies Regulations, 1956" shall be published within a week from the date of making the application. A Certified true copy of the aforesaid notice shall be sent forthwith to the Regional Director (Format is enclosed herewith)
- The Regional Director shall after considering the objections , if any within 30 days from the date of publication of notice and after consulting any authority as it may in its discretion decide, determine whether the license should or should not be granted.

3rd Step: Incorporation

- After the approval of the Regional Director is received, Certificate of Incorporation will be obtained from the Registrar of Companies.
- For Incorporation the following documents are required to be filed before the Registrar of Companies, along with requisite fees:-
 - a) Letter approving availability of name by the Registrar of Companies.
 - b) Memorandum & Articles of Association duly stamped & signed by the subscribers & attested by at least one witness.
 - c) Declaration of compliance in Form No 1.
 - d) Form No. 32 in duplicate.
 - e) Form No. 18.
 - f) Power of Attorney.
 - g) Treasury Challan evidencing payment of registration fees.
- The Registrar of Companies will issue the Certificate of Incorporation & the date given in the certificate will be the date of Incorporation of the Company.

EXEMPTIONS AVAILABLE TO COMPANIES REGISTERED U/S 25

1. **Sec 147:** Exemption from publication of name of Company outside every office in which its business is carried, in all its business letters, bill heads, notices & other official publications etc.
2. **Sec 166(2):** AGM can be held at any time & any place provided that the time, date & place of each annual general meeting are decided upon beforehand by BOD having regard to the directions, if any, given in this regard by the company in general meeting.
3. **Sec 171(1):** A general meeting may be called by giving a notice in writing of not less than 14 days (instead of 21 days).
4. **Sec 177, 255, 256 & 263:** Sec 177, 255, 256 & 263 shall not apply if the Articles make provisions for election of all directors by ballot.
5. **Sec 209(4A):** Books of account relating to a period of not less than four years (instead of eight years) immediately preceding the current year shall be preserved.
6. **Sec 219:** A Copy of the Balance Sheet (including the P & L a/c, the auditor's report & any other document required by law to be annexed to the Balance Sheet) which is to be laid before a company in General Meeting may be sent not less than fourteen days (instead of 21 days) before the date of general meeting.
7. **Sec 257:** Sec 257 shall not apply to the Companies whose articles provide for election of directors by ballot.
8. **Sec 259:** The Company is not required to take Central Government's approval for increase in the number of directors.
9. **Sec 264(1):** The consent of candidate for directorship is not required to be filed with the company.
10. **Sec 285:** Company is required to hold at least one Board meeting in every 6 months (instead of 3 months).
11. **Sec 287:** Sec 287 shall apply only to the extent that the quorum for the Board Meeting shall be either 8 members or 1/4th of its total strength whichever is less provided the quorum shall not be less than two members in any case.

12. **Sec 292:** Matters referred to in clauses (c), (d) & (e) of sub-section (1) i.e. power to borrow money, power to invest funds & power to make the loans may be decided by the Board by circulation instead of at a meeting.
13. **Sec 299:** Disclosure of Interests by director is required only in the cases to which sub-sections (1) & (3) of Sec 297 apply.
14. **Sec 301:** A register shall be maintained only of contracts to which sub-section (1) & (3) of section 297 apply.
15. **Sec 303(2):** The Company is not required to send list of its members to the Registrar & of maintaining register of directors & intimating changes therein to the Registrar.

NOTICE

(Pursuant to regulation 11 (a) of the Companies Regulations, 1956)

Notice is hereby given that in pursuance of section 25 of the Companies Act, 1956 an application has been made to the Government of India for a license directing that the body about to be formed under the name of may be registered as a company with limited liability without the addition of the word "Private Limited" with its name.

The principal objects of the Company are as follows:

1.
2.

A copy of the draft Memorandum and Articles of Association of the proposed company may be seen at(Registered office of the Company)

NOTICE is hereby given that any person, firm, Company or Corporation objecting to this application may communicate such objections to the Regional Director, Northern Region within 30 days from the date of publication of this notice by a letter addressed to the Regional Director, Northern Region, Ministry of Company Affairs, A-14, PDIL Bhawan, Sector – 1, Noida 201 301.

(Director)

Place:

Date :

Licenced Companies Under Section 25 of Companies Act, 1956

ASHISH MAKHIJA

An association having objects to promote commerce, art, science, religion, charity or any other useful purpose and not having any profit motive can be registered as non-profit company under section 25 of the Companies Act, 1956. This section empowers the Central Government to grant a licence directing that such an association may be registered as a company with limited liability, without the addition of the words 'Limited' or 'Private Limited' to its name.

The so-called non-profit organizations can alternatively be formed as a Public Trust or a Society under the Societies Registration Act, 1860. The question then arises why to form a company under the Companies Act, 1956 and simultaneously obtain licence under Section 25 of the Act, which involves enormous paperwork and stricter provisions relating to maintenance of accounts and audit? The most obvious answer is provided by the advantages of having an incorporated company, namely, independent corporate entity, limited liability, perpetual succession etc. Section 25 companies enjoy greater privileges in the form of concessions allowed under the Act to such companies.

Statutory provisions

Section 25 empowers the Central Government to issue a

licence to a company which is proposed to be incorporated provided it complies with conditions, as to its objects, application of its profits/income and distribution of its profits, enumerated as under: -

- (i) it is being formed for *promotion of commerce, art, science, religion, charity or any other useful object*;
- (ii) it intends to *apply its profits or other income in promotion of its objects*;
- (iii) it intends to *prohibit payment of dividend to its members*.

The grant of licence is not only restricted to 'proposed companies' but also extends to 'existing companies' registered under the Companies Act, 1956. Such existing companies must make compliance of the aforesaid conditions through its Memorandum of Association prior to being eligible for grant of such a licence.

A licence under this section can be granted by the Central Government through four Regional Directors namely, Regional Director (Eastern Region) at Kolkata, Regional Director (Northern Region) at Kanpur, Regional Director (Western Region) at Mumbai and Regional Director (Southern Region) at Chennai. The application for grant of licence is to be made to the Regional Director of the region, in case of proposed companies in the State where the registered office is proposed to be situated and in case of existing companies in the State where its registered office is situated, falls.

Any other useful object

The presence of words 'any other useful object' in Section 25 leads to an inference that a company which is promoted for any useful object other than those specified in

the section namely, promotion of commerce, art, science, religion or charity shall also be eligible for grant of licence under the section. The question, however, remains what could be considered as '*any other useful object*'? The application of cardinal rule of '*ejusdem generis*' provides the answer. According to this rule, when particular words pertaining to a class, category or genus are followed by general words, they are construed as limited to the things of same kind as those specified. Thus, in construing the words *any other useful object*, the objects enumerated contemplate objects that are for the benefit of the society as a whole. Thus, even promotion of sports, education, research activities etc. would fall under the category of '*any other useful object*'.

The Non-profit or 'No Profit - No Loss'

The companies registered under section 25 of the Act are also known as '**Non-Profit**' or '**No Profit - No Loss**' companies. These terms are often given literal meaning that such

companies cannot earn any profits. Assigning such a meaning leads to unrealistic and impractical situations, as it would be impossible to maintain a situation of no profit and no loss. The words 'Non-Profit' or 'No Profit - No Loss' essentially signify that such companies cannot distribute the profits earned in the form of dividends to its members and the income/profit earned has to be applied for furtherance of the objects for which it has been formed.

Exemptions & privileges on grant of licence

Once a license is granted, such companies can be formed without the words 'Limited' or 'Private Limited' as part of their name. The existing companies can also take benefit of this provision and on grant of licence by the Central Government, can proceed to change its name by omitting the words 'Limited' or 'Private Limited' from its name. In addition to the privilege as to non-inclusion of the words 'Limited' or 'Private Limited' in its name, such companies enjoy numerous exemptions under the Act.

Section 263A provides protection to section 25 companies from the applicability of provisions of sections 177, 255, 256 & 263 of the Act, if the articles of such a company provide for election by ballot of all its directors at each Annual General Meeting. The protection provided by section 263A is enumerated as under: -

No minimum paid-up capital

The Companies Amendment Act, 2000 introduced the concept of minimum paid-up capital. Thus all the companies i.e. existing companies as well as the companies registered after the commencement of the Companies Amendment Act, 2000 were obligated to increase their paid-up capital to the required minimum - Rs. 1 lac for private limited companies & Rs. 5 lacs for public limited companies. The companies registered under Section 25 of the Act either before or after the commencement of Companies Amendment Act, 2000, have, however, been exempted from the requirement of minimum paid-up capital. This is a privilege exclusively for companies registered under section 25 of the Act.

Section	Matter	Exemption
177	Resolutions put to vote at general meetings to be decided on show of hands unless poll is demanded u/s 179	Whole, if the articles provide for election by ballot
255	Retirement of directors by rotation	Whole, if the articles provide for election by ballot
256	Ascertainment of directors retiring by rotation and filing of vacancies	Whole, if the articles provide for election by ballot
263	Appointment of directors to be voted on individually	Whole, if the articles provide for election by ballot

The Central Government, in exercise of the power conferred by sub-section (6) of Section 25 has also granted following exemptions to companies under section 25: -

LAW

Section	Matter	Exemption
2(45)	Appointment of qualified company secretary	In so far as it requires the appointment of an individual to perform the duties which may be performed by a secretary under the said Act and any other administrative duties only if he possesses the prescribed qualifications
147	Publication of name of company	Whole
160(1)(aa)	Name of the members, date on which they became members, they ceased as members since the date of annual general meeting of the immediately preceding year	Entire
166(2)	Holding of Annual General Meeting during business hours, not on a public holiday, in the city where the Registered Office of the company is situated	Entire provided time, date and place of each Annual General Meeting is decided upon before hand by the Board of Directors having regard to the directions, if any, given in this regard by the company in the general meeting
171(1)	Length of notice for calling general meeting	A general meeting can be called by giving a notice of not less than 14 days in writing
193	Recording of minutes within 30 days of conclusion of every meeting	Earlier the section provided for 14 days for recording of the minutes. The time period allowed to section 25 companies was 30 days. However, Section 193 was amended in 1965 to allow 30 days to all the companies.
209(4A)	Preservation of Books of Account and other papers for 8 years	The period for preservation of books of account and other papers in case of section 25 companies is 4 years immediately preceding the current year
219	Annual Accounts to be sent to the members at least 21 days before the date of meeting	The annual accounts can be sent not less than 14 days before the date of the meeting
257	Right of persons other than retiring director to stand for directorship	Not to apply to companies whose Articles provide for voting by ballot
259	Approval of Central Government for increase in number of directors beyond 12	Entire
264(1)	Filing of consent of director to act as director	Entire
285	Holding of at least one meeting in every three calendar months and at least four meetings in a year	At least one meeting within every six calendar months
287	Quorum for Board meetings - 1/3rd of strength of Board with minimum of 2	¼th or 8 whichever is less with minimum 2
292	Certain powers to be exercised in Board Meetings only like to make calls, issue debentures, borrow money, invest funds, make loans	Power to borrow money, invest funds and make loans can be done by circulation
299	Disclosure of Interest by a director	Not applicable except for contracts to which 297(1) & (3) applies
301	Register of contracts, companies and firms in which directors are interested	Applicable for contracts to which Section 297(1) or (3) applies
303(2)	Intimation to Registrar of change in directorship	Entire

Lower registration fee & exemption from stamping

Another privilege, which such a company enjoys, is that though such a company can have share capital like any other company but the registration fees payable is lower as compared to companies not having a licence under section 25. The fee payable is fixed irrespective of the amount of authorized share capital.

The companies registered under section 25 of the Act enjoy another privilege as these companies are not required to have their Memorandum & Articles of Association stamped under section 39 of Indian Stamp Act, 1899.

Non-application of Companies Auditor's Report Order 2003

Section 25 companies are exempt from the applicability of Companies Auditor's Report Order 2003 (CARO). CARO was notified by the Central Government on 12.06.2003 to be applicable for financial years ending on or after 1st July, 2003. The Central Government vide its circular no. 32/2003 dated 10th November, 2003 has made it mandatory for financial years ending on or after 1st January, 2004. For the financial years ending between 1st July, 2003 and 31st December, 2003, the Central Government has advised all Registrar of Companies to take a lenient view provided, however, either a report in CARO or earlier MAOCARO (Manufacturing and other Companies (Auditor's Report) Order 1988), if applicable, is attached. *CARO expressly exempts section 25 companies from its applicability vide Clause 2(iii) of Para 1 of the Order.* Earlier also, Manufacturing and other

Companies (Auditor's Report) Order 1998 was not applicable to section 25 companies vide Clause 2(b)(iii) of the said Order.

Firm can be a member

A unique feature of Section 25 companies is that even a 'firm' can also be a member of such a company in its own name. It may be recalled that a firm, not being distinct and separate from its partner(s), cannot hold shares in any company in its own name. But in a section 25 company, a firm can become a member of such a company in its own name. An interesting question which arises is whether a proprietary firm can become a member of such a company? This issue is important since many such companies have enrolled proprietary firms as its members. This has eventually led to a situation where an individual being a proprietor of more than one firm has been enrolled as a member as many times as he has floated the proprietary firms. This seems to be a blatant violation of the privilege granted to such companies in order to control the management of the such companies. The word 'firm' has to be given a meaning as defined in Indian Partnership Act, 1932 as '*persons who have entered into partnership with one another are collectively called as a firm*'. Therefore, for a firm, **existence of partnership** is a must which is not possible in case of a proprietary firm. If such a contention is permitted, a single person being a proprietor of two or more firms can form a private company under this section which does not seem to be the intention of the Act.

Conditions for grant of license under section 25

The licence is granted subject to fulfillment of various conditions by such companies. The conditions, subject to which the licence is granted by the Central Government, are enumerated as under: -

- (a) That the profit/income earned by the company shall be applied by the company for the promotion of its objects;
- (b) That the company by its articles shall prohibit distribution of its profit in the form of dividend, bonus etc. to its members;
- (c) That the company shall not alter its object clause without the prior approval of the Central Government in writing. The licence issued by the Regional Directors normally contains the prohibition regarding amendment of any clause of Memorandum of Association without their previous permission;
- (d) That the company shall not amend its Articles without the permission of the Central Government; and
- (e) That the company shall not pay remuneration or other benefit to any of its members. This is applicable even though they are officers/servants/office bearers. Any member working for the association has to work in an honorary capacity. What can be paid is reimbursement of expenses, interest on loan, rent for premises lent to the company. However, such payment can be made to a members for services rendered by them which are not of the kind ordinarily expected to be rendered by him as member, with the previous approval of the

Central Government.

Revocation of licence

In the event of the company contravening any of the aforesaid conditions, the Central Government has been empowered to revoke the licence so granted. But before revoking the licence, the Central Government shall give a notice in writing of its intention to the company and shall afford an opportunity of being heard in opposition to the revocation. The Central Government is expected to use this power bonafide based on the principles of natural justice. Upon revocation, the company shall cease to enjoy the privileges and exemptions granted under section 25 of the Act. It shall also be obliged to add the words 'Limited' or 'Private Ltd. as the case may be to its name.

Procedure for obtaining License

The procedure for obtaining licence from the Central Government and subsequent incorporation of the company involves the following steps: -

- (i) Obtain name availability letter from the Registrar of Companies after making application in Form 1-A stating the fact that the company is proposed to be registered under section 25 of the Act.
- (ii) Make an application for grant of license. The application is to be made by the promoter(s) in case of a proposed company and by any director under authorization of the Board, in case of an existing company. Such an application is to be made on a plain paper and generally contains the background of promoters, activities to be



undertaken by the company etc. The application is to be made to the concerned Regional Director enclosing the following documents: -

- Three copies of Memorandum & Articles of Association duly executed by the promoters.
- Three copies of list of names, description, addresses of promoters/ directors with the name of organization in which they are holding responsible positions.
- Three copies of statement showing estimates of future Income & Expenditure and Balance Sheet (for new company). For existing companies, besides the estimated Income & Expenditure Account and Balance Sheet, past three years' annual accounts, report on working of the company and a statement showing in detail the assets and liabilities of the company as on the date of application or within seven days of that date are also to be attached.
- Three copies of statement

giving in brief description of work proposed to be carried out after incorporation.

- Three copies of the statement specifying the grounds on which the application is made.
- Declaration, on a non-judicial stamp paper of appropriate value duly notarized, by all the directors of the company (Prescribed Performa is given in Annexure V of the Companies Regulation, 1956) that he is not of unsound mind, not an undischarged insolvent, has not applied for adjudication as insolvent, and has not been convicted by any court, and is not disqualified to act as a director.
- Declaration, on a non-judicial stamp paper of appropriate value duly notarized, by a Chartered Accountant or an Advocate of a Supreme Court or of a High Court, an attorney or a pleader entitled to appear before a High Court or a Company Secretary that Memorandum & Articles of Association have been drawn up in accordance with the provisions of the Act and that all the requirements of the Act and the rules made there under have been duly complied with in respect of registration or matters incidental or supplementary thereto.
- Application fee of Rs. 500/- (Revised from Rs. 60/- in July 1999) by way of a demand draft in favour of

- Regional Director, Northern/Eastern/Western/Southern Region and payable at the place where the concerned Regional Director's office is situated.
- Copy of name-availability letter issued by the Registrar of Companies.
 - Documentary evidence in support of addresses of promoters.
 - If the company is being established at the instance/collaboration of some foreign charitable organization, then certified copy of the charter of that organization with its translation in English or Hindi, if the charter is not in English or Hindi.
- (iii) Within seven days of making the application, a notice is to be published once in English language in English Newspaper and once in vernacular language in local newspaper circulating in the district in which the registered office is proposed to be situated or is situated inviting objections to the application for grant of licence. The public notice shall be in the prescribed format as given in Annexure II to the Companies Regulations, 1956. Such a notice has to provide minimum 21 days for receipt of objections and the Regional Director shall consider all objections received by him before grant of licence.
- (iv) A copy of the application for grant of licence is also required to be submitted to the concerned Registrar of Companies with all enclosures.

(v) Registrar of Companies shall scrutinize the documents and suggest modifications, if any, to the Regional Director within 15 days. The Registrar of Companies can seek the views of District Magistrate of the State where the Registered Office of the company is either situated or proposed to be situated about the desirability of such a company. Regional Director can also make a reference to State Government and can also consult the ministries concerned to determine objections, if any, to the grant of licence.

(vi) The Regional Director shall proceed to grant the licence on being satisfied regarding desirability of such companies.

The Department of Company Affairs, in order to facilitate quicker disposal of applications received for grant of licence under section 25 of the Act, has issued instructions to the Regional Directors to complete all the formalities within a period of eight weeks from the receipt of the application and to issue the licence applied for within a period of 10 or 12 weeks of receipt of the application.

Procedure for incorporation of Company

Normal procedure for incorporation of proposed company is to be followed except that Memorandum of Association and Articles of Association as approved/modified by the Regional Director has to be printed and submitted to the concerned Registrar of Companies alongwith a copy of the licence issued by the Regional Director and other documents as normally filed

at the time of incorporation of companies.

Income Tax Provisions

The income earned by Section 25 companies is taxable under the provisions of the Income tax Act, 1961. The income tax return of such companies must be filed in Form-3A before 31st October every year. However, such a company can get itself registered u/s 12A of the Income Tax Act and can get the benefit of accumulation of its income to some extent for utilization in future years. Such a company can also get itself registered u/s 80G of the Income Tax Act and the donor donating the amount to such a company shall be entitled to a deduction to the extent of 50% of the sum donated from its income. Section 12A(b) of the Income Tax Act provides for mandatory audit of accounts of such companies provided the total income without giving effect to the provisions of section 11 & 12 exceeds Rs. 50000/- in any year. The audit report is to be submitted in Form No. 10B and must be duly signed by a chartered accountant holding certificate of practice.

There are certain restrictions as to investment of funds by such entities registered u/s 12A of the Income Tax Act. The investment by such companies must be made in approved forms and modes of investment as specified in Section 11(5) of the Income Tax Act. All voluntary donations received by such a company are treated as income. Any amount applied out of such income is eligible for deduction be it a revenue expenditure or a capital expenditure. However, any donation received with the intent of forming a corpus is not treated as income. ■

Seminar
On
Tax Audit

Guest Speaker:
CA. Rakesh Gupta

Issues relating to clauses covered in Tax Audit

Judicial decisions at times throw very interesting propositions of law which are helpful for assesseees and tax professionals alike while dealing with tax matters. Below is an attempt to list certain propositions of law expounded by the courts' decisions which may be found useful.

Section 40A (2)

- **Assessment year 1998-1999** – Whether for invoking provision of section 40A(2) *onus lies upon Assessing Officer* to prove that payment is excessive or unreasonable having regard to fair market value of goods or legitimate needs of business, there is no presumption of unreasonableness – Held, Yes – **S.K. ENGG V. JT CIT 103 ITD 97 (BANG).**

- **Business expenditure----Disallowance under s. 40A(2)**—
Payment of commission to sister concern---Department not being able to show as to how 0.5 per cent higher commission

- paid by assessee company to its sister concern, which was also being assessed at higher rate, *resulted in tax evasion*, Tribunal was justified in deleting the addition.---*CIT vs. Indo Saudi Services (Travel) (P) Ltd. 12 DTR 304(Bom)*
- ---Payment of salary to director----AO having made no enquiry to ascertain whether the payment of remuneration by the assessee company to the director in the relevant year was excessive or unreasonable having regard to the fair market value of the services, no disallowance could be made u/s. 40A(2) on the basis that the remuneration paid in the relevant year was substantially more than that paid in the earlier year.----*Jagdamba Rollers Flour Mill Ltd. vs. Asstt. CIT 20 DTR 370 (Nag)(TM)(Tribunal)*.
 - ---Disallowance under s. 40A(2)----Excessive Interest payment to relatives of directors---AO having no information as to what should be the fair market rate of interest, he could not have treated interest paid by assessee to relatives of directors @ 24 per cent per annum as excessive or unreasonable so as to invoke provisions of s. 40A(2)(b) and disallow part of it by reopening the assessment--*Satya Narain Kesho Ra, (P) Ltd. vs. Dy. CIT 21 DTR 1(Lucknow)*

Section 41(1)

Business income---Profits chargeable to tax under s. 41(1)----

Remission or cessation of liability---AO having not brought anything on record to prove that the liabilities ceased to exist as on last date of relevant previous year, same could not be taxed as income under s. 41(1).----*Wilson & Co. Ltd. vs. Asstt. CIT 16*

DTR 428(Chennai)

- **Business income**---Cessation of liability---Unilateral writing off of unclaimed liability---Not statutory but contractual liability---Taxable as income---Income-tax Act, 1961, s. 41(1)---*JAY ENGINEERING WORKS LTD. 167 Taxman*

130 (Delhi)

- **Income**----Business----Waiver of loan taken by assessee for business purposes---Amount transferred to profit and loss account---Amount assessable as business income---Income-tax Act, 1961, s. 41(1)---*SOLID CONTAINERS LTD. V.*

DEPUTY CIT 308 ITR 417(Bom.)

- **S. 41(1) – Income – Business income – Remission of liability – Amount shown as liability in balance sheet – No evidence of cessation of liability – Amount not assessable under section 41 – CIT VS. TAMILNADU WAREHOUSING CORPORATION 292 ITR 310 (MAD.)**

- **Business income – Profits chargeable to tax under section 41(1) – Amounts carried forward for years – In the absence of any evidence of cessation of liability amount which has been merely carried forward to years in the books of accounts is not assessable under section 41(1) – CIT VS. SOUTHERN ROADWAYS LIMITED 202 CTR 279 (MAD.)**

Section 43B

- **Business expenditure----Deduction only on actual payment----Contributions to provident fund beyond stipulated period but paid on or before due date for furnishing return under section 139(1)----Deductible Income-tax Act, 1961, ss. 2(24)(x), 36(1)(va), 43B---CIT v. M.N. CHARI 310 ITR 445(Karn.)**

- **Business expenditure---Disallowance under s. 43B---**
Contribution to provident fund----Payment of PF contribution made by the assessee after the due date prescribed under the Employees Provident Fund Act and The Rules made thereunder but before the due date of filing of return could not be disallowed under s. 43B--- **---CIT vs. P.M. Electronics Ltd. 15 DTR 258(Del)**

Section 269 SS and 269 T

Penalty under ss. 271D and 271E---Contravention of ss. 269SS and 269T-----Reasonable cause----Family transaction between two independent assesseees, based on an act of casualness, specially in a case where the disclosure thereof is contained in the compilation of accounts, and which has no tax effect, establishes “reasonable cause” under s. 273B for not invoking the penal provisions of ss. 271D and 271E.**---CIT vs. Sunil Kumar Goel 21 DTR 43(P&H)**

-----Deposits and loans in cash in excess of prescribed limit--
-Finding that amounts were mere book entries and transactions

on behalf of family members---No violation of sections 269SS and 269T-----Penalty could not be imposed---Income-tax Act, 1961, ss. 269SS, 269T,271D, 271E----**CIT v. NATVARLAL PURSHOTTAMDAS PAREKH 303 ITR 5(Guj)**

- **Validity-Limitation**-Penalty under s.271D was invalid as, it was not initiated during any proceedings under the Act and was also initiated after a lapse of 7years.—**SHARDA EDUCATIONAL TRUST V/S ASSTT. CIT-VOL.99-TTJ-212(AGRA).**
- **Penalty Under s. 271 D – Leviability –** Deposit treated as undisclosed income- Revenue having taken the stand that the alleged deposit was undisclosed income of the assessee,it could not resort to penalty proceedings under s. 271D - **CIT VS. Standard BRANDS LTD. 204 CTR 48 (DEL).**
- **S.271D – Penalty –** Deposit or loan in cash exceeding prescribed limit – Amount received by private company from director – Not a deposit or loan – Penalty cannot be imposed – **CIT VS. IDHAYAM PUBLICATIONS LTD. 285 ITR 221 (MAD)**

- **Section 271D—Penalty—**Acceptance of loans in cash exceeding specified limit—Finding that transactions entered in books of account and amount involved was not very high—Penalty cannot be imposed—**CIT VS RATNA AGENCIES 284**
ITR 609 (MAD)

Seminar
On
Fringe Benefit
Tax

Guest Speaker:
Dr. Ravi Gupta

FRINGE BENEFIT TAX

Dr. Ravi Gupta

*M.Com., LL.B., D.L.L., M.B.A., Ph.D.
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The taxation of perquisites or fringe benefits provided by an employer to his employees, in addition to the cash salary or wages paid, is subject to varying treatment in different countries. These benefits are either taxed in the hands of the employees themselves or the value of such benefits is subject to a 'fringe benefit tax' in the hands of the employer. The rationale for levying a fringe benefit tax on the employer lies in the inherent difficulty in isolating the 'personal element' where there is collective enjoyment of such benefits and attributing the same directly to the employee. This is so especially where the expenditure incurred by the employer is ostensibly for purposes of the business but includes, in partial measure, a benefit of a personal nature. Moreover, in cases where the employer directly reimburses the employee for expenses incurred, it becomes difficult to effectively capture the true extent of the perquisite provided because of the problem of cash flow in the hands of the employer.

Therefore, the Finance Act, 2005 adopted the following two pronged approach for the taxation of fringe benefits under the Income-tax Act:—

- (1) ***Perquisites which can be directly attributed to the employees:*** Such perquisites will continue to be taxed in the hands of the employees in accordance with the existing provisions of section 17(2) of the Income-tax Act and subject to rule 2A, rule 2B, rule 2BB and rule 3 of the Income-tax Rules.
- (2) ***Perquisites which cannot be directly attributed to the employee or for some reason it is not feasible to tax the benefits in the hands of the employee:*** Where attribution of the personal benefit poses problems, or for some reasons, it is not feasible to tax the benefits in the hands of the employee, the Finance Act, 2005 has levied a separate tax known as "fringe benefit tax" on the employer on the value of such benefits provided or deemed to have been provided to the employees.

For the second approach, A new Chapter XII-H has been inserted in the Income-tax Act containing sections 115W to 115WL, which provides for the levy of additional income-tax on fringe benefits known as Fringe Benefit Tax. The Chapter is divided into three parts. Part A which has only one section *i.e.* section 115W which gives the meaning of certain expressions used in the chapter. Part B enumerates the basis of charge and consists of three sections *viz.* section 115WA to 115WC. Part C delineates the procedures for filing of return in respect of fringe benefits, assessment and the payment of tax thereon and consists of sections 115WD to 115WL.

After insertion of the above chapter, the Board has issued a Circular No. 8/2005, dated 29-8-2005 to clarify certain issues relating to fringe benefit tax. These issues are also being discussed, wherever it is found necessary.

1. Fringe benefit tax is payable by employer

"Fringe benefit tax" is payable by an 'employer' on the fringe benefits provided or deemed to have been provided by him to his employees.

(a) Meaning of employer [Section 115W(a)]: "Employer" means,—

- (i) a company;
- (ii) a firm;
- (iii) an association of persons or a body of individuals, whether incorporated or not;
- (iv) a local authority; and
- (v) every artificial juridical person, not falling within any of the preceding sub-clauses.

However, any person eligible for exemption under section 10(23C) or registered under section 12AA or a political party registered under section 29A of the Representation of the People Act, 1951 shall not be deemed to be an employer for the purpose of this Chapter.

In other words, the following persons are not required to pay fringe benefit tax:

- (i) an individual;
- (ii) HUF;
- (iii) funds or trust or institution eligible for exemption under clause (23C) of section 10 or registered under section 12AA;
- (iv) a political party registered under section 29A of the Representation of the People Act, 1951.

Since, a foreign charitable institution incorporated outside India are (a) not eligible tax for exemption under section 10(23C), or (b) not registered under section 12AA, it cannot avoid liability for fringe benefit tax, through it has no taxable income in India. [**Population Council Inc (AAR)**].

(b) Meaning of fringe benefit tax [Section 115W(b)]: "Fringe benefit tax" or "tax" means the tax chargeable under section 115WA.

2. Charge of fringe benefit tax [Section 115WA(1)]

In addition to the income-tax charged under this Act, there shall be charged for every assessment year commencing on or after the 1st day of April, 2006, additional income-tax (in this Act referred to as fringe benefit tax) in respect of the fringe benefits provided or deemed to have been provided by an employer to his employees during the previous year at the rate of 30% on the value of such fringe benefits.

An analysis of the above reveals the following:

- (1) Fringe benefit tax is payable by '**an employer**'.
- (2) Fringe benefit tax is payable w.e.f. assessment year 2006-07.
- (3) Fringe benefit tax is payable **in addition to the income-tax** charged under the Income-tax Act.
- (4) Fringe benefit tax is payable in respect of the fringe benefits **provided or deemed to have been provided** by the employer to his employees during the previous year. The words "deemed to have been provided" clearly indicate that such fringe benefit tax is a presumptive tax.
- (5) There must be atleast **one employee** (*See Note 1 in box*) in the concern before an employer can be charged to fringe benefit tax.
- (6) The determination of the tax base comprises three elements:
 - (a) the scope of the term 'fringe benefits provided' [*See section 115WB(1)*];
 - (b) the scope of the term 'fringe benefits deemed to have been provided' [*See section 115WB(2)*];
and
 - (c) the basis of valuation of (a) and (b) [*See section 115WC*].

It is based on a presumptive method applied to certain heads of expenditure as a measure/indicator of fringe benefits.

- (7) The tax will be levied @ 30% on the *value of such fringe benefits*. [Section 115WC deals with the valuation of fringe benefits].

1. Although the word used in section 115WA(1) is "employees" but as per section 13(2) of General Clauses Act, 1897, "words in the singular shall include the plural, and *vice versa*".
2. Although the rate of tax on the value of fringe benefit is 30% but the employer shall be charged surcharge @ 10% (if applicable) *plus* an education cess @ 2% *plus* SHEC @ 1% on the tax including surcharge, if any. Thus, the effective rate of tax is 33.99% in most of the cases. In the case of foreign company, the surcharge is 2.5% instead of 10%. Surcharge will be added even if the total income of the firm or the company/foreign company does not exceed Rs. 1 crore.

3. Fringe benefit tax shall be payable even if there is no taxable income [Section 115WA(2)]

'Fringe benefit' tax shall be payable by all those employers who fall within the definition of 'employer' although such employer may not be liable to pay income-tax on his total income. Even loss making concerns will have to pay fringe benefit tax although there is no income-tax payable by them.

An employer who is eligible for deduction under section 10A, 10AA, 10B, 10BA shall also be liable to pay fringe benefit tax, even though he is allowed deduction under the aforesaid sections.

4. What are fringe benefits [Section 115WB(1) and (2)]

"Fringe benefits" means any consideration for employment provided by way of—

- (a) any privilege, service, facility or amenity, directly or indirectly, provided by an employer, whether by way of reimbursement or otherwise, to his employees (including former employee or employees);
- (b) any free or concessional ticket provided by the employer for private journeys of his employees or their family members;
- (c) any contribution by the employer to an approved superannuation fund for employees; and
- (d) any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees).

- (1) "specified security" means the securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 and includes employees' stock option;
- (2) "sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Clauses (b), (c) and (d) are specific cases of fringe benefits. These facilities shall be a fringe benefits whether the employer is engaged in any business or profession or not.

Clause (a) of section 115WB(1) covers all privileges, services facilities or amenities in the meaning of fringe benefits.

Further, as per section 115WB(2), the fringe benefits shall be deemed to have been provided by the employer to his employees, if the employer has, *in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains)* incurred any expense on, or made any payment for the 16 purposes mentioned in table under para 6 below.

Thus, sub-section (2) of section 115WB has expended the scope of sub-section (1) through a deeming provision. However, the law has no intention to tax all such fringe benefits in the hands of the employer, as

it has not prescribed the valuation of all such privileges, facilities, etc in section 115WC. This inclusion has been done to specify that any kind of privilege, service, facility or amenity provided by the employer to the employees including the former employees whether provided directly or indirectly and whether by way of reimbursement or otherwise shall be a fringe benefit so that there may not be any litigation regarding the fact that such privilege, service, etc. is not a fringe benefit.

The intention of the law is to tax only 16 items of expenses or payment which according to section 115WB(2) have been specifically treated as deemed fringe benefits. The intention is more clear because section 115WC(2) has given the valuation of only such 16 items mentioned in clauses (A) to (Q) besides those covered under clauses (b), (c) and (d) of section 115WB(1). [Clauses (A) to (L) except (K) to be valued @ 20%, (M) to (P) to be valued @ 50% and (Q) to be valued @ 5%].

In other words, the following conditions must be satisfied to cover any expense or payment within the meaning of deemed fringe benefits for the purpose of section 115WB(2):

- (1) The employer must have incurred any expense or made payment for any one or more of the 16 items given under clauses (A) to (Q) except (K) above.
- (2) He should have incurred expenses on such 16 items or made payment for the same *in the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains)*.

If both the above conditions are satisfied then these 16 items given under clauses (A) to (Q) shall be fringe benefits as per section 115WB(2) and these fringe benefits shall be deemed to have been provided by the employer to his employees.

(1) The employer must have incurred any expense or made payment for any one or more of the 16 items of clauses (A) to (Q) of section 115WB(2)

Expenses incurred or paid on such 16 items can be of two types:

- (1) Revenue expenses;
- (2) Capital expenses

Revenue expenses: Where the employer has incurred revenue expenses on any one or more of the specified 16 items, although he shall be eligible for deduction of such expenses while computing his income from business or profession, but such 16 items shall be treated as fringe benefits in the hands of the employer and he shall be liable to pay fringe benefit tax on the value of such fringe benefits as determined under section 115WC.

Where such revenue expenditure incurred are not allowed as deduction, for any reason, while computing the income from business or profession of the employer, the expenditure cannot be said to have been incurred for the said purpose and thus should not be treated as fringe benefits.

Capital expenses: Expenditure incurred on the acquisition of any capital asset in respect of which depreciation is allowable under section 32 of Income-tax Act does not fall within the scope of section 115WB(2). But, where the employer has incurred *expenses on any of the above 16 items which are of capital nature*, the deduction of such capital expenditure shall not be allowed as deduction while computing the income from business or profession except in the form of depreciation/ amortisation, if any. However, such capital expenditure shall be treated as fringe benefits and liable to fringe benefit tax.

For further clarifications of revenue and capital expenses see question No. 19 & 89 in the Appendix.
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(2) He should have incurred expenses on such 16 items of clauses (A) to (Q) or made payment for the same in the course of his business or profession (including any activity whether or not such activity is

carried on with the object of deriving income, profits or gains)

This condition very clearly stipulates that the expenditure/payment on any of the 16 items will be deemed to be a fringe benefit only if the employer is carrying on a business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains). It may further be observed that section 115WB(2) mandates the carrying on of a business or profession. It is not necessary that such business or profession must be carried on in India but the employees must be based in India.

As per the answers to FAQ No. 43 of the Explanatory Circular No. 8/2005, the employer is liable to fringe benefit tax if it is engaged in the business and profession or any activity, whether or not such activities carried on with the object of deriving income, profits or gains. However, the authors are of the view that the words in the brackets *i.e.* "including any activity whether or not activity is carried on with the object of deriving income, profits or gain", must derive its meaning from the words preceding *i.e.* business or profession. The words in the bracket should be relevant only when the employer is engaged in the business or profession and not otherwise. However, by excluding a political party from the applicability of fringe benefit tax, the law has made its intention more clear that every employer shall be liable to fringe benefit tax whether it is carrying on business or profession or not. A political party does not carry on any business but it has been specifically excluded from fringe benefit tax. If fringe benefit tax was leviable only when the employer is carrying on business or profession, there would not have been any need to exclude the political party.

The meaning of the fringe benefits can thus be summarised as under:

- (i) Any privilege, service, facility or amenity mentioned in clause (a) shall although be fringe benefits but shall not be liable to fringe benefit tax as there are no valuation provisions for the same.
- (ii) Items mentioned in clauses (b), (c) or (d) of section 115WB(1) shall be fringe benefits in the hands of all employers whether or not such employer is carrying on any business or profession. However, such employer should be covered in the definition of 'employer' given under section 115W(a).
- (iii) 16 items covered under clauses (A) to (Q) of section 115WB(2) shall be treated as deemed benefits.

The valuation of items mentioned in clauses (ii) and (iii) above shall be done as per the provisions of section 115WC.

5. Kinds of fringe benefits

Fringe benefits which are subject to fringe benefit tax can be divided in the following two categories:

- (A) Fringe benefits identifiable with the employees.
- (B) Deemed fringe benefits.

(A) Fringe benefits identifiable with the employees

The following two fringe benefits are identifiable with the employees and would be taxable in the hands of all employers under this Chapter whether or not they are carrying on any business or profession:

- (a) any free or concessional ticket provided by the employer for private journeys of his employees or their family members;
- (b) any contribution by the employer to an approved superannuation fund for employees; and
- (c) any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or

employees).

(B) Deemed fringe benefits

As already stated above, section 115WB(2) has listed 16 items of expenditure/ payment under clauses (A) to (Q) which shall be treated as deemed fringe benefits and tax on such fringe benefits shall have to be paid by the employer on presumptive basis where such employer has incurred/paid such expenditure during the course of his business or profession (including any activity whether or not such activity is carried on with the object of deriving income, profits or gains).

6. Certain perquisites and benefits or amenity not to be treated as fringe benefits [Section 115WB(3)]

It may be noted that most of the above-mentioned fringe benefits are at present covered by the existing definition of 'perquisites' as appearing in section 17(2) and therefore, they are taxable in the hands of the employees under the provisions of section 15, read with section 17. To avoid double taxation of the fringe benefits, it has been provided in sub-section (3) of section 115WB, that for purposes of sub-section (1), the privilege, service, facility or amenity does not include perquisites in respect of which tax is paid or payable by the employee, or *any benefit or amenity in the nature of free or subsidised transport or any such allowance provided by the employer to his employees for journeys by the employees from their residence to the place of work or such place of work to the place of residence.*¹

Perquisites include allowances: The rules for valuation of allowances and perquisites have been given in rule 2A, rule 2B, rule 2BB and rule 3 of the Income-tax Rules. As per such rules, certain perquisites/ allowances are valued/taxable after giving some exemptions, but as per section 115WB(3) 'fringe benefits' shall not include those perquisites in respect of which tax is *paid or payable* by the employee. In this case, the intention of the law seems to be to exempt from fringe benefit even those perquisites which are wholly or partly exempt under these rules in the hands of the employee. However, a clarification should have been issued regarding this intention.

W.e.f. assessment year 2007-08, full or subsidised transport or any allowance provided by the employer for journeys by the employees from their residence to the place of work or *vice versa* shall also be not covered under fringe benefit tax.

It may be noted that while issuing the Notification No. 68/2005, dated 28-2-2005, the rules for the valuation of the following perquisites only have been omitted:

- (1) Rule 3(2) relating to valuation of motor car.
- (2) Rule 3(6) relating to value of benefit of free or concessional journey given to transport employees and their family members.
- (3) Rule 3(7)(ii) relating to the value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household.
- (4) Rule 3(7)(iii) relating to the value of free meals provided by the employer to an employee.
- (5) Rule 3(7)(iv) relating to the value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise.
- (6) Rule 3(7)(v) relating to valuation of credit card facility/reimbursement.
- (7) Rule 3(7)(vi) relating to valuation of club facility/reimbursement.

¹ Words in italics inserted by assessment year 2007-08.

- (8) Rule 3(8) relating to valuation of any other benefit or amenity, service, right or privilege provided by the employer.

The effect of the omission of these sub-rules is that employees will not have to pay tax in respect of the perquisites covered by them unless these perquisites are covered within the meaning of section 17(2)(iv) i.e. these are in the form of sum paid or reimbursed by the employer in discharging the monetary obligation of the employee.

1. Rule 3(8) relating to valuation of other benefit or amenity, service, right or privilege provided by the employer has been omitted w.e.f. 1-4-2005 and as such all other privilege, service benefit or amenity provided by the employer shall be covered under fringe benefits provided these are covered under section 115WB(1) or section 115WB(2).
2. The above perquisites are subject to fringe benefit tax w.e.f. assessment year 2006-07. However, all employers are not liable to fringe benefit tax as certain employer have not been included in the meaning of the employer for fringe benefit tax. W.e.f. assessment year 2008-09 employees who are working with an employer who is not liable to pay fringe benefit tax under Chapter XII-H of this Act, shall now be required pay tax on the value of the above perquisites as provided in rule 3 as amended by Notification No. 271/2007, dated 1-11-2007. For details refer para 6b below.

6a Perquisites and allowances — when taxable in the hands of employee and when liable to fringe benefit tax in the hands of the employer

Nature of Privilege, service benefit or amenity	Exempt/Taxable in the hands of employee	Liable for FBT in the hands of the employer
1. House rent allowance	1. Exempt upto certain limit specified in section 10(13A) read with rule 2A, excess, if any, taxable	Not applicable
2. Prescribed allowances received by an employee from his employer <i>e.g.</i> children education allowance, hostel expenditure allowance, transport allowance, tribal area allowance, border area allowance, allowance to transport employees, etc. [Rule 2BB(2)]	Certain amount exempt u/s 10(14)(ii) excess, if any, taxable	Not applicable
3. Prescribed allowance of the following nature: (i) Travelling allowance (ii) Daily allowance/per-diem allowance (iii) Conveyance allowance (iv) Helper allowance (v) Academic allowance (vi) Uniform allowance	Exempt u/s 10(14)(i) if spent on the performance of official duties: Q. On some occasions, employers prefer to give a per-diem allowance for meeting the expenditure on lodging and boarding rather than making payments on actual basis. The per-diem allowance is exempt from tax under section 10(14). Would this be subject to FBT? Ans. Since the per-diem	Liable for fringe benefit tax. For valuation of the same see para 8 below

Nature of Privilege, service benefit or amenity	Exempt/Taxable in the hands of employee	Liable for FBT in the hands of the employer
	<p>allowance is paid for the purposes of use of hotel, boarding and lodging facilities, it would fall within the scope of clause (G) of sub-section (2) of section 115WB. However, the employees will not be liable to pay income tax on any surplus accruing to him from such allowance.</p> <p>[Q. No. 79 of Circular No. 8/2005, dated 29-8-2005]</p>	
4. Any other allowances	Taxable	Not applicable
5. Accommodation whether furnished or unfurnished provided by the employer whether rent free or at concessional rate	Taxable perquisite in the hands of the employee and the value of such perquisite shall be determined as per rule 3(1)	Not applicable
6. Leave Travel Concession/ assistance	Exempt upto certain limit specified in section 10(5) read with rule 2B. Excess, if any, taxable.	Not applicable
7. Benefit to the employee resulting from provision by the employer of services of a sweeper, a gardener, a watchman or a personal attendant	Taxable perquisite in the hands of the employee and the value of such perquisite shall be determined as per rule 3(3)	Not applicable
8. Benefit to the employee resulting from the supply of gas, electric energy or water for household consumption	Taxable perquisite in the hands of the employee and the value of such perquisite shall be determined as per rule 3(4)	Not applicable
9. Benefit to the employee resulting from provision of free or concessional educational facilities for any member of employee's household	Taxable perquisite in the hands of the employee and the value of such perquisite shall be determined as per rule 3(5). If educational institution is run by the employer, it will be a tax free perquisite if cost of the education per child does not exceed Rs. 1,000 p.m.	Not applicable
10. Benefit to the employee resulting from provision of interest-free or concessional loans for any purpose made available to	Taxable perquisite in the hands of the employee and the value of the same shall be determined as per rule 3(7)(i)	Not applicable

Nature of Privilege, service benefit or amenity	Exempt/Taxable in the hands of employee	Liable for FBT in the hands of the employer
the employee or any member of his household		
11. Use by the employee or any member of his household of any moveable assets other than laptops, computers, motor car and furniture	Taxable perquisite in the hands of the employee and value of the same shall be determined as per rule 3(7)(vii)	Not applicable
12. Transfer of any moveable asset belonging to the employer directly or indirectly to the employee or any member of his household	Taxable perquisite in the hands of the employee and value of the same shall be determined as per rule 3(7)(viii)	Not applicable
13. Monetary obligation of the employee discharged by the employer which otherwise would have been payable by the employee	Taxable perquisite and the valuation shall be the actual amount incurred by the employer.	Not applicable
14. Medical facility provided in a hospital maintained by the employer	Tax free perquisite	Liable for fringe benefit tax. However, first-aid facility provided shall not be liable for FBT. Further, if it is a statutory obligation, it will not be liable to FBT.
15. Medical reimbursement	Taxable if the re-imburement exceeds Rs. 15,000	Liable for fringe benefit tax upto reimbursement of Rs. 15,000. However, if it is a statutory obligation, it will not be liable to FBT.
16. Food and beverages provided to employee	Tax free perquisite Note: Also refer to para 6b below.	Also not liable to FBT, if provided to employee in the office or in the factory. Otherwise liable for FBT.
17. Use of health club, sports and similar facilities provided by the employer to his employee	Tax free perquisite Note: Also refer to para 6b below.	Liable for FBT
18. Expenses on telephone, including mobile phone, actually incurred on behalf of the employee by the employer	Tax free perquisite Note: Also refer to para 6e below.	Liable for FBT
19. Allotment of shares or debentures under ESOP/S in accordance with guidelines issued by Central Government	Tax free perquisite	Liable for FBT
20. Motor car provided by the employer to employee	Tax free perquisite	Liable for FBT

Nature of Privilege, service benefit or amenity	Exempt/Taxable in the hands of employee	Liable for FBT in the hands of the employer
	Note: Also refer to para 6c below.	
21. All other perquisites in the form of a facility (to be treated as employee's welfare)	Tax free perquisite Note: Also refer to para 6e below.	Liable for FBT unless any expenditure is incurred or payment is made by the employer to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer
22. Gift in cash	Taxable in the hands of the employee	Not liable for FBT
23. Gift in kind	Exempt in the hands of the employee Note: Also refer to para 6b below.	Liable for FBT
24. Gratuity	Exempt u/s 10(10) upto certain limit, excess, if any, taxable	Not liable for FBT
25. Commuted pension	Exempt u/s 10(10A) upto certain limit, excess, if any, taxable	Not liable for FBT
26. Leave encashment at the time of superannuation/retirement	Exempt u/s 10(10AA) upto certain limit, excess, if any, taxable	Not liable for FBT
27. Compensation under Industrial Dispute Act or any award or any order of Court	Exempt u/s 10(10B) upto certain limit, excess, if any, taxable	Not liable for FBT
28. Compensation under voluntary retirement scheme	Exempt u/s 10(10C) upto certain limit, excess, if any, taxable	Not liable for FBT

To summarise, perquisites given to the employees which are either fully or partially taxable or tax free in his hands shall not be treated as fringe benefits. On the other hand, certain perquisites for which the valuation rules have been deleted will no longer be taxable in the hands of the employees and thus liability of tax on such perquisites has been shifted from the employees to the employer. Thus, there exists mutual exclusion between the two. What is taxable in the hands of the employee cannot be taxed as fringe benefits in the hands of the employer in view of section 115WB(3) and what is taxable as fringe benefits in the hands of the employer cannot to be taxed in the hands of the employees. Thus, there appears to be no scope for double taxation.

6b Fringe benefits or amenities which shall be taxable perquisites in the hands of employees provided the employer is not liable to pay FBT [W.e.f. assessment year 2008-09.]

The following fringe benefits shall be taxable in the hands of those employees who are in the employment of an employer who is not liable to pay FBT under Chapter XII-H. However, if the employer is liable to pay FBT under Chapter XII-H, the value of such facility, benefit, etc. shall not be taxable in the hands of employees as the employer shall pay FBT on the same. A comparative chart of such fringe benefits or amenities is given below:

Nature of fringe benefits or amenity	Where the employer is not liable to pay FBT under Chapter XII-H <i>i.e.</i> if the employer is an individual or HUF, charitable or religious trust covered u/s 10(23C) or registered under section 12AA or a registered political party	Where the employer is liable to pay FBT										
<p>1. The value of traveling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household other than leave travel concession [Rule 3(7)(ii)]</p>	<p>Taxable in the hands of the employee.</p> <p>The value of the benefit will be as under:—</p> <table border="1" data-bbox="472 497 1209 1570"> <thead> <tr> <th data-bbox="472 497 842 609">Circumstances</th> <th data-bbox="842 497 1209 609">Value of benefit or amenity</th> </tr> </thead> <tbody> <tr> <td data-bbox="472 609 842 833">(a) Where such facility is maintained by the employer, and is not available uniformly to all employees.</td> <td data-bbox="842 609 1209 833">It will be the value at which such facilities are offered by other agencies to the public.</td> </tr> <tr> <td data-bbox="472 833 842 1128">(b) Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him.</td> <td data-bbox="842 833 1209 1128">The amount of expenditure so incurred.</td> </tr> <tr> <td data-bbox="472 1128 842 1352">(c) Where any official tour is extended as a vacation.</td> <td data-bbox="842 1128 1209 1352">The value will be limited to the expenses incurred in relation to such extended period of stay or vacation</td> </tr> <tr> <td data-bbox="472 1352 842 1570">(d) In any other case, where such facility is given to the employee or any member of his household.</td> <td data-bbox="842 1352 1209 1570">A sum equal to the amount of expenditure incurred by the employer.</td> </tr> </tbody> </table> <p>However, in the all above cases, the amount determined above shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> <p>The above rules shall not be applicable to any leave travel concession or assistance referred to in rule 2B.</p> </div>	Circumstances	Value of benefit or amenity	(a) Where such facility is maintained by the employer, and is not available uniformly to all employees.	It will be the value at which such facilities are offered by other agencies to the public.	(b) Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him.	The amount of expenditure so incurred.	(c) Where any official tour is extended as a vacation.	The value will be limited to the expenses incurred in relation to such extended period of stay or vacation	(d) In any other case, where such facility is given to the employee or any member of his household.	A sum equal to the amount of expenditure incurred by the employer.	<p>Employer is liable to pay fringe benefit tax on the value of such fringe benefit/amenity</p>
Circumstances	Value of benefit or amenity											
(a) Where such facility is maintained by the employer, and is not available uniformly to all employees.	It will be the value at which such facilities are offered by other agencies to the public.											
(b) Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him.	The amount of expenditure so incurred.											
(c) Where any official tour is extended as a vacation.	The value will be limited to the expenses incurred in relation to such extended period of stay or vacation											
(d) In any other case, where such facility is given to the employee or any member of his household.	A sum equal to the amount of expenditure incurred by the employer.											
<p>2. Value of free food and non-alcoholic beverages [Rule 3(7)(iii)]</p>	<p>Taxable in the hands of the employee.</p> <p>The value of free food, tea and snacks shall be as under:—</p>	<p>Employer is liable to pay fringe benefit tax on the value of such</p>										

	Circumstances	Value of benefit	fringe benefit/amenity
	(a) Tea or snacks provided during working hours	Nil	
	(b) Free food and non-alcoholic beverages during working hours provided in a: (i) remote area; or (ii) an offshore installation.	Nil	
	(c) Free food and non-alcoholic beverages provided by the employer during working hours: (i) at office or business premises; or (ii) through paid vouchers which are not transferable and usable only at eating joints.	Nil, if the value thereof in either case is upto Rs. 50 per meal.	
	(d) In any other case	Actual amount of expenditure incurred by the employer as reduced by the amount if any paid or recovered from the employee for such benefit or amenity.	
	<p>It may be noted that as per Circular No. 15/2001, dated 12-11-2001 relating to TDS on salary not only tea but similar non-alcoholic beverages and snacks in the form of light refreshment during working hours are not charged as perquisite.</p> <p>Further, as regards free meals, expenditure on provision of free meals by the employer <i>in excess of Rs. 50</i> should only be treated as perquisite, as reduced by recoveries made from the employer.</p>		
3. Value of any gift, voucher or token [Rule 3(7)(iv)]	<p>Taxable in the hands of the employee.</p> <p>The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer, who is not liable to pay</p>		Employer is liable to pay fringe benefit tax on the value of such fringe

	<p>FBT under Chapter XII-H shall be determined as the sum equal to the amount of such gift.</p> <p>However, where the value of such gift, voucher or token, as the case may be, is <i>below</i> Rs. 5,000 in the aggregate during the previous year, the value of perquisite shall be taken as nil.</p>	benefit/amenity						
<p>4. Expenses on credit card [Rule 3(7)(v)]</p>	<p>Taxable in the hands of the employee.</p> <table border="1" data-bbox="486 495 1214 1310"> <thead> <tr> <th data-bbox="486 495 965 571">Circumstances</th> <th data-bbox="965 495 1214 571">Value of benefit</th> </tr> </thead> <tbody> <tr> <td data-bbox="486 571 965 1122"> <p>(a) Where expenses <i>including membership fees</i> and annual fees are incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card), provided by the employer or otherwise, are paid for or reimbursed by the employer and such expenses are incurred for any purpose other than mentioned under clause (b) below.</p> </td> <td data-bbox="965 571 1214 1122"> <p>The amount paid for or reimbursed by the employer.</p> </td> </tr> <tr> <td data-bbox="486 1122 965 1310"> <p>(b) Where such expenses are incurred wholly and exclusively for official purposes.</p> </td> <td data-bbox="965 1122 1214 1310"> <p>Nil, provided the conditions specified below are fulfilled.</p> </td> </tr> </tbody> </table> <p>The amount determined in clause (a) above shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.</p> <p><i>Specified conditions to be fulfilled to claim that expenses have been incurred wholly and exclusively for official purposes:—</i></p> <p>(a) complete details in respect of such expenditure is maintained by the employer which may, <i>inter alia</i>, include the date of expenditure and the nature of expenditure;</p> <p>(b) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.</p>	Circumstances	Value of benefit	<p>(a) Where expenses <i>including membership fees</i> and annual fees are incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card), provided by the employer or otherwise, are paid for or reimbursed by the employer and such expenses are incurred for any purpose other than mentioned under clause (b) below.</p>	<p>The amount paid for or reimbursed by the employer.</p>	<p>(b) Where such expenses are incurred wholly and exclusively for official purposes.</p>	<p>Nil, provided the conditions specified below are fulfilled.</p>	—do—
Circumstances	Value of benefit							
<p>(a) Where expenses <i>including membership fees</i> and annual fees are incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card), provided by the employer or otherwise, are paid for or reimbursed by the employer and such expenses are incurred for any purpose other than mentioned under clause (b) below.</p>	<p>The amount paid for or reimbursed by the employer.</p>							
<p>(b) Where such expenses are incurred wholly and exclusively for official purposes.</p>	<p>Nil, provided the conditions specified below are fulfilled.</p>							

<p>5. Club membership and expenses incurred in a club [Rule 3(7)(vi)]</p>	<p>Taxable in the hands of the employee.</p> <table border="1" data-bbox="488 219 1211 786"> <thead> <tr> <th data-bbox="488 219 967 293"><i>Circumstances</i></th> <th data-bbox="967 219 1211 293"><i>Value of benefit</i></th> </tr> </thead> <tbody> <tr> <td data-bbox="488 293 967 629">(a) The payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by the employee or by any member of his household for any purpose other than mentioned in clause (b) below.</td> <td data-bbox="967 293 1211 629">The actual amount of expenditure incurred or reimbursed by the employer.</td> </tr> <tr> <td data-bbox="488 629 967 786">(b) Where such expenses are incurred wholly and exclusively for official purposes.</td> <td data-bbox="967 629 1211 786">Nil, provided the conditions specified below are fulfilled.</td> </tr> </tbody> </table> <p>The amount determined in clause (a) shall be reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.</p> <p><i>Specified conditions to be fulfilled to claim that expenses have been incurred wholly and exclusively for official purposes:—</i></p> <p>(a) complete details in respect of such expenditure is maintained by the employer which may, <i>inter alia</i>, include the date of expenditure, the nature of expenditure and its <i>business expediency</i>;</p> <p>(b) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.</p> <table border="1" data-bbox="475 1379 1211 1899"> <tr> <td data-bbox="475 1379 1211 1899"> <ol style="list-style-type: none"> 1. Where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the <i>initial fee</i> paid for acquiring such corporate membership. 2. There shall be no perquisite value for use of health club, sports and similar facilities provided uniformly to all employees by the employer. 3. Although the conditions given above are similar to conditions applicable for credit cards, but in clause (a) above words 'business expediency' have been included which are not there in case of benefit relating to credit card. </td> </tr> </table>	<i>Circumstances</i>	<i>Value of benefit</i>	(a) The payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by the employee or by any member of his household for any purpose other than mentioned in clause (b) below.	The actual amount of expenditure incurred or reimbursed by the employer.	(b) Where such expenses are incurred wholly and exclusively for official purposes.	Nil, provided the conditions specified below are fulfilled.	<ol style="list-style-type: none"> 1. Where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the <i>initial fee</i> paid for acquiring such corporate membership. 2. There shall be no perquisite value for use of health club, sports and similar facilities provided uniformly to all employees by the employer. 3. Although the conditions given above are similar to conditions applicable for credit cards, but in clause (a) above words 'business expediency' have been included which are not there in case of benefit relating to credit card. 	<p>Employer is liable to pay fringe benefit tax on the value of such benefit/amenity</p>
<i>Circumstances</i>	<i>Value of benefit</i>								
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(b) Where such expenses are incurred wholly and exclusively for official purposes.	Nil, provided the conditions specified below are fulfilled.								
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6c Valuation of motor car/other vehicles [Rule 3(2)]

(A) Where the employer is liable to pay FBT under Chapter XII-H

Expenses incurred on motor car provided by the employer to the employee or expenses incurred by the employer relating to a car owned by employee shall not be a perquisite in the hands of the employee. However, the employer shall have to pay fringe benefit tax on the value of fringe benefit provided in the form of a car/reimbursement of conveyance expenses.

(B) Where the employer is not liable to pay FBT under Chapter XII-H

Where the employer is an individual or HUF, a charitable or religious trust or institution covered under section 10(23C) or registered under section 12AA, or a registered political party, the perquisite of motor car shall be taxable in the hands of the employee as the employer is not liable pay FBT under Chapter XII-H. For this purpose rule 3(2) has been reintroduced for such employers by notification No. 271/2007, dated 7-11-2007.

Valuation of motor car/other vehicles [Rule 3(2)]

As already discussed, motor car/other vehicles, *provided by the employer*, is a perquisite only for specified employees because it is a facility provided by the employer to the employees. On the other hand, if the car belongs to the employee and the expenses of running and maintenance of that car are met by the employer, it becomes a perquisite taxable in the hands of all employees as it is an obligation of the employee to maintain his car but such obligation is being met by the employer.

Value of Perquisite per *calendar month*

<i>Sl. No.</i>	<i>Circumstances</i>	<i>Where cubic capacity of engine does not exceed 1.6 litres</i>	<i>Where cubic capacity of engine exceeds 1.6 litres</i>
1.	Where the motor car is owned or hired by the employer and,—		
	(a) is used wholly and exclusively in the performance of his official duties;	No value provided that the <i>documents specified</i> below this table are <i>maintained</i> by the employer.	No value provided that the <i>documents specified</i> below this table are <i>maintained</i> by the employer.
	(b) is used exclusively for the private or personal purposes of the employee or any member of his household and the running and main-tenance expenses are met or reimbursed by the employer.	Actual amount of expenditure incurred by the employer on the running and main-tenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car (which will be 10% of the cost of motor car or cars) and as reduced by any amount charged from the employee for such use.	Actual amount of expenditure incurred by the employer on the running and mainten-ance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car (which will be 10% of the cost of motor car or cars) and as reduced by any amount charged from the employee for such use.
	(c) is used partly in the performance of duties and partly for private or personal		

Sl. No.	Circumstances	Where cubic capacity of engine does not exceed 1.6 litres	Where cubic capacity of engine exceeds 1.6 litres
	purposes of his own or any member of his household and,—		
	<p>(i) the expenses on maintenance and running are met or reimbursed by the employer.</p> <p>(ii) the expenses on running and main-tenance for such private or personal use are <i>fully met</i> by the employee.</p>	<p>Rs. 1,200 (<i>plus</i> Rs. 600, if chauffeur is also provided to run the motor car)</p> <p>Rs. 400 (<i>plus</i> Rs. 600, if chauffeur is provided by the employer to run the motor car)</p>	<p>Rs. 1,600 (<i>plus</i> Rs. 600, if chauffeur is also provided to run the motor car)</p> <p>Rs. 600 (<i>plus</i> Rs. 600, if chauffeur is also provided to run the motor car)</p>
2	<p>Where the employee <i>owns</i> a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and,—</p> <p>(i) such reim-bursement is for the use of the vehicle wholly and exclusively for official purposes,</p> <p>(ii) such reim-bursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.</p>	<p>No value provided that the documents specified below this table are maintained by the employer.</p> <p>The actual amount of expenditure incurred by the employer as reduced by the amount specified in col. (1)(c)(i) above <i>i.e.</i> Rs. 1,200 (<i>plus</i> Rs. 600 if chauffeur is also provided)</p>	<p>No value provided that the documents specified below this table are maintained by the employer.</p> <p>The actual amount of expenditure incurred by the employer as reduced by the amount specified in col. (1)(c)(i) above <i>i.e.</i> Rs. 1,600 (<i>plus</i> Rs. 600 if chauffeur is also provided)</p>
		<p>However, in this case, if actual expenses on running and main-tenance for official purpose is more than Rs. 1,200/1,800, as the case may be, he can claim such actual amount of expenditure as deduction by maintaining the documents specified below the table.</p>	<p>However, in this case also, if actual expenses on running and maintenance for official purpose is more than Rs. 1,600/2,200, as the case may be, he can claim such actual amount of expenditure as deduc-tion by maintaining the documents specified below the table.</p>
3.	Where the employee <i>owns</i> any other auto-motive conveyance but the actual		

<i>Sl. No.</i>	<i>Circumstances</i>	<i>Where cubic capacity of engine does not exceed 1.6 litres</i>	<i>Where cubic capacity of engine exceeds 1.6 litres</i>
	running and maintenance charges are met or reimbursed to him by the employer and,—		
	(i) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes, (ii) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee.	No value provided that the documents specified below this table are maintained by the employer. The actual amount of expenditure incurred by the employer as reduced by an amount of Rs. 600. However, in this case, if actual expenses on running and maintenance for official purpose is more than Rs. 600, he can claim such actual amount of expenditure as deduction by maintaining the documents specified below the table.	Not applicable

Where more than one motor car is provided

Where one or more motor cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor car or all or any of such motor cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car in accordance with item (1)(c)(i) of the above table as if the employee had been provided one motor car for use partly in the performance of his duties and partly for his private or personal purposes and the amount calculated in respect of the other car or cars in accordance with item (1)(b) of the above table as if he had been provided with such car or cars exclusively for his private or personal purposes.

Specific documents to be maintained for S. No. (1)(a) or S. No. (2) and (3) of the above table

- (i) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon;
- (ii) the employer gives a certificate that the expenditure was incurred wholly and exclusively for the performance of his official duty.

Vehicle provided by the employer for commuting from residence to office and back [Explanation to section 17(2)(iii)]: The use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate.

Conveyance facility provided to the High Court Judges and Supreme Court Judges is not taxable.

6d Provision of personal or private journey by an undertaking engaged in the business of carrying of passengers or goods

- (1) **Where the employer is liable to pay FBT under Chapter XII-H:** Any free or concessional ticket

provided by the employer for private journeys of his employees or their family members shall be liable to FBT in the hands of the employer.

(2) Where the employer is not liable to FBT under Chapter XII-H

In case such undertaking provides personal or private journey to any employee or to any member of household free of cost or at concessional fare in any conveyance owned, leased or made available by any other arrangement by the undertaking for the purpose of transport of passengers or goods, the value of such benefit shall be taken to be the value at which such benefit or amenity is offered by such undertaking to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit or amenity.

Railway and Airline employees: Privilege passes and privilege ticket granted to employees of Railway and Airlines are still not taxable in the hands of the employees.

6e The value of any other benefit or amenity, etc. provided the employer is not liable to pay FBT [Rule 3(7)(ix)]

The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arms' length transaction as reduced by the employees' contribution, if any:

However, the expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer shall be a tax free perquisite.

Rule 3(7)(ix) has been inserted to provide for valuation of any other benefit or amenity, etc. in residual cases *relating to any employer*.

7. Fringe benefits directly identifiable with employees and its valuation [Section 115WB(1)(b) & (c) and section 115WC]

<i>Nature of expenditure</i>	<i>Value of fringe benefit</i>	<i>Effective rate of fringe benefit tax [surcharge as applicable and education cess @ 2% shall be levied separately]</i>
(1) Any free or concessional ticket provided by the employer for private journeys of the employees and their family members.	Cost at which this benefit is provided by the employer to the public as reduced by the amount, if any, paid or recovered from the employee or employees. However, if this expense is included in the fringe benefits mentioned in table above, the total expenses to be included in the above table shall be reduced by the amount of such expenditure for computing the value of fringe benefit. Note: Also refer to para 6d above.	30%
(2) Any contribution by the employer to an approved superannuation fund for employees exceeding Rs. 1,00,000 per employee.	Actual amount of contribution	30%

<i>Nature of expenditure</i>	<i>Value of fringe benefit</i>	<i>Effective rate of fringe benefit tax [surcharge as applicable and education cess @ 2% shall be levied separately]</i>
(3) Any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employee or employees)	100% of its fair market value determined in accordance with the method as may be prescribed by the Board on the date on which the option vests with the employee as reduced by the amount actually paid by, or recovered from the employee in respect of such security or shares.	30%

Fair market value (Notification No. SO 1805(E), dated 23-10-2007) — (1) In a case where, on the date of the vesting of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange.

Provided that where, on the date of vesting of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognized stock exchange which records the highest volume of trading in the share.

Provided further that where, on the date of vesting of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be—

- (a) the closing price of the share on any recognised stock exchange on a date closest to the date of vesting of the option and immediately preceding such date; or
- (b) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of vesting of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

(2) In a case where, on the date of vesting of the option, the share in the company is not listed on a recognized stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

<p>1. "Closing price" of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange.</p> <p>Provided that where the stock exchange quotes both "buy" and "sell" prices, the closing price shall be the "sell" price of the last settlement.</p> <p>2. "Opening price" of a share on a recognized stock exchange on a date shall be the price of the first settlement on such date on such stock exchange:</p> <p>Provided that where the stock exchange quotes both "buy" and "sell" prices, the opening price shall be the "sell" price of the first settlement.</p>

8. Deemed fringe benefits and its valuation [Section 115WB(2) & Section 115WC]

Item of expenditure of deemed fringe benefits as per section 115WB(2)	% of expenditure to be treated as value of fringe benefit	Effective rate of fringe benefit tax [surcharge as applicable and education cess @ 2% shall be levied separately]	Remarks
(A) Entertainment	20%	6%	
(B) Provision of hospitality of every kind by the employer to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include —	20%	6%	
<p>(i) any expenditure on or payment for, food or beverages provided by the employer to his employees in office or factory</p> <p>(ii) any expenditure on or payment through paid vouchers which are not transferable and usable only at eating joints or outlets</p> <p>(iii) any expenditure on or payment through non-transferable pre-paid electronic meal card usable only at eating joints or outlets and which fulfils such other conditions as may be prescribed (inserted by the Finance Act, 2008, w.e.f. A.Y. 2009-10)</p> <p>However,</p> <p>— in the case of an employer engaged in the business of hotel.</p> <p>— In the case of an employer engaged in the business of carriage of passengers or goods by aircraft/ship</p>	5%	1.5%	<p>The assessee should, therefore, debit the expenses incurred on food and beverages provided to the employees' to a separate account for example 'employees fooding & beverages account'. Such amount should not be debited to employee's welfare or staff welfare account. Further 'paid vouchers' can be given to any person and not necessarily the employees</p>
<p>(C) Conference (other than fee for participation by the employees in any conference)</p> <p><i>Explanation.</i>—For the purposes of this clause, any expenditure on conveyance, tour and travel (including foreign travel), on hotel, or boarding and lodging in connection with any conference shall be deemed to be expenditure incurred for the purposes of conference.</p>	20%	6%	<p>Fee for participation by the employee in any conference should be separately debited to avoid fringe benefit tax. Further, such fee should not include expenses of travel, conveyance, boarding & lodging, etc.</p>
<p>(D) Sales promotion including publicity.</p> <p>Provided that any expenditure on advertisement,—</p> <p>(i) being the expenditure (including rental) on advertisement of any form in any print (including journals, catalogues or price lists) or electronic media or transport system;</p>	20%	6%	<p>The expenses on advertisement of the nature given in items</p>

Item of expenditure of deemed fringe benefits as per section 115WB(2)	% of expenditure to be treated as value of fringe benefit	Effective rate of fringe benefit tax [surcharge as applicable and education cess @ 2% shall be levied separately]	Remarks
<p>(ii) being the expenditure on the holding of, or the participation in, any press conference or business convention, fair or exhibition;</p> <p>(iii) being the expenditure on sponsorship of any sports event or any other event organised by any Government agency or trade association or body;</p> <p>(iv) being the expenditure on the publication in any print or electronic media of any notice required to be published by or under any law or by an order of a court or tribunal;</p> <p>(v) being the expenditure on advertisement by way of signs, art work, painting, banners, awnings, direct mail, electric spectaculars, kiosks, hoardings, bill boards or by way of such other medium of advertisement;</p> <p>(vi) being the expenditure by way of payment to any advertising agency for the purposes of clauses (i) to (v) above,</p> <p>(vii) expenditure on distribution of samples either free of cost or at concessional rate; and</p> <p>(viii) payments to any person of repute for promoting the business of the employer.</p> <p>shall not be considered as expenditure on sales promotion including publicity.</p>			<p>No. (i) to (vi) should be debited to advertisement account and not to the sales promotion or publicity account.</p> <p>The assessee should not give any free offers (with products). Such free offers may be charged at a nominal rate</p>
<p>(E) Employee welfare</p> <p><i>Explanation.</i>—For the purposes of this clause, any expenditure incurred or payment made to fulfill any statutory obligation or mitigate occupational hazards or provide first aid facilities in the hospital or dispensary run by the employer shall not be considered as expenditure for employees' welfare.</p> <p>Explanation inserted by the Finance Act, 2008, w.e.f. A.Y. 2009-10</p> <p>For the purposes of this clause, any expenditure incurred or payment made to—</p> <p>(i) fulfil any statutory obligation; or</p> <p>(ii) mitigate occupational hazards; or</p> <p>(iii) provide first aid facilities in the hospital or dispensary run by the employer; or</p> <p>(iv) provide crèche facility for the children of the employee; or</p>	20%	6%	<p>Contribution to recognised provident fund or employees state insurance fund or for any other statutory obligation shall not be liable for any fringe benefit tax. Expenditure incurred for providing and maintaining uniform shall be exempt from FBT if it is an obligation under the Employment Standing Orders Act, 1948.</p>

<i>Item of expenditure of deemed fringe benefits as per section 115WB(2)</i>	<i>% of expenditure to be treated as value of fringe benefit</i>	<i>Effective rate of fringe benefit tax [surcharge as applicable and education cess @ 2% shall be levied separately]</i>	<i>Remarks</i>
(v) sponsor a sportsman, being an employee; or (vi) organise sports events for employees, shall not be considered as expenditure for employees' welfare.			
(F) Conveyance However, — in the case of an employer engaged in the business of construction — in the case of an employer engaged in the business of manufacture or production of pharmaceuticals — in the case of an employer engaged in the business of manufacture or production of computer software	20% 5% 5% 5%	6% 1.5% 1.5% 1.5%	
(G) Use of hotel, boarding and lodging facilities However, — in the case of an employer engaged in the business of manufacture or production of pharmaceuticals — in the case of an employer engaged in the business of manufacture or production of computer software — in the case of an employer engaged in the business of carriage of passengers or goods by aircraft/ship	20% 5% 5% 5%	6% 1.5% 1.5% 1.5%	
(H) Repair, running (including fuel), maintenance of motorcars and the amount of depreciation thereon However, — in case of an employer engaged in carriage of passengers or goods by motor car	20% 5%	6% 1.5%	Driver salary and interest on money borrowed for purchase of car shall also be covered under this clause. Depreciation on car shall be taken as per income-tax provisions.
(I) Repair, running (including fuel) maintenance of aircrafts and the amount of depreciation thereon However, — in case of an employer engaged in carriage of passengers or goods by aircraft	20% Nil	6% Nil	
(J) Use of telephone (including mobile phone) other than expenditure on leased telephone lines	20%	6%	
(K) Maintenance of any accommodation in the nature of guest house other than accommodation used for training	20%	6%	Omitted by the Finance Act, 2008. Hence, such expenses shall not be liable

<i>Item of expenditure of deemed fringe benefits as per section 115WB(2)</i>	<i>% of expenditure to be treated as value of fringe benefit</i>	<i>Effective rate of fringe benefit tax [surcharge as applicable and education cess @ 2% shall be levied separately]</i>	<i>Remarks</i>
purposes			to FBT w.e.f. A.Y. 2009-10
(L) Festival celebrations	50% 20% w.e.f. A.Y. 2009-10	15% 6% w.e.f. A.Y. 2009-10	
(M) Use of health club and similar facilities	50%	15%	
(N) Use of any other club facilities	50%	15%	
(O) Gifts	50%	15%	If gifts are given with logo of the employer, it will come under sale promotion and publicity
(P) Scholarship	50%	15%	
(Q) Tour and travel (including foreign travel) [W.e.f. assessment year 2007-08]	5%	1.5%	

W.e.f. assessment year 2007-08, tour expenses shall have to divided into the following four parts:

1. Travelling expenses (its value shall be taken at 5%);
2. Daily allowance which will fall under boarding and lodging (its value shall be taken at 20%);
3. Conveyance expenses incurred within the city where the person is posted (its value shall be taken at 20%);
4. Telephone expenses if reimbursed (its value shall be taken at 20%).