Memorandum explaining the provisions in the Finance Bill, 1972

(Clauses referred to are clauses in the Bill)

PROVISIONS RELATING TO DIRECT TAXES

The provisions in the Finance Bill, 1972, in the sphere of direct taxes relate to the following matters :—

(i) Prescribing the rates of income-tax (including surcharges) on incomes liable to tax for the assessment year 1972-73 ; the rates at which tax will be deductible at source during 1972-73 from interest (including interest on securities), dividends, salaries, winnings from lotteries and crossword puzzles, payments made by certain categories of persons to contractors and by contractors to sub-contractors, and other categories of income liable to such deduction under the Income-tax Act; and the rates for computation of advance tax and charging of income-tax on current incomes in certain cases for the financial year 1972-73.

(ii) Amendment of the Income-tax Act, 1961, with a view to raising additional revenue ; widening the area of tax incentives for savings; plugging loopholes in the law leading to tax avoidance; enabling the Central Government to enter into treaties with foreign countries for exchange of information for preventing evasion or avoidance of taxes or recovery thereof and giving effect to such provisions by the issue of a notification ; and a few other matters.

(iii) Amendment of the Wealth-tax Act, 1957, with a view to widening the area of incentives for investment; preventing misuse of funds of charitable or religious trusts for giving benefits to their authors, relatives etc. ; providing relief in respect of recognised or approved funds set up exclusively for the benefit of employees; providing tax relief to co-perative societies ; and a few other matters.

(iv) Amendment of the Gift-tax Act, 1958, and the Companies (Profits) Surtax Act, 1964, so as to bring the provisions of these enactments in line with the changes proposed in the Income-tax Act.

2. The Bill broadly follows the principle (adopted since 1967) that changes in the rates of tax as also in other provisions of the tax laws should ordinarily be made operative prospectively in relation to current incomes and not in relation to incomes of the past year. The substance of the main provisions in the Bill relating to direct taxes is explained in the following paragraphs.

INCOME-TAX

I. *Rates of income-tax in respect of incomes liable to tax for the assessment year 1972-73*

3. In respect of the incomes of all categories of assessees (other than companies) liable to tax for the assessment year 1972-73, the rates of income-tax under the Bill are the same as laid down in Part III of the First Schedule to the Finance (No. 2) Act, 1971, for purposes of computation of advance tax, deduction of tax at source from " Salaries " and retirement

annuities payable to partners of registered firms engaged in specified professions and computation of the tax payable in certain special cases, during the financial year 1971-72. The rates of income-tax (including surcharges on income-tax) for the assessment year 1972-73 in the case of individuals, Hindu undivided families, firms and other categories of non-corporate taxpayers have been specified in Paragraphs A to D of Part I of the First Schedule to the Bill.

4. In the case of the Life Insurance Corporation of India and other companies, the basic rates of income-tax on incomes assessable for the assessment year 1972-73 are the same as those laid down in Part III of the First Schedule to the Finance (No. 2) Act, 1971, for the purpose of computation of advance tax during the financial year 1971-72. The income-tax payable by these entities will, however, be increased by a surcharge on income-tax calculated at the rate of 2·5% of such income-tax. The provision for the levy of surcharge on income-tax has been made in the context of the levy of surcharge at the rate of 2·5% of income-tax payable in advance by all companies during the financial year 1971-72 under the Companies (Surcharge on Income-tax) Act, 1971, enacted in December, 1971. These rates have been laid down in Paragraphs E and F of Part I of the First Schedule to the Bill.

II. *Rates for deduction of tax at source during the financial year 1972-73 from incomes other than "Salaries" and retirement annuities.*

5. The rates for deduction of tax at source during the financial year 1972-73 from income other than "Salaries" and retirement annuities payable to partners of registered firms engaged in specified professions are set forth in Part II of the First Schedule to the Bill. In the context of the provision being made in the Income-tax Act for deduction of income-tax at source from income by way of winnings from lotteries and crossword puzzles, the Bill lays down the rates for deduction of income-tax not only from interest on securities, other categories of interest, dividends and other categories of non-salary income of non-residents, but also for deduction of tax from income by way of winnings from lotteries and cross-word puzzles. Under another amendment sought to be made in the Income-tax Act, income-tax will be deductible at source from payments made to contractors and sub-contractors in certain cases. The rates for deduction of tax at source prescribed in the Bill in respect of categories of income which are already liable to such deduction differ from the rates specified in Part II of the First Schedule to the Finance (No. 2) Act, 1971, for purposes of deduction of tax at source from such incomes during the financial year 1971-72 in certain respects. The changes in the rates are explained in the following paragraphs.

6. *Payment in respect of lottery and cross-word puzzle prizes to residents other than companies.*—In the case of income by way of winnings from lotteries and crossword puzzles payable to resident recipients other than companies during the financial year 1972-73, tax will be deductible at the rate of 34·5%, made up of basic income-tax of 30% and surcharge of 4·5% (being 15% of the income-tax). In view of a specific provision being made in the new section 194B of the Income-tax Act proposed to be inserted in that

Act under clause 28 of the Bill, income-tax will be deductible only where the payment exceeds Rs. 1,000. It is also being provided in that section that no deduction will be made from winnings from lotteries and crossword puzzles where the payment is made before 1st June, 1972.

7. *Payments to contractors and sub-contractors resident in India.*—Under the new section 194C proposed to be inserted in the Income-tax Act under clause 28 of the Bill, income-tax will be deductible at source from income comprised in payments made by the Central Government or any State Government, local authorities, statutory corporations and companies to contractors engaged for carrying out any work or for supplying labour for carrying out such work. Income-tax will be deductible at 2% of such payments. Similarly, deduction will be made from payments made by contractors, other than individuals or Hindu undivided families, to sub-contractors at the rate of 1% of the payment. No deduction would, however, be required to be made if the consideration for the contract or the sub-contract does not exceed Rs. 5,000 or where the payment is made before 1st June, 1972. In view of the position that the rates for deduction of tax at source in respect of payments to contractors and sub-contractors have been laid down in the Income-tax Act, no specific provision in this regard has been made in Part II of the First Schedule.

8. *Payments of income to domestic companies.*—In respect of interest other than "Interest on securities" payable to a domestic company, the rate for deduction will be 21 per cent., made up of income-tax at 20 per cent. and surcharge at 1 per cent. (5 per cent. of income-tax as against 20 per cent. formerly). In respect of any other income (excluding interest payable on a tax-free security), tax will be deducted at the rate of 23 per cent. (made up of income-tax at 22 per cent. and surcharge at 1 per cent.) as against 22 per cent. hitherto. The increase in these rates is being made in the context of the levy of surcharge on income-tax in the case of companies as explained in paragraph 12 of the Memorandum.

9. *Payments of income to foreign companies.*—In the case of income payable to a foreign company, income-tax deductible at source as hitherto will be increased by a surcharge on income-tax of 5 per cent. The rates for deduction of income-tax and surcharge in the case of foreign companies will, therefore, stand as under :—

	Income-tax %	*Surcharge* %
(*a*) On income by way of dividends payable by any domestic company	24·5	1·225
(*b*) On income by way of royalties payable by an Indian concern in pursuance of approved agreements	50	2·5
(*c*) On income by way of fees payable by Indian concerns for rendering technical services under approved agreements	50	2·5
(*d*) On income by way of interest payable on tax-free securities	44	2·2
(*e*) On any other income	70	3·5

It will be seen that the rates for deduction of basic income-tax in the case of foreign companies are the same as laid down in Part II of the First Schedule to the Finance (No. 2) Act, 1971.

III. *Rates for deduction of tax at source from "Salaries", computation of advance tax and charging of income-tax in special cases during the financial year 1972-73.*

10. *Individuals, Hindu undivided families and all other non-corporate taxpayers.*—The rates for deduction of tax at source from "Salaries" in the case of individuals during the financial year 1972-73 and also for computation of advance tax payable during that year in the case of all categories of taxpayers have been specified in Part III of the First Schedule to the Bill. These rates are also applicable for deduction of tax at source during 1972-73 from retirement annuities payable to partners of registered firms engaged in certain professions (chartered accountants, solicitors, lawyers, etc.) and for charging income-tax during 1972-73 on current incomes in special cases, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good, during the assessment year 1972-73, etc.

These rates are the same as those specified in Part I of the First Schedule for the assessment of incomes liable to tax for the assessment year 1972-73.

11. The Table below shows, at selected levels of income of an individual the incidence of tax (including surcharge) at the rates proposed in the Bill for computation of advance tax and deduction of tax at source from "Salaries" during the financial year 1972-73. As explained in the preceding paragraph, the tax chargeable in the case of an individual for the assessment year 1972-73 will also be the same.

INCIDENCE OF TAX AT SELECTED LEVELS OF INCOME IN THE CASE OF INDIVIDUALS

Income	Tax (including surcharge) at the rates in the Bill for computation of advance tax and deduction of tax at source from "Salaries" during 1972-73
Rs.	Rs.
5,000	Nil.
6,000	110
7,500	275
10,000	550
12,500	1,018
15,000	1,485
20,000	2,875
25,000	4,600
40,000	12,650
50,000	19,550
60,000	26,450
70,000	34,500
80,000	42,550
90,000	51,175
1,00,000	59,800
1,50,000	1,05,800
2,00,000	1,51,800
2,50,000	2,00,675
3,00,000	2,49,550
5,00,000	4,45,050
10,00,000	9,33,800

12. *Life Insurance Corporation of India and other companies.*—The basic rates of income-tax in these cases specified, respectively, in Paragraphs E and F of Part III of the First Schedule to the Bill for purposes of computation of advance tax payable by them during the financial year 1972-73 are the same as the rates of income-tax specified, respectively, in Paragraphs E and F of Part I of the First Schedule for incomes assessable for the assessment year 1972-73. The income-tax calculated at these rates will, however, be increased by a surcharge on income-tax of 5 per cent. as against 2·5 per cent. applicable in respect of incomes assessable for the assessment year 1972-73. [Clauses 2 and 28 and the First Schedule]

IV. *Proposed amendments to the Income-tax Act*

MEASURES FOR RAISING ADDITIONAL REVENUE

13. *Taxation of casual and non-recurring incomes.*—Under the existing provisions of the Income-tax Act, receipts which are of a casual and non-recurring nature are exempt from tax except where the receipts constitute capital gains or arise from a business or the exercise of profession, vocation or occupation or are by way of additions to the remuneration of an employee. In view of this exemption, no tax is currently chargeable in respect of winnings from lotteries, crossword puzzles, races, card games or from gambling or betting. The exemption from tax of such receipts is not in keeping with the principle of taxing equally persons with equal capacity to pay. The exemption also provides scope for tax evasion and conversion of 'black' money into 'white' by ascribing income which would normally be taxable to winnings from lotteries, races, card games, etc. The Bill seeks to make the following amendmends to the Income-tax Act with a view to withdrawing the exemption currently available in respect of casual and non-recurring receipts:

(i) The definition of "income" is being extended to specifically provide that winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever will be regarded as income for purposes of the Income-tax Act.

(ii) Winnings from State or other lotteries in the case of non-corporate taxpayers will be taxed on a concessional basis in the same manner as long-term capital gains relating to assets other than lands and buildings. In other words, the whole of the income by way of lottery winnings will be allowed as deduction in computing the taxable income where the gross total income of the assessee does not exceed Rs. 10,000 or where winnings do not exceed Rs. 5,000. In other cases, a deduction equal to Rs. 5,000 *plus* 50 per cent. of the balance will be allowed in computing the taxable income.

(iii) Other casual and non-recurring receipts which are in excess of Rs. 1,000 in a year will be included in the total income in the case of all categories of assessees and charged to tax at normal rates. The exemption of the first Rs. 1,000 of income will, however, not be available in respect of capital gains, receipts arising from business or exercise of profession, vocation or occupation or receipts by way of addition to remuneration

of an employee and such incomes will continue to be chargeable to tax on the existing basis.

(iv) Winnings from lotteries, crossword puzzles, races, card games, other games or from gambling or betting will be chargeable to tax under the head "Income from other sources". Accordingly, expenditure, not being in the nature of capital expenditure incurred wholly and exclusively for the purpose of making or earning such income will be allowed as deduction in computing the taxable income.

(v) Losses from lotteries, crossword puzzles, races, card games, etc., will be allowed to be set off only against income from the same source. Losses relating to these sources incurred in one year will also not be allowed to be carried forward to be set off against income of a subsequent year. For this purpose, each of the following sources will be regarded as a separate and distinct source :

(a) lotteries;
(b) crossword puzzles;
(c) races, including horse races;
(d) card games;
(e) other games of any sort;
(f) betting or gambling of any form or nature not falling under any of the foregoing items.

Thus, while losses from bridge may be set off against winnings from any other card game, these will not be set off against income from any other source.

(vi) Income-tax will be deductible at source from winnings from lotteries and crossword puzzles at such rates as may be prescribed in the annual Finance Act if the payment in respect thereof exceeds Rs. 1,000. The present Bill seeks to provide for the deduction of tax at source from such winnings at 34·5 per cent. (income-tax 30 per cent. *plus* surcharge 4·5 per cent.) in the case of resident non-corporate taxpayers. In the case of non-resident non-corporate taxpayers, tax will be deductible on the same basis as is currently applicable to income other than interest payable on a tax-free security, i.e., at the rate of 34·5 per cent. or the higher appropriate rate applicable to lottery winnings, etc., if such winnings were the total income.

(vii) Income by way of winnings from lotteries, crossword puzzles, races including horse races, card games, other games or from gambling or betting will not be included in the taxable income for purposes of payment of advance tax.

14. The above provisions will take effect from 1st April, 1972. It is, however, being specifically provided that income by way of casual and non-recurring receipts will continue to be exempt from income-tax for the assessment year 1972-73 to the same extent as hitherto. The new provision for deduction of tax at source from winnings from lotteries and crossword puzzles will come into force with effect from 1st June, 1972.

[Clauses 3(b)(ii), 4(a), 10 to 14, 28 to 38 and 59.]

15. *Income from specified priority industries.*—Under the existing law, income derived by certain domestic companies from specified priority industries is charged to tax on a concessional basis. The priority industries specified in this behalf comprise—

(a) the business of generation or distribution of electricity or any other form of power;

(b) the business of construction, manufacture or production of any one or more of the articles or things specified in the list in the Sixth Schedule to the Income-tax Act; and

(c) the business of any hotel, where such business is carried on by an Indian company and the hotel is, for the time being, approved in this behalf by the Central Government.

The concessional taxation of profits from these industries is brought about by allowing a deduction of an amount equal to 5 per cent. of such profits in computing the taxable income of the domestic company. The Bill seeks to discontinue this special deduction allowable in computing profits of domestic companies from priority industries.

16. The withdrawal of the concession in respect of priority industries will take effect from 1-4-1973 and, accordingly, the deduction will not be available for the assessment year 1973-74 in relation to current incomes of the financial year 1972-73 or any other accounting year corresponding to it. [Clauses 15, 18, 19 & 43]

17. *Deduction in respect of dividends from co-operative societies.*—Under the existing provisions of the Income-tax Act, dividends received by an assessee from a co-operative society are completely exempt from income-tax without any ceiling limit. This exemption facilitates tax avoidance by persons who would otherwise earn taxable income by arranging to carry on their activities through the medium of one or more co-operative societies. It is proposed to withdraw the special concession in respect of dividends from co-operative societies. Such dividends will, however, be included in the categories of financial assets income wherefrom qualifies for deduction up to Rs. 3,000 in the aggregate in the hands of an individual or a Hindu undivided family.

18. The changes set forth in the preceding paragraph will take effect from 1st April, 1973, and will, accordingly, apply to the assessment year 1973-74, i.e., in relation to current incomes of the financial year 1972-73 or any other accounting year corresponding to it. [Clauses 20 and 21]

Incentives for savings

19. *Deduction in respect of long-term savings in specified media.*—Under the existing provisions of the Income-tax Act, tax relief is allowed in respect of long-term savings effected by certain categories of taxpayers out of their income. In the case of an individual, long-term savings through life insurance or deferred annuity policies on the life of the individual, his spouse or child, certain provident funds and superannuation funds and 10-year and 15-year Cumulative Time Deposit Accounts qualify

for tax relief. In the case of Hindu undivided families, long-term savings effected through insurance policies on the life of any member of the family qualify for tax relief. In the case of an assessee being an association of persons or body of individuals consisting only of husband and wife governed by the system of community of property in force in the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu, long-term savings through policies of insurance or for deferred annuities on the life of any member of such association or body or on the life of any child of either member as also through the Public Provident Fund and 10-year and 15-year Cumulative Time Deposit Accounts qualify for tax relief. The tax relief, in all cases, is allowed by deducting 100 per cent. of the first Rs. 1,000 plus 50 per cent. of the next Rs. 4,000 plus 40 per cent. of the balance of qualifying savings in computing the taxable income of the assessee.

20. With a view to widening the area of tax incentives for savings, it is being provided that contributions made by an individual out of his income chargeable to tax for participation in the Unit-linked Insurance Plan of the Unit Trust of India will qualify for the special deduction currently available in respect of life insurance premia, contributions to recognised provident funds, etc. The deduction will be available only in relation to the contributions made by the assessee himself as a member of the Plan and not by his spouse or children. This is because under the scheme of the Plan, minors are not allowed to participate in the Plan, and a woman would be eligible for participation only if she has a regular income of her own.

The deduction will also be available in respect of contributions made by any one member of an association of persons or body of individuals consisting only of husband and wife governed by the system of community of property in force in the Union territories of Dadra and Nagar Haveli and Goa, Daman and Diu.

21. In order to prevent misuse of the concession, it is being provided that where a member participating in the Unit-linked Insurance Plan withdraws from the Plan before paying contributions for a period of five years, no deduction will be allowed in respect of the contributions made in the year of withdrawal. Further, an amount equal to the aggregate of the deductions allowed in respect of contributions to the Plan in the past years will be included in his total income of the previous year in which he withdraws from the Plan. For this purpose, the deduction allowed in respect of contributions made in any previous year will be the difference between the amount by which the total deduction actually allowed in that year exceeds the deduction which would have been allowed if no such contributions had been made in that year. In other words, the contributions will be related to the top slab of the qualifying amount of savings in the relevant year.

22. The tax concession in relation to contributions to the Unit-linked Insurance Plan will become effective from 1st April, 1973, and will, accordingly, apply in relation to the assessment year 1973-74 and subsequent years. [Clause 16]

Measures for plugging loopholes in the law leading to tax advance

23. *Changes in the provisions relating to exemption from tax of the income of charitable and religious trusts.*—The Finance Act, 1970, made certain important changes in the scheme of taxation of the income of charitable or religious trusts and institutions with effect from 1st April, 1971. Under the provisions of the Income-tax Act, as amended by the Finance Act, 1970, income from property held under trust *wholly* for charitable or religious purposes is exempt from income-tax to the extent such income is applied to the purposes of the trust in India in the same year or within a period of 3 months immediately following. A similar exemption is available also in cases where property is held under trust *in part* only for charitable or religious purposes, provided that the trust was created before 1-4-1962. In both these types of trusts, any income which is not so applied is allowed to be accumulated or set apart for future application to charitable or religious purposes without attracting tax liability, if the trust complies with certain procedural requirements laid down in this behalf. These requirements are that (a) the trust or institution should give notice to the Income-tax Officer specifying the purpose for which the income is to be accumulated and the period for which the accumulation is proposed to be made, and (b) the income so accumulated should be invested in Government or other approved securities or deposited in the Post Office savings Bank, scheduled banks, co-operative banks or approved financial corporations. The maximum period of such accumulation is 10 years and if the accumulated income is not applied to the purposes for which it was accumulated within one year of the expiry of the 10-year period, the exemption is lost and tax is chargeable on the accumulated income.

The exemption from tax is also forfeited, in the case of a trust or institution created or established after 31-3-1962, if under the terms of the trust or the rules governing the institution, any part of the trust income enures for the direct or indirect benefit of *specified persons*, such as, the founder of the trust, substantial contributor to the trust or any relative of such founder or contributor. In the case of a trust or institution, whenever created or established, the exemption is forfeited also if its income or property is used or applied during the relevant year for the direct or indirect benefit of such persons. An exception is, however, made in the case of trusts or institutions created or established before 1-4-1962, if the use of the income or property for the benefit of the specified persons is in compliance with any mandatory provision in the terms of the trust or the rules governing the institution. Under specific provisions made in the Act, the trust income or property is regarded as having been used or applied for the benefit of such persons if the trust or institution engages in any of the following transactions :—

(a) lending of the income or property of the trust or institution to any one of the specified persons without either adequate security or adequate interest or both ;

(b) making available land, building or other property of the trust or institution, for the use of any of the specified persons without charging adequate rent or other compensation ;

(c) payment of excessive remuneration to any of the specified persons for services rendered by him to the trust or institution;

(d) making the services of the trust or institution available to any of the specified persons without adequate remuneration or other compensation;

(e) purchase of shares, securities or other properties for the trust or institution from any of the specified persons for more than adequate consideration;

(f) sale of shares, securities or other property of the trust or institution to any of the specified persons for less than adequate consideration;

(g) diversion of a *substantial portion* of the income or property of the trust or institution in favour of any of the specified persons;

(h) investment of the trust funds in any concern in which any of the specified persons has a *substantial interest.*

If the quantum of investment referred to in (h) above does not exceed 5 per cent. of the capital of the concern, the trust or institution forfeits exemption from tax *only* in respect of the income arising from such investment.

24. Voluntary contributions received by charitable or religious trusts and institutions and applicable solely to religious or charitable purposes are also exempt from tax. Various conditions laid down in section 11, such as, application of income to charitable or religious purposes within the specified period, accumulation of the unspent income in the specified manner, and the provisions relating to the forfeiture of tax exemption in certain circumstances, mentioned above, however, do not apply to income by way of voluntary contribution except where such contributions are received from a charitable or religious trust or institution which itself claims exemption from tax.

25. In order to ensure that the tax exempt funds of charitable and religious trusts or institutions are applied to the purposes of such trusts and institutions and are not diverted for the benefit of the author of the trust, founder of the institution, persons who have made substantial contributions or who manage the affairs of the trust or institution, the Bill seeks to make the following amendments in the scheme of tax exemption of such trusts and institutions:—

(i) The definition of "income" is being extended to specifically provide that voluntary contributions received by a charitable or religious trust or institution, regardless of whether such trust or institution has been created or established wholly or partly for charitable or religious purposes, will be regarded as income for purposes of the Income-tax Act. Contributions received with a specific direction that they will form part of the corpus of the trust or institution will, however, not be treated as income. For this purpose, the term "trust" will include any other legal obligation.

(ii) Where such voluntary contributions are received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes, these contributions will, for purposes

of sections 11 and 13, be regarded as income derived from property held under trust wholly for charitable or religious purposes.

The effect of the modifications at (i) and (ii) above would be as follows:

(a) Income by way of voluntary contributions received by private religious trusts will no longer be exempt from income-tax.

(b) Income by way of voluntary contributions received by a trust for charitable purposes or a charitable institution created or established after 31-3-1962 (i.e., after the commencement of the Income-tax Act, 1961) will not qualify for exemption from tax if the trust or institution is created or established for the benefit of any particular religious community or caste.

(c) Income by way of voluntary contributions received by a trust created partly for charitable or religious purposes or by an institution established partly for such purposes will no longer be exempt from income-tax.

(d) Where the voluntary contributions are received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes, such contributions will qualify for exemption from income-tax only if the conditions specified in section 11 regarding application of income or accumulation thereof are satisfied and no part of the income enures and no part of the income or property of the trust or institution is applied for the benefit of persons specified in section 13(3) of the Income-tax Act, i.e., author of the trust, founder of the institution, a person who has made substantial contribution to the trust or institution, the relatives of such author, founder, person, etc. In other words, income by way of voluntary contributions will ordinarily qualify for exemption from income-tax only to the extent it is applied to the purposes of the trust during the relevant account year or within three months next following. Such charitable or religious trusts will, however, be able to accumulate income from voluntary contributions for future application to charitable or religious purposes for a maximum period up to ten years, without forfeiting exemption from tax, if they comply with certain procedural requirements laid down in section 11 in this behalf. These requirements are that (1) the trust or institution should give notice to the Income-tax Officer, specifying the purpose for which the income is to be accumulated and the period for which the accumulation is proposed to be made, and (2) the income so accumulated should be invested in Government or other approved securities or deposited in post office savings bank, scheduled banks, co-operative banks or approved financial institutions.

(iii) The list of persons referred to in sub-section (3) of section 13 of the Income-tax Act is being enlarged by including therein trustees of trusts, managers of institutions, their relatives and concerns in which such trustees, managers and relatives have a substantial interest. The effect of this amendment will be that where any income of the trust or institution created or established after 31-3-1962 (i.e., after the coming into force of the Income-tax Act, 1961) enures for the benefit of trustees, managers, etc., the trust or institution will forfeit exemption from tax. Likewise, where any income or property of the trust or institution is used or applied during the

relevant account year for the direct or indirect benefit of trustees, managers, etc., exemption from income-tax will be forfeited irrespective of whether the trust or institution was created or established before or after the commencement of the Income-tax Act.

(iv) The scope of the expression "relative" for purposes of section 13 is also being enlarged so as to include relatives through marriage. "Relative" will now mean (1) spouse of the individual, (2) brother or sister of the individual, (3) brother or sister of the spouse of the individual, (4) any lineal ascendant or descendant of the individual, (5) any lineal ascendant or descendant of the spouse of the individual, (6) spouse of a person referred to in (2), (3), (4) and (5) above and (7) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

The effect of this provision will be that relatives through marriage of the author, founder, substantial contributor, trustee or manager will be included in the list of persons specified in section 13(3) of the Income-tax Act.

(v) Under an existing provision, a charitable or religious trust or institution forfeits exemption from tax if a "substantial portion" of the income or property of the trust or institution is diverted during the relevant account year in favour of any person referred to in section 13(3). This provision is being modified to provide that exemption from income-tax under this provision will be lost if the aggregate of the income or property diverted in favour of any such person, during the relevant account year, exceeds Rs. 1,000.

(vi) Exemption from income-tax in respect of income derived from property held under trust or by way of voluntary contributions by charitable or religious trusts or institutions will be available only if the following conditions are fulfilled:

(1) The person in receipt of the income makes an application for registration of the trust or the institution to the Commissioner of Income-tax before the 1st July, 1973, or before the expiry of a period of one year from the date of creation of the trust or establishment of the institution, whichever is later. (The Commissioner of Income-tax is, however, being empowered to admit, in his discretion, belated applications for registration in deserving cases).

(2) Where the total income of the trust or institution (without giving effect to the provisions of sections 11 and 12) exceeds Rs. 25,000 in any previous year, the accounts of the trust or institution for that year have been audited by a chartered accountant or any other accountant entitled to be appointed as an auditor of companies.

(vii) It is being specifically provided that in determining whether any part of the income or property of the trust or institution has been used for the benefit of any specified person during any period before 1-7-1972, the amendments now proposed to be made in section 13 will be ignored.

26. Under an existing provision in the Income-tax Act, every person in receipt of income derived from property held under trust or other legal

obligation wholly for charitable or religious purposes, or in part only for such purposes, is required to furnish voluntarily the return of income if the total income in respect of which he is assessable as a representative assessee, without giving effect to the provisions of section 11 relating to application of income, exceeds the maximum amount not liable to income-tax. This provision is being amended so as to provide that the return of income will have to be filed even in cases where the income *including voluntary contributions received by the trust or institution* exceeds such limit.

27. The modifications set forth in the preceding two paragraphs will take effect from 1st April, 1973, and will accordingly apply in relation to the assessment year 1973-74 and subsequent years.

[The Wealth-tax Act is also being amended to provide that in a case where any part of the corpus or income of a charitable or religious trust is used for the benefit of the author of the trust, a substantial contributor to the trust and other specified persons, the trust will be liable to pay wealth-tax on its net wealth at a flat rate of 1·5 per cent. or the appropriate rate applicable to such net wealth, whichever is higher. This provision has been explained separately in paragraph 50-51 of this Memorandum.]

[Clauses 3(b)(i), 5, 6, 7 and 26(c)]

28. *Donations to charitable trusts or institutions.*—Under an existing provision in the Income-tax Act, donations to charitable or religious institutions qualify for a tax concession, subject to certain conditions. One of these conditions is that where the institution or fund derives any income, such income should not be liable for inclusion in its total income under the provisions of section 11 or section 12. The tax concession is, however, not merely on either or both of the following grounds :—

(i) That, subsequent to the donation, any part of the income or fund has become chargeable to tax due to non-compliance with any of the provisions of section 11 relating to application or accumulation of income in the specified manner.

(ii) That the exemption under section 11 is denied to the institution or fund in relation to any income arising to it from any investment made in a concern in which persons specified in section 13(3) of the Income-tax Act have a substantial interest, where the investment in such a concern does not exceed 5 per cent. of the capital of the concern.

29. In view of the position that under the Bill, income by way of voluntary contributions received by a charitable or religious trust will also be subject to the same requirements as are currently applicable in respect of the income derived from property held under trust, consequential changes are proposed to be made in the provision relating to the tax concession in respect of donations to such trusts. The exemption in respect of the donation will not be denied also in a case where the trust or institution forfeits exemption on account of non-compliance with the requirements of application or accumulation of voluntary contributions in the specified manner where the default takes place after the donation is made. Similarly, the tax concession will not be denied merely because the trust

or institution forfeits exemption in respect of its income by way of voluntary contributions on the ground that the funds of the trust or institution have been invested in a prohibited concern provided, however, the investment in such concern does not exceed 5 per cent. of its capital.

30. The modifications in the preceding paragraph will take effect from 1st April, 1973, and will accordingly apply in relation to assessments for the assessment year 1973-74 and subsequent years. [Clause 17]

PROVISIONS FOR ENABLING THE CENTRAL GOVERNMENT TO ENTER INTO TAX TREATIES WITH FOREIGN COUNTRIES FOR EXCHANGE OF INFORMATION FOR PREVENTING EVASION OR AVOIDANCE OF TAXES AND RECOVERY THEREOF

31. Under an existing provision in the Income-tax Act, the Central Government is empowered to enter into an agreement with the Government of any foreign country for the avoidance of double taxation of income and to make provisions for implementing the agreement by the issue of a notification in the Official Gazette. Some of the taxpayers having transactions with outside countries resort to dubious methods for evading their liability under the tax laws. Tax evasion is thus closely linked with transactions involving over-invoicing and under-invoicing in import and export business, operations through secret foreign bank accounts and smuggling of valuable articles into and out of India. Cases of taxpayers who thwart the attempts of the tax administration to collect tax dues by either retaining their assets abroad or transferring them secretly outside India are also not unknown. With a view to enabling the tax administration to tackle the problem of tax evasion having international ramifications, the Bill seeks to amend the provisions relating to tax treaties in order to provide for the following matters :—

(i) The Central Government will be empowered to enter into agreements with foreign countries not only for purposes of avoidance of double taxation of income but also for enabling the tax authorities to exchange information for the prevention of evasion or avoidance of taxes on income or for investigation of cases involving tax evasion or avoidance or for recovery of taxes in foreign countries on a reciprocal basis.

(ii) A consequential change is also being made in the provisions of the Income-tax Act relating to recovery of arrears of taxes. Where the tax treaty provides for the recovery of taxes due to the Government of one treaty country in the other and the Government of the foreign country or any authority specified in this behalf in the tax treaty sends to the Central Board of Direct Taxes a certificate for the recovery of any tax due in the foreign country, the Board will be empowered to send the certificate to the Tax Recovery Officer within whose jurisdiction the property of the defaulter is situated and thereupon the Tax Recovery Officer will proceed to recover the dues in the manner specified in the Income-tax Act. Likewise, if a taxpayer in India has property in the foreign country, the Income-tax Officer will be able to send a certificate to the Board certifying the amount of arrears due from the taxpayer and thereupon the Board will take action

for the recovery of the dues in the foreign country in accordance with the terms of the tax treaty.

32. The above modifications will come into force with effect from 1-4-1972.

[The Companies (Profits) Surtax Act, Wealth-tax Act and Gift-tax Act also contain similar provisions enabling the Central Government to enter into agreements with foreign countries for the avoidance of double taxtion with respect to taxes levied under these Acts. The corresponding provisions in these Acts are also being brought in line with the provisions of the Income-tax Act, as proposed to be amended under the Bill.]

[Clauses 23, 39, 48, 49, 53, 54 & 57]

OTHER AMENDMENTS TO THE INCOME-TAX ACT

33. *Tax treatment of gratuities.*—Under an existing provision in the Income-tax Act, death-*cum*-retirement gratuity received under the revised pension rules of the Central Government or under any similar scheme of a State Government, a local authority, or a statutory corporation is completely exempt from tax. Similarly, retiring gratuity received under the new pension code applicable to members of the Defence Services also qualifies for tax exemption without any ceiling limit. In the case of any other gratuity the exemption is available to the extent such gratuity does not exceed one-half month's salary for each year of completed service, calculated on the basis of the average salary for the three years immediately preceding the year in which the gratuity is paid, or fifteen months' salary so calculated or Rs. 24,000, whichever is the least. No ceiling limits in regard to the death-*cum*-retirement gratuity received by civilian Government servants and retiring gratuity received by members of the Defence Services have been prescribed in the law because such gratuities are subject to ceiling limits under the relevant rules which are similar to those specifically laid down in the Act. No ceiling limits have also been laid down in respect of the exempt amount of gratuities received by employees of statutory corporations as the schemes under which these gratuities are paid are broadly on the lines of the gratuities payable to Government servants. On nationalisation, banks and other undertakings have come within the category of statutory corporations. The gratuity schemes of some of these banks and undertakings do not have any monetary ceiling in respect of gratuities payable thereunder or the monetary ceiling is substantially higher. This, therefore, creates an invidious distinction between the employees of such statutory corporations and those in the private sector. Further, whereas in the case of Government servants, gratuities are paid only on retirement or death persons in private employment may receive gratuities from time to time even while they continue in service. The present wording of the relevant provision is wide enough to confer exemption in respect of gratuities which are paid otherwise than on retirement or death. With a view to removing these anomalies in the tax treatment of gratuities received by different categories of employees, the following modifications are proposed to be made in the relevant provisions of the Income-tax Act :—

(i) Exemption from income-tax in respect of gratuities received by employees of statutory corporations and employees in the private sector will be available only if such gratuities are received on retirement, incapacitation or death of the employee or on termination of his employment.

(ii) The exempt amount of gratuities in the case of employees of statutory corporations and those in the private sector will be subject to a ceiling limit of one-half month's salary for each year of completed service, calculated on the basis of the average salary for the three years immediately preceding the year in which the gratuity is paid, or fifteen months' salary so calculated or Rs. 24,000, whichever is the least.

34. This change will take effect from 1st April, 1973, and will accordingly apply in relation to the assessment year 1973-74 and subsequent years. [Clause 4(b)]

35. *Exemption from income-tax of income of approved gratuity funds.*— Under an existing provision in the Income-tax Act, income of provident funds to which the Provident Funds Act, 1925, applies, recognised provident funds and approved superannuation funds, is completely exempt from income-tax. Such exemption is, however, not available in respect of the income of approved gratuity funds. The approved gratuity funds are subject to regulation under the Income-tax Rules and the pattern of investment made by such funds is also prescribed under these rules. With a view to encouraging the formation of approved gratuity funds and thus safeguarding the interest of employees in general, it is proposed to amend the relevant provision in the Income-tax Act to provide for exemption of the income of approved gratuity funds from tax.

36. This change will take effect from 1st April, 1973, and accordingly will apply in relation to the assessment year 1973-74 and subsequent years. [Clauses 4(c) & 42]

37. *Curtailment of time allowed for filing returns of income and modification of the provisions relating to charging of interest for delay in furnishing such returns.*—Under an existing provision in the Income-tax Act, every person having a taxable income from sources other than business or profession is required to furnish voluntarily the return of his income before 30th June of the relevant assessment year. In the case of an assessee deriving income from business or profession, the return is required to be furnished before the expiry of six months from the end of the previous year or before the 30th June of the assessment year, whichever is later. Under another provision, the Income-tax Officer has the power to issue a notice to any person requiring him to furnish his return of income within 30 days of the date of service of the notice and this notice can curtail the time allowed for furnishing the voluntary return. In case the return of income is not furnished before 1st October of the assessment year, the taxpayer is ordinarily liable to pay simple interest at 9 per cent. per annum from the 1st day of October to the date of furnishing of the return. Where, however, the total income of the assessee includes any income from business or profession, tbe previous year in respect of which expired after

31st December of the year immediately preceding the assessment year, the interest is reckoned from the 1st day of January instead of the 1st day of October of the assessment year. In view of these provisions, an assessee can delay his return of income for a period ranging from three months to almost six months without attracting any liability to pay interest for the period of delay. Further, under section 140A, where the tax payable on the basis of the return filed by an assessee exceeds Rs. 500, the assessee is required to pay tax on the basis of self assessment within 30 days of furnishing the return. In case of default in paying the tax on the basis of self-assessment within the time allowed, a penalty up to a maximum of 50 per cent. of the amount of tax due is exigible. The effect of these provisions is that if an assessee furnishes his return of income within the time allowed under section 139(1), he is required to pay the tax due on the basis of the return within 30 days of furnishing such return. If, however, he does not furnish the return within the time allowed but delays it either after obtaining an extension from the Income-tax Officer or otherwise, he does not have to pay any tax on self-assessment basis until he files the return. Further, where the return is due by 30th June, the assessee can delay it up to 30th September even without attracting any liability to interest for delay in furnishing the return. Where the assessee derives income from a business or profession and closes his accounts after 31st December of the previous year preceding the assessment year, the return can be delayed upto 31st December of the assessment year without attracting any liability to interest. In view of this position, there is a tendency on the part of assessees not only to delay the returns of income uptill the due date under section 139(1) but also to request for extension of time, sometimes, on frivolous grounds.

The time limit for completion of assessments has been reduced from four years to two years recently and with the introduction of the scheme of summary assessments the pendency of arrear assessments has also been reduced considerably. It is, therefore, necessary in the interest of proper management of assessment work that the bulk of the returns are received early in the assessment year.

With the twin objective of ensuring early receipt of returns and withdrawing the in-built incentive for delaying the returns, it is proposed to make the following modifications in the relevant provisions of the Income-tax Act :—

(i) Assessees having income from business or profession would be statutorily required to furnish returns of income voluntarily within four months (as against six months at present) of the close of the accounting year or by the 30th June following that year, whichever is later. [For all other categories of assessees, the last date for filing the returns of income will continue to be 30th June regardless of the accounting year adopted by them.]

(ii) Interest for delay or default in furnishing the return of income will, in all cases, be charged from the expiry of the due date for furnishing such return voluntarily under section 139(1). Thus, where the return is due by 30th June of any assessment year, but is not filed on or before that date, interest will be charged from 1st July of that year.

(iii) In keeping with the other provisions in the Bill increasing the rate of interest chargeable from the assessees or payable to them from 9 per cent. per annum to 12 per cent. per annum, the rate of interest for delay or default in furnishing the return will also be increased to 12 per cent. per annum.

38. These modifications will take effect from 1st April, 1972.

[Under the corresponding provision in the Wealth-tax Act, an assessee carrying on a business or profession is required to furnish the return of his net wealth before 30th June of the assessment year or within the period prescribed under the Income-tax Act for furnishing the return of his total income, whichever is later. In view of the above modifications sought to be made in the Income-tax Act, the returns of net wealth in such cases will also become due on 30th of June or within four months of the expiry of the relevant account year, whichever is later.]

[Clause 26(a), (b) & (d)]

39. *Increase in the rate of interest chargeable from assessees, and also payable to assessees by Government under the provisions of the Income-tax Act.* —Simple interest at 9 per cent. per annum is chargeable from assessees under certain provisions of the Income-tax Act, e.g., for failure to pay the tax dues within the time allowed under the notice of demand, short payment of advance tax, delay in furnishing return of income, etc. Likewise, assessees are entitled to receive simple interest from the Central Government at 9 per cent. per annum on excess payment of advance tax and delay in issue of refund. It is proposed to increase the rate of interest chargeable from, or payable to, assessees under the various provisions of the Income-tax Act, from 9 per cent. per annum to 12 per cent. per annum with effect from 1st April, 1972. It is being specifically clarified that the proposed increase in the rate of interest will apply in respect of any period falling after 31st March, 1972, also in those cases where the interest became chargeable or payable from an earlier date.

[Clauses 25, 26(d)(i) and 60]

40. *Withdrawal of exemption in respect of capital gains arising from transfer of personal jewellery.*—Under the provisions of the Income-tax Act, any profits or gains arising from the transfer of a "capital asset" are chargeable to tax. The term "capital asset" as defined in the Income-tax Act does not include, *inter alia*, personal effects, i.e., movable property including wearing apparel, jewellery and furniture held for personal use by the assessee or any member of his family dependent on him. In view of the specific exclusion of jewellery from the definition of 'capital asset', profits and gains arising from the transfer of jewellery held for personal use are not chargeable to income-tax. The exemption of capital gains arising from transfer of jewellery facilitates tax evasion through bogus or inflated claims of sale of jewellery for explaining moneys introduced in business. It is, therefore, proposed to withdraw this exemption and to charge capital gains arising from the transfer of personal jewellery on the same basis as capital gains relating to assets other than lands or buildings. The term "jewellery" is being given the same extended meaning as has

been given to it under the Wealth-tax Act and will, therefore, include—(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel; (b) precious or semi-precious stone, whether or not set in any furniture, utensil or other article and whether or not worked or sewn into any wearing apparel. As it is not intended to levy any tax on capital gains arising from *bona fide* transfer of jewellery made for the purpose of acquiring any other jewellery for personal use, it has been specifically provided that where such jewellery is acquired within six months of the transfer, any profits and gains arising from the transfer will not be liable to tax if the whole of the full value of the consideration is spent in acquiring the new jewellery. Where only a part of this consideration is used in acquiring new jewellery, a proportionate part of capital gain will not be liable to tax.

41. These amendments take effect from 1st April, 1973, and will, therefore, apply in relation to assessment year 1973-74 and subsequent years. [Clauses 3(a), 8 and 9]

42. *Power to make rules for admission of additional evidence.*—At present, an Appellate Assistant Commissioner of Income-tax has a wide and unrestricted discretion in regard to admission of evidence which is not produced by the assessee before the Income-tax Officer but is produced for the first time in the course of the appellate proceedings. With a view to regulating the admission of such additional evidence, the Central Board of Direct Taxes is being empowered to prescribe in the Income-tax Rules the circumstances in which, the conditions subject to which, and the manner in which the Appellate Assistant Commissioner of Income-tax may permit the appellant to produce evidence which was not produced or which was not allowed to be produced before the Income-tax Officer. [Clause 41]

43. *Appointment of a Vice-President or Vice-Presidents of Appellate Tribunal.*—The Income-tax Appellate Tribunal is headed by a President who is appointed by the Central Government from amongst the members of the Tribunal. The President of the Tribunal exercises various statutory functions, such as the constitution of Benches and allocation of work to them, besides administrative control over all members and staff. With a view to enabling the President to cope with the increasing volume of work, the Central Government is being empowered to appoint one or more members of the Appellate Tribunal to be the Vice-President or, as the case be, Vice-Presidents of the Appellate Tribunal. It is also being provided that a Vice-President shall exercise such of the powers and perform such of the functions of the President of the Tribunal as may be delegated to him by the President by a general or special order in writing. [Clause 40]

PROPOSED AMENDMENTS TO THE WEALTH-TAX ACT, 1957

44. *Exemption of co-operative societies from wealth-tax.*—Under the existing provisions of the Wealth-tax Act, wealth-tax is chargeable in respect of the net wealth of (i) individuals, (ii) Hindu undivided families, and (iii) companies. [Wealth-tax is, however, not being charged in respect

of the net wealth of companies from the assessment year 1960-61 onwards in view of a special provision made in this behalf in the Finance Act, 1960.] Recently, some doubt has been raised that a co-operative society could, in law, be regarded as an "individual" for purposes of the Wealth-tax Act and charged to tax accordingly. Such an interpretation would not be in keeping with the intention underlying these provisions. Levy of wealth-tax on co-operative societies will also have an adverse effect on the co-operative movement in the country. The Wealth-tax Act is, therefore, being amended to provide for exemption of co-operative societies from wealth-tax retrospectively from 1st April, 1957 (i.e., from the date of commencement of the Wealth-tax Act). [Clauses 44 & 50(b)]

45. *Exemption from wealth-tax of recognised provident funds, approved superannuation funds and gratuity funds.*—The Wealth-tax Act does not contain any specific provision for the exemption of recognised provident funds, approved superannuation funds and approved gratuity funds constituted for the benefit of employees. Such funds have, however, not been charged to tax as it was not the intention to bring them within the ambit of the Wealth-tax Act. Because of certain amendments made to the Wealth-tax Act in 1970, relating to taxation of discretionary trusts, a doubt has been raised regarding the tax treatment of such funds. The levy of wealth-tax on such funds will substantially erode their corpus and hamper the setting up of such funds for the benefit of employees in the public and private sectors. The Wealth-tax Act is, therefore, being amended to provide for exemption of provident funds to which the Provident Funds Act, 1925, applies, as also all provident funds, superannuation funds, and gratuity funds which are recognised or approved for the purposes of the Income-tax Act. The exemption is being given retrospective effect from 1st April, 1957 (i.e., the date of commencement of the Wealth-tax Act).

[Clause 45(a)(i)]

46. *Exemption from wealth-tax of assets forming part of an industrial undertaking.*—The Wealth-tax Act provides for exemption from tax in respect of investments made in specified financial assets up to an aggregate value of Rs. 1,50,000. The specified investment qualifying for this exemption are :—

(a) Government securities, including small savings securities of the Central Government.

(b) Fixed deposits with the Central Government as also in Post Offices on Government account and Recurring and Time Deposits in Post Offices.

(c) Shares in Indian companies.

(d) Notified debentures.

(e) Units in the Unit Trust of India.

(f) Deposits with banking companies, including co-operative banks, land mortgage banks and land development banks.

(g) Deposits with approved financial institutions engaged in providing long-term finance for industrial development in India.

(h) Shares in a co-operative society.

(i) Deposits made by a member of a co-operative society with the society (other than deposits made with a co-operative housing society by a member of the society to whom a building or part thereof is allotted or leased under a house building scheme of the society, which are separately exempted from wealth-tax without any limit to the extent such deposits have been made under the house building scheme of the society).

It is now proposed to enlarge this list so as to include the value of assets forming part of an industrial undertaking belonging to the assessee, as also the value of his interest in the assets forming part of an industrial undertaking belonging to a firm or an association of persons of which the assessee is a partner or a member. Accordingly, in computing the exemption from wealth-tax up to Rs. 1,50,000, the value of these assets will also be taken into account. The value of any land or building or any rights in any land or building or the value of assets of the industrial undertaking which are otherwise exempt from wealth-tax under section 5(1) of the Wealth-tax Act will, however, not be taken into account for the purposes of this exemption. "Industrial undertaking" for the purposes of this provision has been defined to mean an undertaking engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. This provision will take effect from 1st April, 1973, and will, therefore, apply for the assessment year 1973-74 and subsequent assessment years. [Clause 45(a)(ii) & (b)]

47. *Concession in regard to holding period of exempt assets.*—Under an existing provision in the Wealth-tax Act, certain assets qualify for exemption from wealth-tax only if these are held by the assessee for a period of at least six months ending with the relevant valuation date. Some of these assets are (i) deposits in notified schemes framed by Central Government; (ii) Government securities; (iii) shares in Indian companies; (iv) notified debentures; (v) units in the Unit Trust of India; (vi) deposits with banking companies, co-operative banks, etc. In the case of shares in a company, the exemption from tax is available if the shares have been held from the date on which these were first issued even if the holding period is less than six months. The restriction has been placed in order to prevent misuse of the tax exemption by changing investments from non-exempt assets to exempt assets for a short period merely to obtain the benefit of the tax concession. This provision sometimes results in hardship even in bona fide cases of conversion of one category of exempt assets to another category of exempt assets. For example, an employee receiving the balance to his credit in a recognised provident fund (which is exempt from wealth-tax) and depositing the amount in a bank may forfeit exemption from tax in respect of the amount merely because he has not been able to hold the bank deposit for a period of six months. In order to obviate hardship in such cases, section 5(3) of the Wealth-tax Act is being amended to provide that in computing the period of six months in relation to any asset, in a case where such asset was acquired by the assessee by conversion of, or in exchange for, or with the proceeds of, or with the money constituting, any

other asset exempt from wealth-tax under sub-section (1) or sub-section (2) of the Wealth-tax Act, so much of the period for which the assessee held such other assets as falls within the period of six months ending with the relevant valuation date, will also be taken into account. This relaxation will be available only if the assessee acquires the relevant asset within thirty days after he ceases to hold the first asset. The concession under this provision will, however, not apply in the case of shares or securities held as stock-in-trade by the assessee for the purposes of his business.

48. These amendments will take effect from 1st April, 1973, and will, therefore, apply for the assessment year 1973-74 and subsequent years. [Clause 45 (c)]

49. *Forfeiture of exemption from wealth-tax in the case of public charitable or religious trusts and institutions.*—Income derived from property held under trust or other legal obligation for charitable or religious purposes is exempt from income-tax to the extent such income is applied to such purposes or accumulated for being so applied in accordance with the provisions of the Income-tax Act. Section 13 of the Income-tax Act provides for the forfeiture of the exemption from tax in the case of a trust or institution created or established after 31st March, 1962, if under the terms of the trust or the rules governing the institution, any part of the income *enures* for the direct or indirect benefit of the author of the trust, founder of the institution, a substantial contributor to the trust and their relatives, etc. In the case of a trust or institution, whenever created or established, the exemption is forfeited also where the trust income or property is *used or applied* during the relevant year for the direct or indirect benefit of such person. This disability does not apply in the case of a trust or institution created or established before 1-4-1962, if the use of the trust income or property is in compliance with a mandatory provision in the terms of the trust or rules governing the institution.

50. Under section 5(1)(i) of the Wealth-tax Act, property held under trust or other legal obligation for any public purpose of a charitable or religious nature in India is exempt from wealth-tax. The Wealth-tax Act, however, does not contain any provision for the forfeiture of the exemption from wealth-tax, on the lines of the aforesaid provisions in section 13 of the Income-tax Act. To provide a further deterrent to the misuse of the income or property of the trust or institution by such persons, the provisions in the Wealth-tax Act are proposed to be brought in line with the provisions in the Income-tax Act. Accordingly, a new section 21A is being introduced in the Wealth-tax Act to secure that where any part of the income of the trust or institution enures for the direct or indirect benefit of the author of the trust, substantial contributor, etc., or where any income or property of the trust or institution is used or applied, directly or indirectly, for the benefit of any such person, the trust or institution will be liable to pay wealth-tax on the value of its entire property at the rate of 1·5% or the rate applicable in the case of an individual, whichever is beneficial to the revenue. For the purposes of this provision, it has been specifically provided that any part of the property or income of a trust shall be deemed to have been used or applied for the benefit of any of the

specified categories of persons if it can be deemed to have been so used or applied within the meaning of clause (c) of sub-section (1) of section 13 of the Income-tax Act at any time during the period of twelve months ending with the relevant valuation date.

Where the trust funds are invested in any concern in which any of the specified persons has a substantial interest, and the quantum of the investment does not exceed 5% of the capital of the concern, the trust or institution forfeits exemption from income-tax only in respect of the income arising from such investment and not its entire income. Similarly, exemption from wealth-tax, in such cases, will be denied only in relation to such investment and other assets will continue to qualify for exemption.

51. The new section 21A takes effect from 1st April, 1973, and will, therefore, apply in relation to assessments for the assessment year 1973-74 and subsequent assessment years. [Clause 46]

52. *Increase in the rate of interest chargeable from or payable to assessees.* —Simple interest at 9 per cent. per annum is chargeable from assessees on the arrears of tax due from them for the period of the default in payment. Likewise, assessees are entitled to receive simple interest from the Central Government at 9 per cent. per annum on the amount of refunds due to them for the period of delay in the issue of refund beyond six months from the date of the order giving rise to the refund. In line with the proposed increase in the rate of interest chargeable from, or payable to, assessees under the Income tax Act, the relevant provisions of the Wealth tax Act are also proposed to be amended to raise the rate of interest provided therein from 9 per cent. per annum to 12 per cent. per annum with effect from 1st April, 1972. It is being specifically clarified that the proposed increase in the rate of interest will apply in respect of any period falling after 31st March, 1972, also in those cases where the interest became chargeable or payable from an earlier date. [Clauses 47 and 60]

53. *Extension of scope of tax treaties between the Central Government and the Government of a foreign country.*— Under the existing provisions in the Wealth-tax Act, the Central Government is empowered to enter into an agreement with the Government of any foreign country for the avoidance or relief of double taxation with respect to wealth-tax payable under that Act and under the corresponding law in force in the foreign country. On the lines of the amendments proposed to be made to the corresponding provisions in the Income-tax Act, the scope of these provisions is proposed to be enlarged to empower the Central Government to enter into agreement with the Government of a foreign country also for enabling the exchange of information for the prevention of evasion or avoidance of wealth-tax (including investigation of cases of such evasion or avoidance) and for recovery of such tax in the treaty countries.

54. The new section 228A relating to the recovery of tax in pursuance of agreements with foreign countries, proposed to be inserted in the Income-tax Act under clause 39 of the Bill, is also proposed to be applied to the Wealth-tax Act. [Clauses 48 and 49]

55. *Power to make rules for admission of additional evidence.*—At present, an Appellate Assistant Commissioner of Wealth-tax has a wide and unrestricted discretion in regard to admission of evidence which is not produced by the assessee before the Wealth-tax Officer but is produced for the first time in the course of the appellate proceedings. With a view to regulating the admission of such additional evidence, the Central Board of Direct Taxes is being empowered to prescribe in the Wealth-tax Rules, the circumstances in which, the conditions subject to which and the manner in which the Appellate Assistant Commissioner of Wealth-tax may permit the appellant to produce evidence which he did not produce or which he was not allowed to produce before the Wealth-tax Officer. [Clause 51]

56. *Clarificatory amendment regarding application of wealth-tax in certain cases.*—Certain entities enumerated in section 45 of the Wealth-tax Act have been exempted from wealth-tax. It is proposed to amend this section to clarify that while wealth-tax is not to be levied in respect of the net wealth of the entities enumerated in this section, the application of the other provisions of the Act (e.g., calling for evidence from such entities) will not be barred. This amendment takes effect from 1st April, 1972. [Clause 50(a)]

Proposed amendments to the Gift-tax Act, 1958

57. *Increase in the rate of interest chargeable from or payable to assessees.*—Simple interest at 9 per cent. per annum is chargeable from assessees on the arrears of tax due from them for the period of default in payment. Likewise, assessees are entitled to receive simple interest from the Central Government at 9 per cent. per annum on the amount of refunds due to them for the period of delay in the issue of refund beyond six months from the date of the order giving rise to the refund. In line with the proposed increase in the rate of interest chargeable from, or payable to, assessees under the Income-tax Act and the Wealth-tax Act, the relevant provisions of the Gift-tax Act are also proposed to be amended to raise the rate of interest provided therein from 9 per cent. per annum to 12 per cent. per annum with effect from 1st April, 1972. It is being specifically clarified that the proposed increase in the rate of interest will apply in respect of any period falling after 31st March, 1972, also in those cases where the interest became chargeable or payable from an earlier date. [Clauses 52 and 60]

58. *Extension of scope of tax treaties between the Central Government and the Government of a foreign country.*—Under an existing provision in the Gift-tax Act, the Central Government is empowered to enter into an agreement with the Government of any foreign country for the avoidance or relief of double taxation with respect to gift-tax payable under that Act and under the corresponding law in force in the foreign country. On the lines of the amendments proposed to be made to the corresponding provisions in the Income-tax Act, the scope of these provisions is proposed to be enlarged to empower the Central Government to enter into agreement with the Government of a foreign country also for enabling the exchange of information for the prevention of evasion or avoidance of gift-tax (including investigation of cases of such evasion or avoidance) and for recovery of

such tax in the treaty countries. The new section 228A relating to recovery of tax in pursuance of agreements with foreign countries proposed to be inserted in the Income-tax Act under clause 39 of the Bill, is also proposed to be applied to the Gift-tax Act. [Clauses 53 and 54]

59. *Exemption of gifts made by charitable or religious institutions or funds.*—Section 45(e) of the Gift-tax Act excludes from the purview of that Act any gifts made, *inter alia*, by an institution or fund, the income whereof is exempt from income-tax under section 11 of the Income-tax Act. Under an amendment made to the Gift-tax Act through the Finance (No. 2) Act, 1971, it has been provided that a charitable institution or fund will not forfeit the exemption from gift-tax in respect of gifts made by it merely because—(a) subsequent to the gift, any income of the institution or fund becomes chargeable to income-tax due to non-compliance with any of the provisions of section 11 of the Income-tax Act relating to application of income during the accounting year itself; or (b) the institution or fund forfeits exemption in respect of a part of its income which arises from investments made in a concern in which the founder of the institution or fund or his relatives have a substantial interest, where the aggregate of the funds invested by the institution or fund in such a concern does not exceed 5 per cent. of the capital of that concern.

60. Section 12 of the Income-tax Act has been substituted by two new sections 12 and 12A. As already explained, the effect of the substitution of section 12 is that voluntary contributions received by charitable or religious trusts or institutions will qualify for exemption from income-tax only if the conditions specified in section 11 regarding application of income or accumulation thereof are satisfied also in relation to such income by way of voluntary contributions. Further, the trust or institution will forfeit exemption from tax in respect of its entire income if any part of its income enures or any part of its income or property is used or applied directly or indirectly for the benefit of the author of the trust, founder of the institution, a person who has made a substantial contribution to the trust and institution, the relative of such author, founder, etc. The new section 12A provides that exemption from income-tax in respect of income derived from property or by way of voluntary contributions by charitable or religious trusts or institutions will be available only if (a) the trust or institution applies for its registration to the Commissioner of Income-tax within the specified period, and (b) where the total income of the trust or institution (without giving effect to the provisions of sections 11 and 12) exceeds Rs. 25,000 in any previous year, the accounts of the trust or institution for that year have been audited by a chartered accountant or any other accountant entitled to be appointed as an auditor of companies.

61. In view of these changes in the Income-tax Act, section 45 of the Gift-tax Act is also being amended to provide that a charitable institution or fund will not forfeit exemption from gift-tax in respect of gifts made by it merely because (a) subsequent to the gift any income of the institution or fund by way of voluntary contributions becomes chargeable to income-tax

due to non-compliance with the provisions of the substituted section 12 of the Income-tax Act; or (b) the institution or fund is denied exemption from income-tax by reason of the non-fulfilment of the conditions in the new section 12A relating to the filing of an application for registration with the Commissioner of Income-tax or the audit of the accounts of the institution or fund by a chartered accountant, etc., or the institution or fund forfeits exemption in respect of its income by way of voluntary contributions on the ground that the funds of the institution or fund have been invested in a prohibited concern provided, however, the investment in such concern does not exceed 5% of its capital. [Clause 55]

62. *Power to make rules for admission of additional evidence.*—At present an Appellate Assistant Commissioner of Gift-tax has a wide and unrestricted discretion in regard to admission of evidence which is not produced by the assessee before the Gift-tax Officer but is produced for the first time in the course of the appellate proceedings. With a view to regulating the admission of such additional evidence, the Central Board of Direct Taxes is being empowered to prescribe in the Gift-tax Rules, the circumstances in which, the conditions subject to which and the manner in which the Appellate Assistant Commissioner of Gift-tax may permit the appellant to produce the evidence which he did not produce or which he was not allowed to produce before the Gift-tax Officer. [Clause 56]

PROPOSED AMENDMENTS TO THE COMPANIES (PROFITS) SURTAX ACT, 1964

63. *Extension of scope of tax treaties between the Central Government and the Government of a foreign country.*—Under the existing provisions in the Companies (Profits) Surtax Act, the Central Government is empowered to enter into an agreement with the Government of any foreign country for the avoidance or relief of double taxation with respect to surtax payable under that Act and a similar tax under any corresponding law in force in the foreign country. On the lines of the amendments proposed to be made to the corresponding provisions in the Income-tax Act, the scope of these provisions is proposed to be enlarged to empower the Central Government to enter into agreement with the Government of a foreign country also for enabling the exchange of information for the prevention of evasion or avoidance of surtax (including investigation of cases of such evasion or avoidance) and for recovery of such tax in the treaty countries. The Central Government will also be empowered to make provisions for implementing the agreement by the issue of a notification in the Official Gazette. [Clause 57]

64. *Power to make rules for admission of additional evidence.*—With a view to regulating the admission of evidence which is not produced by a company before the Income-tax Officer but is produced for the first time in the course of the appellate proceedings before the Appellate Assistant Commissioner of Income-tax, the Central Board of Direct Taxes is being empowered to prescribe in the Companies (Profits) Surtax Rules, the circumstances in which, the conditions subject to which and the manner in which the Appellate Assistant Commissioner may permit the appellant to

produce evidence which was not produced or which was not allowed to be produced before the Income-tax Officer. [Clause 58]

CUSTOMS DUTIES

The proposals include :—

(a) Revision of the rates of regulatory duties of customs imposed with effect from 13th December, 1971, so as to subject (i) articles liable to a basic effective duty of customs at the rate of 100 per cent. *ad valorem* or more and a few other selected items to a regulatory duty of 10 per cent. *ad valorem*, (ii) articles liable to a basic effective duty of 60 per cent. or more but less than 100 per cent. to a regulatory duty of 5 per cent. *ad valorem* and (iii) all other articles (with the exception of foodgrains, books and certain special categories) to 2½ per cent. *ad valorem*. This measure is expected to yield an additional revenue of Rs. 860 lakhs per annum.

(b) Rationalisation of the rates of duty under Item No. 22(5)(b) I. C. T. (Drug and Medicines containing spirit) and 28(28)(b) I. C. T. (certain vitamins and vitamin preparations) consequent on the elimination of the margin of preference as a result of the country's commitments under the General Agreement on Tariffs and Trade.

(c) Continuance up to 15th May, 1973, in a modified form, of the enabling provision for the levy of regulatory duties of customs similar to the provision in section 4 of the Finance Act, 1971 ; and

(d) Additional revenue amounting to Rs. 1,340 lakhs per annum is also expected from additional (countervailing) duties consequent on the changes in Central Excise duties except in respect of iron and steel items (including tin plate and sheets) which are being exempted from the additional (countervailing) duty corresponding to the increase in excise duties on these articles.

Details of this are given in the Table below :

S. No.	Item(s) in the Customs Tariff Schedule	Brief description of goods	Additional revenue per annum (Rs. lakhs)
1.	27(4)(a)	Kerosene	480
2.	28, 28(8), 35 and 35(1)	Fertilisers	600
3.	Various	Others	260
		Total :	1,340

(e) Continuance up to the passing of the Finance Bill, 1972, of the regulatory duties of customs levied under the Finance Act, 1971, and in force immediately before the 18th March, 1972, subject to any exemption notifications.

There will be a net increase in customs revenue of Rs. 2,200 lakhs per annum. [Clauses 61 and 62]

The provisions of the Indian Tariff (Amendment) Act, 1949, are being continued for another year so as to maintain the *status quo* in regard to commitments under the General Agreement on Tariffs and Trade.

[Clause 63]

CENTRAL EXCISES

Section 35 of the Central Excises and Salt Act, 1944, confers a right of appeal to a person aggrieved by any decision/order passed by any Central Excise Officer under the said Act or the Rules made thereunder. Similarly, any person aggrieved by any appellate order is entitled to file an application for revision to the Central Government under section 36 of the said Act. There is, however, no corresponding power with the Central Board of Excise and Customs/Central Government to revise of its own motion such original or appellate orders/decisions even where such decisions or orders are incorrect, improper or illegal. Such incorrect, illegal or improper orders have in most cases financial implications involving large sums of revenue. It is, therefore, proposed to confer powers of revision of its own motion or otherwise on the Central Board of Excise and Customs and the Central Government. It is, however, being provided that where a decision or order in such revision is likely to be varied so as to prejudicially affect any person, a reasonable opportunity of making a representation and, if he so desires, of being heard in his defence is given before such an order is passed. It is also being provided that after the expiration of a period of one year from the date of a decision or order, no such revision proceeding shall be commenced in respect of that decision or order. It may be added that provisions for revision exist in allied laws such as Customs Act, 1962, and the Gold (Control) Act, 1968. [Clause 64(a) and (b)]