

transaction under a works contract or transaction by way of an investment made or expenditure incurred or a transaction for taking or accepting any loan or deposit as may be prescribed.

It has also been provided that the Board may prescribe different monetary values for different transactions in respect of different persons. The said sub-section further provides that the value or the aggregate value of such transactions during a financial year so prescribed shall not be less than fifty thousand rupees.

Sub-section (5) of the said section provides that where any person who is required to furnish an annual information return has not furnished the same within the prescribed time, the prescribed Income-tax authority may serve upon such person a notice requiring him to furnish such return within a period not exceeding sixty days from the date of service of such notice.

Vide Notification S.O. No. 1316(E), dated 1-12-2004, a new section 114E relating to furnishing of Annual Information Return has been prescribed. The form and manner in which the annual information return shall be furnished has been prescribed in the said rule. Further, it has also been prescribed in the said rule that every person mentioned in column (2) of the Table below shall furnish an Annual Information Return in respect of transactions specified in the corresponding entry of column (3) of the said table.

TABLE

<i>Sl. No.</i>	<i>Class of person</i>	<i>Nature and value of transaction</i>
(1)	(2)	(3)
1.	A Banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act).	Cash deposits aggregating to ten lakh rupees or more in a year in any savings account of a person maintained in that bank.
2.	A Banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.	Payments made by any person against bills raised in respect of a credit card issued to that person, aggregating to two lakh rupees or more in the year.
3.	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.	Receipt from any person of an amount of two lakh rupees or more for acquiring units of that Fund.
4.	A company or institution issuing bonds or debentures.	Receipt from any person of an amount of five lakh rupees or more for acquiring bonds or debentures issued by the company or institution.
5.	A company issuing shares through a public or rights issue.	Receipt from any person of an amount of one lakh rupees or more for acquiring shares issued by the company.
6.	Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908.	Purchase or sale by any person of immovable property valued at thirty lakh rupees or more.
7.	A person being an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934, who is duly authorized by the Reserve Bank of India in this behalf.	Receipt from any person of an amount or amounts aggregating to five lakh rupees or more in a year for bonds issued by the Reserve Bank of India.

It has also been provided in the said rule that Annual Information Return shall be furnished on or before 31st August immediately following the financial year in which transaction is registered or recorded.

Finance (No. 2) Act, 2004 has inserted a new section 271FA providing for penalty for failure to furnish the annual information return. The said section provides that where any person who is required to furnish the annual information return fails to furnish the same within the prescribed time, the prescribed income-tax authority may direct that such person shall pay by way of penalty a sum of one hundred rupees for every day during which the failure continues.

Reference of the newly inserted section 271FA has been made in section 273B of the Income-tax Act, 1961, relating to penalty not to be imposed where assessee proves that there was reasonable cause for the failure.

[Sections 55, 59, 63]

New provisions for levy of Securities Transaction Tax

Chapter VII of the Finance (No. 2) Act, 2004 contains provisions relating to Securities Transaction Tax. It provides, *inter alia*, that the provisions of the Chapter shall come into force on such date as may be notified by the Central

Government in the Official Gazette. Accordingly, the Central Government has notified the 1st day of October, 2004 as the date of commencement, *vide* notification S.O. No. 1058(E) dated 28th September, 2004.

This Chapter provides that Securities Transaction Tax shall be charged in respect of the following transactions at the rates as under:—

- (i) @ 0.075% on the value of transactions of delivery-based purchase of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange, to be paid by the buyer,
- (ii) @ 0.075% on the value of transactions of **delivery-based sale of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange**, to be paid by the seller,
- (iii) @ 0.015% on the value of transactions of non-delivery based sale of an equity share in a company or a unit of an equity oriented fund, entered in a recognised stock exchange to be paid by the seller,
- (iv) @ 0.01%, on the value of transactions of derivatives entered in a recognised stock exchange to be paid by the seller,
- (v) @ 0.15% on the value of transactions of **sale of units of an equity oriented fund to the mutual fund** to be paid by the seller.

“Equity oriented fund” has been defined to mean a fund where the investible funds are invested by way of equity shares in domestic companies to the extent of **more than 50%** of the total proceeds of such funds and which has been set up under a scheme of a **mutual fund**. It has been provided that the percentage of equity shareholding of the fund shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.

It has been provided in the said Chapter that the Board may specify by rules the method of determining the value of taxable securities transaction.

Securities Transaction Tax Rules, 2004, notified by the **Central Government *vide* notification S.O. No. 1059(E) dated 28th September, 2004**, lay down the method for determining the price in respect of transactions of purchase and sale of equity shares and units in three modes of settlement, *i.e.*, netted settlement mode, **trade to trade settlement mode** and auction settlement mode in a recognized stock exchange.

Section 100 of Chapter VII of Finance (No. 2) Act, 2004, provides that every recognised stock exchange and the prescribed person in case of every mutual fund shall collect the securities transaction tax. These persons are required to pay the same to the credit of the Central Government by the seventh day of the month immediately following the calendar month in which tax is collected.

Section 101 of the said Chapter provides that the recognised stock exchange on the prescribed person in case of the mutual fund shall within the prescribed time, furnish a return in such form and verified in such manner as may be prescribed by the Board, in respect of all taxable securities transactions entered into during any financial year.

In respect of mutual fund, it has been provided in the rules that the trustee of the mutual fund or such other person managing the affairs of the mutual fund as may be duly authorised by the trustee in this behalf shall be responsible for collection and payment of securities transaction tax.

It has been provided in the rules that the return of taxable securities transaction shall be furnished by the recognised stock exchange in Form No. STTS-1 and by the mutual fund in Form No. STTS-2. The format of the Form No. STTS-1 and Form No. STTS-2 has also been prescribed. The return of taxable securities transaction entered into during a financial year shall be furnished on or before 30th June of the financial year immediately following the financial year in relation to which taxable securities transactions are to be reported.

The following persons shall be required to sign the return—

- (i) in case of a corporate recognized stock exchange, the managing director or a director,
- (ii) in case of any other recognized stock exchange, the principal officer thereof,
- (iii) in case of a mutual fund, the trustee or such other person managing the affairs of the mutual fund as may be duly authorised by the trustee.

It has been provided that in cases where the return of taxable securities transaction has not been filed in time by any assessee, the Assessing Officer may issue a notice to such assessee requiring him to furnish the return within thirty days of date of service of notice.

Section 102 of the said Chapter provides that the Assessing Officer shall make an assessment of the value of taxable securities transactions made during any relevant financial year and determine the amount of securities transaction tax payable or refundable on the basis of the return filed by the assessee and on the basis of such accounts or documents or other evidence as may be submitted by the assessee.

Forms of notice of demand have been prescribed in the Securities Transaction Tax Rules, 2004.

In sub-section (3) of section 102, it has been provided that in case any amount is refunded on assessment to the

assessee, then the assessee shall within the time prescribed refund the same to the concerned person from whom the amount was collected.

It has been provided in the rules that such amount shall be refunded by the assessee to the persons from whom it was collected within thirty days of receipt of same from the Government.

Section 103 relates to rectification of mistakes apparent from the record, by the Assessing Officer in any order passed by him.

Section 104 provides for charging of simple interest @ one per cent per month of delay in paying the securities transaction tax to the account of the Government within specified time.

Sections 105 to 108 relates to levy of penalty for certain failures.

Section 110 provides for filing of appeal to the Commissioner of Income-tax (Appeals), in such form and verified in such manner as may be prescribed by the Board, in cases where the assessee is aggrieved by any assessment order/rectification order passed by the Assessing Officer.

Section 111 provides for filing of appeal to the Appellate Tribunal in such form and verified in such manner as may be prescribed by the Board, in cases where the assessee is aggrieved by any order passed by the Commissioner of Income-tax (Appeals).

Forms for filing of appeal to the Commissioner of Income-tax (Appeals) and Income-tax Appellate Tribunal have been prescribed in the Rules.

Section 109 of the said Chapter provides that sections 120, 131, 133A, 156, 178, 220 to 227, 229, 232, 260A, 261, 262, 265 to 269, 278B, 282 and 288 to 293 of the Income-tax Act, 1961, shall apply in relation to the Securities Transaction Tax as they apply in relation to income-tax.

Consequent upon the levy of **Securities Transaction Tax**, the following amendments have been brought in the Income-tax Act.

- (i) A new **clause (38)** has been inserted in section 10 providing for **exemption for income from the long term capital gains arising out of transfer of an equity share in company, or unit of an equity oriented fund**, where such transfer takes place on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force and such transaction is chargeable to Securities Transaction Tax under the said Chapter.
- (ii) A **new section 111A** has been inserted so as to provide that **short term capital gains arising out of transfer of an equity share in a company, or unit of an equity oriented fund**, where such transfer takes place on or after the date on which Chapter VII of the Finance (No. 2) Act, 2004 comes into force and such transaction is chargeable to Securities Transaction Tax under the said Chapter, **shall be charged at the rate of 10%**.
- (iii) Section 115AD of the Income-tax Act, 1961, relates to tax on income of Foreign Institutional Investors from securities or capital gains arising from their transfer. Section 115AD has been amended so as to provide that income by way of short term capital gains referred to in the newly inserted section 111A shall be charged at the rate of 10%.
- (iv) A new proviso has been inserted in section 48 providing that any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004, shall not be allowed as a deduction for the purposes of computing the income chargeable under the head "Capital gains".
- (v) A new section 88E has been inserted providing that where the total income of the assessee in a previous year includes any income chargeable under the head "Profits and gains of business or profession" arising from transactions chargeable to securities transaction tax, he shall be allowed a deduction of an amount equal to the securities transaction tax paid by him in respect of transactions chargeable to securities transaction tax entered into in the course of his business during that previous year, from the amount of income-tax on such income arising from such transactions.

It has further been provided that no deduction under this section shall be allowed unless the assessee furnishes along with the return of income, evidence of payment of STT in the prescribed form. Rule 20AB has prescribed that evidence of payment of securities transaction tax on transactions entered in a recognized stock exchange shall be furnished in Form No. 10DB and evidence of payment of securities transaction tax on transactions of sale of unit of equity oriented fund to the mutual fund shall be furnished in Form No. 10DC.

- (vi) A new sub-clause (ib) has been inserted in clause (a) of section 40 providing that any sum paid on account of securities transaction tax under Chapter VII of the Finance (No. 2) Act, 2004, shall not be allowed as a deduction for the purposes of computing the income chargeable under the head "Profits and gains of business or profession".