E. C. No. 992

ESTIMATES COMMITTEE (1981-82)

TWENTY-NINTH REPORT

(SEVENTH LOK SABHA)

MINISTRY OF FINANCE

DIRECT TAXES (WEALTH TAX, GIFT TAX AND ESTATE DUTY)

PART-II

Presented to Lok Sabha on 12 6 APR 982

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

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* Shri Janardhana Poojary ceased to be Member of the Estimates Committee w.e.f. 15-1-82 consequent on his appointment as Deputy Minister.

INTRODUCTION

1. The Chairman of Estimates Committee having been authorised by the Committee to submit the Report on their behalf, present this Twenty-ninth Report on Ministry of Finance—(Department of Revenue)—Direct Taxes, (Wealth Tax, Gift Tax and Estate Duty)—Part II. Part I of the Report dealing with "Exemption Limits" was presented to the House on 19th February, 1982.

2. The Committee took evidence of the representatives of the Ministry of Finance (Department of Revenue) and Central Board of Direct Taxes on 22 December, 1981, 6 January, 1982 and 2 February, 1982. The Committee wish to express their thanks to the officers of the Ministry and the Board for placing before them the material and information which they desired in connection with the examination of the subject and giving evidence before the Committee.

3. The Committee also wish to express their thanks to the Institute of Chartered Accountants of India, New Delhi, Federation of Indian Chamber of Commerce and Industry, New Delhi, Associated Chambers of Commerce & Industry of India, New Delhi, and National Institute of Public Finance and Policy, New Delhi, for furnishing memoranda to the Committee and also for giving evidence and making valuable suggestions.

4. The Committee also wish to express their thanks to all other institutions, associations and individuals, who furnished memoranda, on the subject to the Committee.

5. The report was considered and adopted by the Committee on 5 April, 1982.

6. For facility of reference the recommendations/Observations of the Committee have been printed in thick type in the body of the Report. A summary of the recommendations/observations is appended to the Report (Appendix).

S. B. P. PATTABHI RAMA RAO,
Chairman,
Estimates Committee.

NEW DELHI;
April 15, 1982
Chaitra 25, 1904 (*Saka*)

CHAPTER I

INTRODUCTORY

A. Concept of Wealth Tax, Gift Tax and Estate Duty

Wealth Tax

1.1 The Wealth-tax Act, 1957 came in its present form in pursuance of a recommendation made by Professor Nicholas Kaldor in his report on Indian Tax Reform. The main argument for the levy of Wealth-tax is that the Income taken by itself is an inadequate yardstick of taxable capacity as between income from work and income from property and also as between different property owners. The basic reason for this is that the ownership of property in the form of disposable assets endows the property owner with a taxable capacity as such, quite apart from the money income which that property yields. This is a very well recognised concept and even in countries which do not levy annual wealth-tax, unearned incomes are generally charged to tax at higher rates as compared to earned income. The main advantage in having both income-tax and wealth-tax, therefore, is that apart from lending equity to the tax system, it makes evasion of taxes a little more difficult than it would be in the absence of the levy of wealth-tax.

1.2 Considering the reasonableness of the arguments in favour of the levy of wealth-tax, the wealth-tax Act was enacted in 1957 as a part of comprehensive personal taxation. Though a number of changes have been made in the statute as it was enacted, the basic format has remained the same except for a major departure that while the Act as it was originally enacted levied tax in respect of the wealth of the companies as well, this was discontinued by the Finance Act, 1960 w.e.f. 1st April, 1960.

Gift Tax Act

1.3 The process of reshaping of the scheme of taxation which was started in 1957 with the enactment of the wealth-tax Act, was continued in 1958 by the introduction of a separate tax on gifts under the Gift-tax Act. This Act once again came into being in pursuance of the recommendation made by Professor Nicholas Kaldor. The reason for introducing a levy on Gifts is that the Gift-tax performs an important function of preventing fragmentation of income and wealth by persons in the higher income and wealth brackets. It also serves the purpose of preventing avoidance of estate duty. The efficacy of a tax on gifts may be judged by the observation made by the Wanchoo Committee which had gone to the extent of suggesting the aggregation of life time gifts to prevent erosion of tax base for estate duty purposes. As gift from one person to another provided a convenient means of avoiding or reducing liability to estate duty, income-tax, wealth-tax and the then prevailing expenditure tax, the only objective method of checking such attempts at evasion of tax liability was by levying a tax on gifts. While introducing this Bill in Parliament it was observed that with the introduction of this tax the integrated tax structure, which the Government have been aiming at, will be complete.

Estate Duty Act

1.4 The Estate Duty Act, 1953 came into force with effect from the 15th October, 1953. This duty is payable on the principal value of all property which passes on the death of any person dying on or after 15th October, 1953.

Though the levy and collection of Income-tax at high rates since the War and the investigations undertaken by the Income-tax Investigation Commission in a number of important cases of tax evasion had prevented to some extent the further concentration of wealth in the hands of those who were already wealthy, yet these did not amount to positive steps in the direction of reducing the existing inequalities in the distribution of wealth. It was, therefore, considered that by the imposition of estate duty such unequal distributions may be rectified to a large extent. It was also felt that such a measure would assist the States towards financing their development schemes. In their draft outline Report, the Planning Commission had stressed the necessity of undertaking legislation to levy death duties in India as early as possible. A bill seeking to impose such a duty was introduced in 1946 and then re-introduced in the provisional Parliament in 1948. The latter Bill after being considered by the Select Committee lapsed on the dissolution of that Parliament. The Estate-Duty Bill which was introduced in Parliament in 1952 was practically a reproduction of the earlier Bill as reported on by the select Committee although certain changes had been made in its provisions. Over the years, though changes have been made from time to time, the basic format of the Act has been preserved.

1.5 Various Committees and Commissions appointed by the Government to look into the various aspects of Direct Taxes administration have suggested that the Act should be retained in its present form as it serves to support the progressivity of the tax structure and limits the growth of large inherited fortunes thus catering to a socialistic objective.

1.6 In order to appreciate the positive role played by the Estate-duty, Wealth-tax and Gift-tax, it may perhaps be desirable to refer to the observations made by the then Finance Minister, Shri T. T. Krishnamachari, who while presenting the Budget of 1957 enumerated briefly the objectives of our taxation policy—

(a) They must make a sizeable addition to public revenue;

(b) they must provide incentives for larger earnings and more savings;

(c) they must restrain consumption over a fairly wide field so as to keep in check domestic inflationary pressures and to relieve resources required for industry; and

(d) they must initiate such changes in the tax structure as would make tax yields progressively more responsive to increased incomes and facilitate an orderly development of the economy with due regard to the social objectives that have been adopted.

1.7 Judging these direct tax enactments on the basis of the objectives as outlined above, it is apparent that these three direct taxes together with Income-tax present a fairly comprehensive scheme of taxation, both personal

and corporate. In terms of revenue yield, the figures of collection under the three Acts for the financial year 1980-81 are as follows :—

Wealth-tax	Rs. 67·58 crores.
Estate Duty	Rs. 15.61 crores.
Gift tax	Rs. 6·26 crores.

1.8 Apart from the revenue yield, these enactments altogether are "Self-checking" in character, both in the sense that concealment or understatement of items in order to minimise the liability to some of the taxes may involve an added liability with regard to others, and in the sense that the information furnished by a taxpayer in the interest of preventing over assessment with regard to his own liability automatically brings to light receipts and gains made by other taxpayers.

CHAPTER II

RETURNS

Wealth Tax Return

2.1 At present only individuals and Hindu undivided Families are liable to wealth-tax. They must file their returns of wealth if the net wealth as on the valuation date exceeds Rs 1.5 lakhs. The return should be filed voluntarily. The return of net wealth is to be filed before the 30th June of each assessment year. In the case of a taxpayer who derives income from business and whose previous year ends on the 31st of March, the return of net wealth should, however, be filed before the 31st July of each assessment year.

Gift Tax Return

2.2 Every person who has made a gift chargeable to Gift-tax has to furnish a Return of Gifts in the prescribed form before the 30th of June of the Financial Year for which assessment is to be made. The return duly-filled in has to be furnished to the Gift-Tax Officer who holds, jurisdiction over the Income-tax assessment of the person making the gift.

Dates Prescribed for self assessment

2.3 There is no provisions for self assessment under the Gift-tax Act as in the case of Income-tax and Wealth-tax Acts. However, an extra credit (of 1/9th of the tax paid) is given to an assessee who pays any amount as gift-tax within fifteen days of the gift. The amount of credit is limited to 1/10th of the total gift tax due in respect of such gift.

2.4 There is only one form GTSI for filing return of gifts. The Ministry of Finance had stated in a written reply to the Committee that the existing wealth tax and Gift tax return forms are fairly Simple and could be filled in by the tax-payers with due diligence. Keeping this in view, there is no proposal under consideration of the Government at present to simplify these return forms further.

Consolidated return

2.5 It was also suggested to the Committee that a combined and comprehensive Return incorporating particulars under Direct Taxes Laws *viz.*, Income-tax, Wealth-tax, Gift-tax may be prescribed in addition to the existing returns. The filing of a consolidated Return may be made optional so that the assessees who are subject to these three taxes may file such combined Returns if they wish. Such a step coupled with powers of the relevant authorities to pass a combined tax assessment order would go a long way in expediting tax assessment and reducing arrears.

2.6 In this context, it was further suggested that the Income-tax return may be the basic return; those income-tax assessees who have to file wealth-tax and/or gift tax returns should be allowed to annex statements showing particulars of their movable and immovable properties/gifts together with exemptions claimed. Such a combined return (which may be optional) should be accepted as compliance with the requirements under wealth-tax and Gift-Tax Laws.

2.7 When asked to comment on the aforesaid suggestions, the Chairman, Central Board of Direct-Taxes stated during evidence that "we had examined this matter from time to time but, somehow, we have come to the conclusion that, instead of expediting work, the proposal will impede the assessment work. The number of income-tax assessments that we have to complete during the year is in the vicinity of 4 million while the wealth tax returns are hardly 2½ to 3½ lakhs and the number of gift tax returns is about 60,000. In case we tag on all these returns together, it may be difficult to dispose them off in the sense that sometimes the records have to go to the appellate authorities. So; if wealth tax and gift tax returns are combined with the income tax return, instead of expediting the disposal, it will impede it. In addition, the procedure that we have to adopt for disposal of income-tax cases is different from that of wealth tax and gift tax cases. In income-tax we are concerned with the validity of certain claims, exemptions and allowances and expenditure which have been claimed by the tax-payers. Therefore, we should have all those particulars with us before we are able to complete the assessment.

2.8 In the case of wealth-tax what we have to do is to see the balance sheet and then compute the wealth. In the case of gift tax, the asset gifted is to be seen. Therefore, the procedures of assessment are also differernt."

2.9 The witness further added that "in the case of wealth-tax and gift tax the main question is the valuation of assets. It arise in most of the cases. Therefore, according to us, this combining would not result in expedition. If there is a separate return and the valuation problem arises in the case of wealth tax return, that file alone can be sent to the valuation Cell or the valuation Officer, who can make the valuation and send it back to us. In such cases, the income-tax assessment will not be delayed. The same reasons apply to gift tax also. These are some of the reasons which are responsible for our taking a decision not to have a consolidated return.

2.10 The Committee asked during evidence whether there was any harm in having the same form for Income Tax and wealth tax especially when the same officer who dealt with Income-tax, also dealt with the wealth-tax. The Chairman CBDT explained that "in matter of wealth tax, valuation problem arises. Although we have issued instructions time and again that all the income-tax officers should see to it that they take up wealth tax returns also along with the income-tax return so that the two returns can be reconciled and the assessment can be framed together, especially in the case of bigger cases, our experience has been that since the valuation matter has been involved in this, things get delayed for disposing of wealth tax returns."

2.11 When the Committee pointed out that every case of Wealth-Tax was not referred to the valuation Cell and in most of the cases, returns could be disposed off on the basis of reports of approved valuers and that there should be no difficulty in having consolidated return for income-tax and wealth tax and disposing it of without delay, the Chairman, CBDT admitted that "we do not send all cases to our valuation cell. Only a few cases are referred to the valuation cell". He assured the Committee that "we will give fresh thinking to this subject".

2.12 The Committee observed during evidence that if both the Income-tax and Wealth-tax returns were filed in a consolidated form, it

would be easier to correlate the Wealth and the Income of the assessee at the time of assessment.

2.13 The Chairman, CBDT stated that —

> "I fully agree that there should be correlation between the income-tax assessment as well as the wealth-tax assessment. Actually, our Income-tax Officers are also the wealth-tax officers and the Gift-tax officers. We have separate officers for Estate Duty. We have issued instructions that the two assessment that is the income-tax assessment and the wealth-tax assessment should be taken up together so that there is a correlation and any accretion in the net wealth of the tax-payer is taken into account while doing the income-tax assessment so that whatever he has concealed is detected there. We have very recently issued instructions that we will even give someweightage in disposal as a measure of incentive to these officers who take up the income-tax and wealth-tax assessments together and dispose them of together. This is what we are trying to do. Now, the question is about having a common return. Even if there are separate forms for Wealth Tax and Income-tax, so far as the assessment is concerned, they can be taken up together. In most of the cases we have not to make a reference to the valuation cell and we can depend upon the valuation made by the approved valuers.".

Simplification of returns

2.14 In a number of non-official memoranda it was represented to the Committee that Wealth-tax Return contains several unnecessary columns which could be dispensed with. Some of the specific suggestions made are : Schedules at page 12 of the return form are mere formalities and need not be retained. The existing wealth tax return is complicated and the assessees are required to show separately business assets and non-business assets. There is no need for showing these assets separately and the contents of the return form could be reduced. Suggestions were also made to the Committee to reduce the length of the return by calling for basic information in the return and leaving the rest to be given in statements which could be annexed to the return.

2.15 Similarly in case of Gift tax it has been represented that Gift tax return forms needs as much simplification as returns for other taxes. The minimum that can be done is to omit various annexures from the return. The requisite information regarding various gifted properties, transfers etc. can be asked by way of statements to be attached with the returns.

2.16 When asked to comment on this suggestion the Chairman, CBDT stated during evidence that —

> "It is true that wealth-tax return form is somewhat complicated and lengthy in the sense that the first two pages which give the substantive information and then there are 16 annexures

to that. But the existence of these annexures becomes necessary for giving the description and location of the various assets whose value has been included in the net wealth. It is for this purpose that some of the annexures are there. Sometimes, on account of amendments that we make through the Finance Act, the revision of the wealth-tax form also become necessary. Last year, we had tried to do an exercise about simplifying the income-tax return and we were successful in that. This year, we propose to take up the simplification and revision of the wealth-tax return form. Here, I would like to mention that while it would be our anxiety to make the return form too short, in some cases it may lead to unnecessary harassment of the tax-payers because the wealth-tax officer will have the right to call him again and again for every small detail that may be necessary. So, we have to strike a balance between the lengthy or the complicated return form and our requirements under the law. But, as I said, we are trying to revise the form and make it simpler".

Estate Duty Return

2.17 Estate Duty becomes payable from the date of death of a person. In order to enable the Assistant Controller to determine the duty payable, full particulars of all properties passing or deemed to pass on the death have to be furnished voluntarily in the prescribed return form E.D.I.A., within 6 months of the date of death. If the return is not filed within 6 months of the date of death and the Assistant Controller has not granted any further time for filing the return at later date, the accountable person will be liable to pay penalty. Where an executor applies for grant of representation he is required to annex the account form to the affidavit of valuation filed in a court, specifying all property liable to duty, and deliver a copy thereof to the Assistant Controller. The Account ED.IA form can be rendered jointly together by more than one person. A certified copy of the will if any has to be appended. In the case of small estates where exemption from Estate Duty is claimed by reason of the smallness of the estate there is a separate return form numbered as E.D. 5-A.

2.18 According to the Ministry, the existing forms of return of Estate Duty are fairly simple and could be filled in by the taxpayers with due diligence. Keeping this in view, there is no proposal under consideration of the Government at present to simplify these return forms further.

2.19 But contrary to this view of the Ministry, a number of non-official organisations have represented to the Committee that estate duty return was much out-dated and complicated and required to be revised and simplified thoroughly. The requirement of affidavit sworn before a Magistrate or an Oath commissioner should be dispensed with and instead there should be verification of the Return by the Assessee as in case of other taxes. In informal discussions with Commissioner of Income-tax during tour the Study Groups were told by them that the Estate Duty returns could be simplified and the affidavit could be dispensed with and substituted by verigcation as done in income-tax return.

2.20 When asked to comment on the aforesaid observations and suggestion, Chairman, CBDT stated during evidence that :

> "I agree that both these forms are very complicated and need simplification.....Recently the entire matter was gone into by the Choksi Committee and they made certain recommendations. The Board examined those recommendations and came to some tentative findings. In the meanwhile the Economic Administrative Reforms Commission was appointed. The Commission are now seized of the matter. Besides the substantive portion of the Estate Duty Act, they are also looking into the forms and procedures with a view to simplifying them. I do hope that, after their recommendations, when they are available, the forms would be completely simplified."

2.21 The witness added that "So far as Affidavit is concerned, I was going through the previous correspondence. I found that, as far back as in 1959, the Tyagi Committee had gone into the matter and recommended that this Affidavit should be dispensed with and the vertification should be in the same manner and in the same form, as in income-tax, gift tax and wealth tax matters. I agree that this Affidavit can be dispensed with.

Revised Return under Estate Duty Act

2.22 It was brought to the Committee's notice that at present there is no provision to file a revised return under Estate Duty Act in case the original return is found to be defective later on. Under other Direct Taxes laws, tthere is a provision for filing revised returns to correct errors or omissions.

2.23 When the Committee asked the Ministry about the reasons to deny the facility of 'revised' return under Estate Duty Act, the Chairman CBDT stated that "There is absolutely no objection to having such a provision in the Estate Duty Act also on the same lines as for Wealth Tax, Income-Tax and other Direct Taxes.'

Extension of Time for Filing of Returns

2.24 It was represented to the Committee that when extension of time for submission of return was sought and given by the Department, the fact was not readily available in the Income-tax Department records and this led to harrassment of the assessee. It was suggested that there should be a column in the return to indicate specifically whether extension of time had been obtained and if so when and till what time ?

2.25 Giving his reactions to this suggestion Chairman, CBDT, stated in evidence that "So far as income-tax returns are concerned, in the revised forms which we devised only last year, we have provided for a column; so far as wealth tax returns are concerned, we are going to simplify that and we shall certainly provide that column so that the position is apparent on the basis of the return itself."

Acknowledgement of Returns

2.26 It was brought to the Committee's notice that at many places formal acknowledgements of returns were not given at the time of submission of returns but only small unstamped chits were issued. These chits had

later to be exchanged for proper acknowledgements. Many a time proper acknowledgements were not given even in lieu of the chits and the assessee had no remedy.

2.27 Chairman Central Board of Direct Taxes informed the Committee during evidence that "In such cases where acknowledgement slips are to be issued, chits should not be given. We do not deny at the same time that there may be some such cases."

2.28 The witness further stated that it is possible in certain rare cases that the office may get a large number of returns on the last day of the limitations period and because of the large volume of work, it may not be possible for the clerk to do this job in one counter. I do not deny that sometime proper acknowledgements may not be given even in lieu of the chits. That possibility is not denied and wherever necessary the Commissioners and IACs should go round and see that more officers are deployed if the situation warrants the same."

Receipted Challan

2.29 It was represented to the Committee that it took more than 15 days to get the receipted challan from the banks after making payment. If the total tax payable as per returned income wealth was paid by due date for filing the return, delay resulting in getting receipted challans should be ignored.

2.30 When asked to comment on the aforesaid suggestion Chairman, Central Board of Direct Taxes stated that "Penalty is imposed under sec. 271(1) (a) under Section 139A only when the return is filed after delay of one complete month. Banks take sometimes 15 days. Suppose a tax payer deposits the self assessment tax on 30th June and files the returns on 15th of July, along with the challan. If one complete month has not gone by, we don't charge penalty. Suppose he deposits the self assessment tax on 16th or 17th of July. Banks take another 15 or 16 days. He may file the return in the first or second week of August. Here, one complete month has gone by. In such a case we levy penalty."

2·31 There is a general feeling that Wealth-tax and Estate Duty returns are unnecessarily cumbersome and lengthy though the Ministry claimed that the returns were fairly simple and did not require any simplification. The Committee are glad to note that in the course of evidence before the Committee, Chairman, Central Board of Direct Taxes, frankly admitted that these returns were very complicated and lengthy. They take note of the assurance given by the Chairman, Central Board, that these returns would be simplified. The Committee expect this exercise to be completed without delay and simplified returns for Wealth Tax, Gift Tax and Estate Duty introduced from the assessment year 1983-84.

(S. No. 1)

2·32 The Ministry has also accepted the view voiced before the Committee by non-official organisations that the affidavit on the Estate Duty return required to be sworn before a magistrate or Oath Commissioner is not necessary and can be substituted by a simple verification as done in the Income-tax return. The Ministry has also agreed that to avoid unnecessary correspondence between the Department and the assessee, a column can be provided in the return to

indicate specifically whether extension of time for submission of return had been obtained by the assessee in any particular case and if so when and till what time. The Committee expect that these improvements as agreed to by the Ministry would be incorporated in the simplified returns to be introduced from the next assessment year. (S. No. 2).

2·33. A case for prescribing a consolidated return for Income-tax, Wealth-tax and Gift-tax was made out before the Committee by non-official organisations. The filing of a consolidated return, it was suggested, should be optional so that assessees can choose to file either separate returns or a consolidated return as may be convenient to them. Since Income-tax, Welath-tax and Gift-tax assessments in respect of an assessee are done by the same Income-tax Officer and since every case of Wealth-tax is not required to be referred to the valuation cell, Chairman, CBDT, after a little bit of hesitation initially, agreed that the question of introducing a consolidated return can be considered afresh. The Committee feel that consolidation of returns will not only facilitate assessment of all the three taxes, viz., Income-tax, Gift-tax and Wealth-tax, at one go but would also make it easier for an Income-tax Officer to correlate Wealth and income of an assessee and have a complete picture before taking a final view on the tax liability of the assessee. They, therefore, recommend that the Ministry should examine the question of introduction of a consolidated return for Income-tax, Wealth-tax and Gift-tax with an open mind and if necessary, try it on an experimental basis before placing it on a permanent basis.

(S. No. 3)

2·34. There is at present no provision to file a revised return under Estate Duty Act in case the original return is found to be defective later on, as is the case under other Direct Taxes laws. The Ministry has no objection to having such a provision in the Estate Duty Act also. This may be done at the earliest opportunity.

(S. No. 4)

2.35. The Committee are unhappy to learn that formal acknowledgements of returns are not issued by the Department in all cases. Sometimes at the time of submission of returns small unstamped chits showing receipt of returns are issued and these are required to be presented at the Income-tax office later for getting formal acknowledgements. The Ministry has conceded that such a practice might have been observed at some places on the last day for submission of returns due to excessive rush of work. This explanation is not acceptable to the Committee. The Committee would like the Ministry to ensure that formal acknowledgements in prescribed forms are issued in all cases without fail at the time of submission of returns by assessees.

(S. No. 5)

2·36. It normally takes an assessee about 15 days to get receipted challan from the bank after payment of tax amount. It has been suggested to the Committee that if the tax as per self-assessment procedure is paid by an assessee by the due date for filing return, delay in filing the return due to the time taken by bank in giving receipted challan should be ignored. This is a reasonable suggestion. The Committee feel that the Ministry should effect necessary amendments in the rules to condone short delays in filing returns in such circumstances.

(S. No. 6)

CHAPTER III

ASSESSMENT PROCEDURE

(*Wealth Tax, Gift Tax & Estate Duty*)

Wealth Tax & Gift Tax

3.1 In the Income Tax Department every Income-tax Officer is also a Gift Tax Officer and a Wealth-tax officer and the jurisdiction over the gift and wealth-tax assessments of his income-tax assessees is vested in him. There is, however, no Summary Assessment Scheme under administrative guidelines in respect of Wealth-tax and Gift-tax. However, u/s 16(1) of the Wealth-tax Act and u/s 15(1) of the Gift Tax Act the officer may accept returns of wealth or gift filed before him without requiring the presence of the assessee and without calling for any further information.

Estate Duty

3.2 The Estate Duty Act is administered by the Controllers and Estate Duty, Deputy Controllers of Estate Duty and Assistant Controllers of Estate Duty. Under the Estate Duty Act the 'Controller' of Estate Duty includes Deputy Controller of Estate Duty and Assistant Controller of Estate Duty. Thus all functions under the Estate Duty Act can be performed by the three different levels of officers. However, in practice the assessment work is generally done by the Assistant Controllers of Estate Duty.

3.3 In a few places in the country the Income-tax officers have been appointed to carry out the functions of Assistant Controller of Estate Duty in addition to their own functions under the Income-tax, Wealth-tax and Gift-tax etc. However, in most cases the Assistant Controller of Estate Duty perform functions only under the Estate Duty Act and for this purpose the estate duty cases of deceased persons are assigned to them on territorial basis.

Demand notice

3.4 It was represented to the Committee that many a time demand notice, was sent without making it clear as to how the demand had been arrived at.

3.5 Asked whether it was not possible to explain the manner in which the demand had been arrived at for the benefit of the assessees, the Chairman, Central Board of Direct Taxes informed the Committee that—

> "In the Demand Notice, there is no question of indicating the tax calculation. However, in the instruction, we have directed that the ITO should invariably indicate the amount chargeable or payable in the Order or in the alternative send ITNS 150 or 158. Now, these ITNS are prepared at the time of assessment. There, the entire calculation is shown and after that a copy of that is to go to the Directorate of Research and Statistics who compile the All India Statistics on the basis of the figures given in the ITNS. We stated that the officers should give the

calculations right in the body of the Assessment order or alternatively send the copy of ITNS 150 and 158 to the assessees so that they may know how the tax has been worked out".

Personal hearing

3.6 It was brought to the Committee's notice that the wealth-tax officers had a tendency to call assessees for personal hearing even when they had not scrutinised the returns and were not ready for hearing. On a similar complaint in the matter of Income-tax, the Ministry had last year assured the Committee (Para 2.58, 9th Report—1980-81) that instructions would be issued to the Income-tax officers to send list of points alongwith the notices of hearing to the assessees.

3.7 Asked whether instructions had been issued by the Ministry in this regard the Chairman, Central Board of Direct Taxes stated that "We have issued clear instructions on 18-11-80. Field officers are there to inspect. They conduct inspection of each ITO's work. They send report to us". When the Committee pointed out that these instructions were not properly followed in actual practice, the witness assured the Committee that "We have it checked up. I have two inspecting officers with me; they run about to see whether the work is properly done".

Summary Assessment for Wealth Tax/Estate Duty

3.8 It was suggested to the Committee that system of summary assessment should be introduced in case of wealth-tax and Estate Duty. The limit for summary assessment may be upto 5 lakhs and all cases where there is no immovable property or any such asset which requires valuation by experts, and all the relevant information is furnished by the accountable persons alongwith the accounts of wealth or Estate (as the case may be), the assessment procedure should be completed in a summary way.

3.9 When asked to comment on this suggestion, Chairman, CEBDT stated during evidence that the adoption of summary assessment scheme for wealth tax was considered by the Board in 1976 and the view of the Board as well as the Commissioners was that it (S.A.) should not be extended to wealth tax assessment because the wealth tax was payable only by the affluent class of people and in case the Summary Assessment scheme was extended to such an affluent class of society, it would perhaps run counter to the policy of the Government and may come in for adverse criticism. The witness further added that the original idea of introducing the wealth tax in our statute was not getting more revenue and 'Mr. Nicholas Kaldor who had studied our tax structure, had suggested, an integrated tax system, that is to say, if there is any understatement for income-tax, the tax payer would be caught in the wealth tax and if there is any concealment in the wealth tax, he would be caught in the estate duty". According to the witness if summary assessment scheme was introduced for wealth tax, it would run counter to the efforts to check evasion of tax.

3.10 Besides, the number of wealth tax payers is not very large and the Ministry does not consider it necessary to have summary assessment scheme in the case of wealth tax.

3.11 Chairman, CBDT also stated that—

> "In case we decide not have the summary assessment scheme for wealth tax, we should not have it for estate duty also because there is no continuity of record. In the case of income tax, there is some continuity of record, on the basis of which a person can find out whether his assessment has been made. Further, in order to look into the tax payers growth of wealth and then to compare it to incomes, shown in various years, we have got scrutiny assessment procedure also. We can select a certain percentage for detailed scrutiny out of the various income ranges. For estate duty, there is no continuity of record. We think that it would not be desirable to have a summary assessment scheme for it".

Application of Wealth Tax to J & K

3.12 The Committee were informed during their visit to Jammu & Kashmir that the application of wealth tax Act to the State of J&K had been challenged in the High Court. More and more assessees were filing petitions in the High Court and getting stay orders.

3.13 Asked to state the factual position, Chairman, CBDT informed the Committee that—

> "A number of writ petitions are being filed and have been filed challenging the validity of the application of the wealth-tax Act to the State of J&K. This is based on the ground that the levy of wealth tax does not fall under entry No. 86 of List No. I of the 7th Schedule of the Constitution and that it falls under entry No. 97 of the State List. Therefore, according to the petitioners, the application of the Wealth-tax Act to the J&K State is *ultra vires*. A number of writ petitions have been filed and the petitioners have taken the stand on the observation of the majority view of the Supreme Court in the case of Union of India *vs.* Harbhajan Singh which seems to suggest that the levy of wealth tax does not fall within entry No. 86 of List I, and it falls within entry No. 97 of the State List, which does not apply, according to the Act to J&K.

3.14 The witness further added that—

> Since there are a large number of writs and the High Court has granted a stay, we have been pursuing the matter with the Ministry of Law, so that they can persuade the Attorney General or the Solicitor General to appear for our Department in the High Court of J&K and the matter can be decided and if it decided against us, then it can be taken to the Supreme Court".

Complex provisions in Estate Duty Act

3.15 It was represented to the Committee that there were several deeming and complex provisions in the Estate Duty Act like sections 9 and 10 dealing with gifts, sections 12 and 27 dealing with settlements, section 17 dealing with controlled company rules and section 46 on limitation of allowance of debts. The gathering of relevant data and their processing for the application of these provisions could be examined with a view to making their application easier.

3.16 Chairman, Central Board of Direct Taxes stated during evidence that—

> "It is true that the Estate Duty Act is very complex and it is very difficult even for an expert to understand it. What we find is that the Estate Duty Act 1953, was modelled primarily on the corresponding provision relating to the Estate Duty Act in U.K. which was an Act passed by the Parliament of U.K. in 1894. We had adopted this Act almost fully from that statute. The Chokshi Committee has made several recommendations about the amendment of the Estate Duty Act. Then we had examined all the recommendations, we had also got certain suggestions and recommendations from various Chambers of Commerce and we had also some suggestions from our own officers about the loopholes that existed there. We also found that certain provisions of the Estate Duty Act which are modelled on the U.K. Act do not apply to the socio-economic conditions prevailing in our country in the situation in which we are. So, we had decided at that time to bring about a comprehensive Bill amending our Estate Duty Act. But at that time the entire matter was transferred to the EARC headed by Mr. Jha. They are now seized of the matter and as soon as their recommendations are received, we will do all that is necessary to simplify the Act".

Certificate of Assessment under Estate Duty Act

3.17 In a memorandum submitted to the Committee it was stated that in the matter of Estate Duty neither the provisional assessment is made as laid down u/s 57, nor a certificate is issued as required by the court for issuing Probate or succession certificate is though tax as per returns is paid, or provision for the payment is made, which should normally satisfy the controller.

3.18 Asked to comment on the aforesaid statement Chairman, Central of Direct Taxes explained during evidence that—

> "The Assistant Controller of Estate Duty has to check wealth or the estate disclosed by the accountable person. Then he calculates tax on that. The incentive for him to dispose of the provisional assessment immediately is that he gets some credit. Under section 57(2) he has to give a certificate that the duty has been paid or that satisfactory arrangement has been made for making the payment. Section 57(2) of the Estate Duty Act is there which casts a statutory obligation on the Controller—(it includes Deputy and Asstt. Controller also) to issue certificate".

3.19 Asked whether the instructions in this regard were being followed the witness said—

> "We have depend on our field officers like the Commissioners and Inspecting Assistant Commissioner who are supposed to ensure that the instructions issued by the Board are followed. They have to send to us certain number of inspection reports every month. In addition, we have very recently created a Grievance

Cell in the office of the Chairman in the Board. We have advertised it in the papers also. In case some assessee has to get some refund or some certificate of exemption or he is transferred but his file is not transferred, he can approach the Chairman directly. Every day, I receive some of these things and immediate action is taken."

Court Fee

3.20 It was represented to the Committee that in most of the cases court stamp is not allowed to be deducted from the estate duty as per return, though according to law court fee is deductible. When asked to state the factual position in this regard, the Chairman CBDT stated that—

"So far as deduction of court fee from the estate duty is concerned, section 50 of the Estate Duty Act casts a statutory obligation that the amount of estate duty payable shall be reduced by an amount equal to the court fee paid. So, there is no question of the Asstt. Controller not allowing the same. There was a case in Madras which went to the High Court, where it was held that time-limit for rectification would not be a bar for giving relief under section 50. Sometimes it may happen that the assessment has been raised for estate duty and the accountable person either forgot or did not claim this relief in respect of court fee paid. Later on, he approached the Asstt. Controller and his case was rejected on the ground that it has become time-barred. But after the decision given by the High Court, that rectification can be made at any time if the court fee has been actually paid, there is no case for further doubt".

Estate Duty Clearance for payment of Provident Fund dues

3.21 It was represented to the Committee that the Employees Provident Fund Organisation needs Estate Duty clearance for payment of Provident Fund dues to the heirs of the deceased subscribers. The Estate Duty officials do not issue the clearance certificate expeditiously. Often the figures relating to P.F. dues receivable vary from the figures actually disbursed by the E.P.F. Organisations. In such cases, difficulty is experienced in amending the figures subsequently for Estate Duty purposes. It was suggested that there should be a specific provision to allow such amendments when facts are placed before the Assessing Officers concerned.

3.22 During evidence the Chairman, CBDT, admitted that some complaints did reach earlier. The complaint actually was from those workers whose estate was around Rs. 50,000/-. In that case, the trustees of the Provident Fund refused to make the payment till this clearance was obtained from the Assistant Controller of Estate Duty".

3.23 The witness added that "we had issued instructions that where the provident fund amount is less than Rs. 25,000/- the trustees can allow the payment of the provident fund of the employee and later on, if any estate duty is found payable, that can be paid out of the forfeited amount. Sometimes, some amounts are forfeited by the trustees. That amount belongs to nobody. So, they can pay out of that fund, and then file a suit against the heir and try to recover the amount".

3.24 The witness further stated that "in the case of insurance linked scheme also where the amount is upto Rs. 10,000/- that can also be paid. Therefore, there should not be any difficulty so far as small cases are concerned. In regard to bigger cases, probably there may be some difficulty".

3.25 When the Committee pointed out that "In case the Provident Fund Organisation does not want to exercise its discretion, then the person's heirs will suffer," the Chairman CBDT informed the Committee that "The instructions are not binding. Recently a Committee was constituted by the Labour Ministry for reviewing Employees Provident Fund Act and scheme. I am a member of that Committee. We have decided that this provision should be made mandatory. I do not know whether the Labour Ministry had given effect to this recommendation".

Discharge Certificate under Estate Duty

3.26 It was brought to the Committee's notice that Section 67 of the Estate Duty Act provides for a discharge certificate being issued only on application being made after completion of assessment. It was suggested to the Committee that a provision may be introduced to provide for a discharge certificate being issued alongwith the assessment order where no duty is payable pursuant to the assessment either on account of absence of dutiable estate or when the necessary duty has already been paid. This would minimise delays.

3.27 The Chairman CBDT stated during evidence that "we fully accept this recommendation and we will try to implement it".

Time limit for Assessment of three taxes

3.28 A number of Non-official organisations represented to the Committee that at present there are different time limits for completion of wealth-tax and Gift-tax assessments as compared to Income Tax assessments. For Estate Duty, there is no time limit at all. For Wealth tax and Gift-tax the time limit is 4 years from the end of the relevant assessment year whereas for income tax it is 2 years. They suggested that it should be considered whether a uniform time limit could not be fixed as different time limits acted as a drag in synchronising the assessments of an assessee under all the three acts. One difficulty in this regard is stated to be the long time taken in valuation of assets under Wealth tax and Gift tax laws.

3.29 Asked to comment on this suggestion, Chairman, Central Board stated during evidence that :

> "It would be very ideal state of affairs to have the same time-limit for all the assessments, for income-tax wealth-tax, gift-tax as well as the Estate Duty assessment."

3.30 He added that 4 years time limit for Wealth tax was fixed a few years back and at that time, the Ministry was guided by the consideration of valuations of immoveable property, jewellery, shares etc. The Ministry thought that from the State of affairs where there was no time limit, 4 years time-limit should be fixed and according to the Ministry this was sufficient for the time-being. The Chairman, CBDT, stated that "if you think we can give a fresh look to it, we can try and we are also waiting for the report of the Economic Administrative Reforms Commission."

3.31 When in evidence it was pointed out that in one particular case brought to the Committee's notice by a Chamber, the Estate Duty return was

filed in the year 1961 before the Assistant Controller of Estate Duty, Calcutta and the care was still pending (1981), the Chairman Central Board of Direct Taxes stated that :

> "At present there is no time-limit laid down in the Estate Duty Act for the completion of Estate Duty Assessment. In the interest of proper administration of this Act and also to relieve possible hardships to the persons concerned just like the case just now mentioned where it had been pending since 1961—we do admit that it is desirable to lay down a specific time limit. We have considered this; and probably this may also be acceptable to the Economic Administration Reforms Commission (EARC). The Choksi Committee has also recommended that there should be a period of four years from the end of financial year for the completion of assessments."

3.32 Chairman, CBDT, added that :

> "For the period till the Act is amended and this time limit is introduced, we have introduced a number of administrative instructions-first in 1978, and later on reiterated in 1980-81. These are administrative instructions, not necessarily having the force of statute, saying that the cases pertaining to 1975-76 or earlier years of Estate Duty should be finalised. In 1980-81, we found that there were some cases still pending we monitered the position. We told the Controller of Estate Duty to see that these cases were disposed of. There were very few cases prior to 1975-76."

Assessment procedure—Separate Enactment

3.33 The Committee found that it was the opinion of not only assessees and non-official organisations but also of senior officers of Income Tax Department that the procedure for assessment of Income-tax, Wealth-tax, Gift tax, Estate Duty, Interest tax, Sur-tax and Hotel receipt tax which is laid down in respective Acts, could be considerably simplified and rationalised if a common procedural law is enacted by Parliament applicable to all the Direct Tax Laws. This would make the various Direct Taxes Acts much less voluminous and also make the procedural law easier to comprehend and refer to.

3.34 When asked about the thinking of the Ministry in this regard, the Chairman, Central Board of Direct Taxes informed the Committee that :—

> "These have been examined by the Choksi Committee. They have recommended Management and Administration Act and this has been debated in Board meetings and other forums. It has been found that this is not a practicable idea. The Board, after closer examination, did not agree with some of the recommendations. The area which is common to all taxes is rather small. There are inherent difficulties of drafting of such an Act. There are certain advantages of having different procedures in each case, depending upon the peculiarities of each case, in addition to provision of a common law. But the matter is now before the EARC."

Refunds

3.35 Numerous representations had been made to the Committee regarding refunds. It was stated that :—

(i) Assessment Orders which result in refunds are served late.

(ii) When they are served, they are without refund vouchers.

(iii) When assessees approach the Deptt. for refund vouchers, the lower staff expects 'tips' and if 'tips' are not paid, harassment starts.

(iv) Refund vouchers where issued, reach after the validity period is over, necessitating re-validation.

(v) Then, bank advise is not issued simultaneously, it is delayed.

(vi) Interest on refunds is not paid automatically. One has to approach the Deptt. repeatedly for getting interest.

3.36 When asked as to why the refund system had not been streamlined so far, the Chairman, Central Board of Direct Taxes replied during evidence that :

"Unlike Income Tax there is no tax deducted at source under the Wealth Tax Act so that the refunds can arise only in one situation, that is, where the order of the WTO is varied in appeal or revision. We have issued instructions from time to time that refunds must accompany the assessment order itself just like the demand notice accompanies the assessment order. We have also said that within seven days of the completion of the assessment, the refund must be issued. If this is not done strict disciplinary action would be taken against the WTO. The supervisory officers are supposed to look into these matters and take necessary action."

3.37 The witness added that :

"We have also taken another step in so far as the advice to the bank is concerned. We have dispensed with the bank advice where the refund is upto Rs. 999. With this a very large number of refunds are taken care of. Bank advice is issued for Rs. 1,000 and above the number of such cases is very small."

3.38 Chairman, CBDT, informed the Committee that on result of the recommendations of the Estimates Committee (9th Report EC.—1980-81) a study was undertaken by Director C&M Department of Income Tax and it was found that :—

"Out of 250 cases, only in 5 cases the refund had not been given within the time allowed. In 52 cases relating to appeals prompt refund was not given in 20 cases and interest for delayed refund was granted in 12 cases. As it is an avoidable loss to the revenue we are looking into these 12 cases as to why action should not be taken against the concerned officers."

3.39 The witness added that :

"Now all refunds are sent by registered post. Here and there some lapses are there and we are trying to plug these loopholes."

3.40 The Committee pointed out that last year also when they were examining 'Income Tax', the Ministry had said the samething as this time, Assessees, the Committee added, were feeling harassed by delays in getting refund and the action taken in the matter did not appears to be adequate. Chairman, CBDT stated that "we are undertaking a study. We have taken action on a sampling basis."

3.41 Asked to explain reasons for delay, the witness added that "we are hopelessly inadequately staffed, the record keeper has to trace the files of 6000 cases for sending refund order. When we have to send it within 7 days after the completion of assessment, it becomes so very difficult. These are the practical difficulties."

3.42 Secretary (Revenue) added that besides inadequacy of staff, "there are also other reasons."

Pendency of Assessment

3.42 Secretary (Revenue) added that besides inadequacy of staff, "there tax, Gift-tax and Estate Duty at the end of year 1976-77, 1979-80 and 1980-81, is given below :—

As on	Total Pendency	One year old	2 years old	3 years old & earlier
		Wealth Tax		
31-3-1977	288949	67107	34788	54378
31-3-1980	432988	101878	65193	62324
31-3-1981	499905	N.A.	N.A.	N.A.
		Gift Tax		
31-3-1977	22580	4578	3794	6955
31-3-1980	27403	7228	3490	4940
31-3-1981	38226	N.A.	N.A.	N.A.
		Estate Duty		
31-3-1977	27256	7467	3123	5628
31-3-1980	34891	7366	5323	8377
31-3-1981	35862	N.A.	N.A.	N.A.

3.44 From the above statement it is seen that pendency of assessments in case of Wealth-tax, Gift-tax and Estate Duty has been increasing noticeably. When asked to state the reasons for such increase in the pendency, Chairman Central Board of Direct Taxes explained that :—

> "It is correct that the pendency of assessment work has increased. It has mainly increased due to two reasons. One reason is that the workload seems to have outstepped the manpower available in the Department. That is a very important factor. We can expect the disposal of work from the wealth-tax Officer or, for that matter, from the gift-tax officer or the estate duty officer according to the norm which has been prescribed by the SIU. These norms have been worked out after the detailed study of the time consumption in the case of various assessments. So, we cannot expect more work from them. We see

that they not only give that much work but something more, that is, 10 per cent or 15 per cent more. Due to our manpower being not quite adequate to match with the workload which has been generated, the pendency is increasing."

3.45 The witness added that there is another factor also responsible for that. We had sometime back set up a survey machinery on a more or less permanent basis. As a result of this, we have added 20,000 more assessments in 1979-80 over the previous year and 33,000 more assessments in 1980-81 over 1979-80. So, more assessments are being thrown up so that in spite of the fact that wealth-tax officers are giving disposal which is slightly more than the norms prescribed by the SIU, the pendency is increasing. The witness further added that our main difficulty is about the shortage of ministerial staff.

3.46 A statement indicating the collection of Wealth tax, Gift-tax and Estate Duty for the first five years (i.e. of the year 1976-77, 1977-78, 1978-79, 1979-80 and 1980-81), is given below :—

(Source figures for year 1976-77 to 1979-80 are based on the IX Month budget files).

Figures in crores of kg

Year	WT	GT	E.D.
1976-77	60·16	5·71	12·45
1977-78	49·08	5·60	13·78
1978-79	54·78	5·85	13·14
1979-80	66·09	6·76	13·93
1980-81*	67·58	6·26	15·61

*Figures for 1980-81 are based on the Telegraphic net collections.

Arrears of Tax

3.47 The following table shows the arrears of tax demand under Wealth-tax, Gift-tax and Estate Duty for more than 1 year, 2 years and 3 years as on 31st March 1980 :—

(Figures in crores of rupees)

	Wealth-tax	Gift-tax	Estate Duty
Upto one year old	62·42	4·34	4·69
Over one year but upto two years old	87·77	8·16	3·39
Over two years but upto three years old	14·51	4·20	2·15
Over three years old	15·83	2·07	7·00
Total	180·53	15·77	17·23

3.48 According to the Ministry of Finance the reasons for such pendency are as under :—

(a) Demands are in dispute before the Appellate Authorities and in many cases stay or payment by instalments has been granted till the disposal of appeals.

(b) In some cases assessees have become insolvent and the assets have been taken over by Official assignee.

(c) In some cases demands have been raised as a protective measure and collections are not pressed in such cases till the final disposal of the issue involved.

(d) In some cases the assessees have left for Pakistan without leaving any asset in India.

(e) Double taxation/Duty relief applications are pending in some cases.

(f) In some cases petitions before settlement Commission are pending.

(g) Petitions for waiver of penalties etc. are pending.

3.49 The Ministry informed the Committee that following steps had been taken, proposed to be taken to realise arrears :—

(a) The appellate authorities have been requested to take up the High demand appeals of other Direct-taxes on priority basis. *Vide* D.O. F. No. 3030/13/81-ED dt. 31st July 1981.

(b) Claims have been filed before the official assignee to pay off the outstanding demand.

(c) Where the demands are not likely to be collected for any reasons, write-off proposals are being considered.

(d) Necessary instructions on delegation of powers for scaling down of tax Arrears in respect of Wealth-tax, Gift-tax, Expenditure tax and Estate Duty are under issue.

(e) Attachment of assets.

(f) Sale of securities in case of failure of payment.

(g) Pending petitions for waiver of penalties etc. are being disposed of expeditiously.

(h) Since a part of the arrear demand is outstanding because of penalties which are subject matter of petitions for waiver (filed before the Commissioners of Income-tax) the Board have filed the following targets for the disposal in the Action Plan for 1981-82 :—

"Dispose of all petitions brought forward on 1-4-1981".

(i) Since a large amount of demand is involved in cases where revision petitions to the Commissioners of Income-tax have been filed the Board have been fixed the following targets in the Action Plan 1981-82 :

"Revision Petitions—50% of the Current Workload."

(j) Since a part of the demand relates to cases where rectification applications may be pending or where orders forgiving effect to

appellate/revisionary orders may be pending the Board have fixed the following targets in the Action Plan for 1981-82 :—

"(a) Dispose of 100% of the rectification claims pending on 1-4-1981, by 30-6-81 and current claims within three months of their receipt."

"(b) Give effect to all appellate/revisionary orders received upto 31-3-81, by 30-6-81 and current orders within three months of their receipt."

3.51 The expectation of the assessees that the basis on which the tax demand is calculated should be clearly indicated in the demand notice, is quite reasonable. The Committee are glad to note that the Ministry has agreed to issue instructions to the officers to give details of tax calculations in the body of the assessment order or send these details to the assessees separately on a prescribed form so that they may be able to know how the tax has been worked out.

(S. No. 7)

3·52 In pursuance of the Estimates Committee's recommendation made last year in the course of the examination of the subject of Income-tax Department (Para 2·58, 9th Report 1980-81), instructions are stated to have been issued by the Department that along with the notices of hearing the Income-tax Officers should send to the Assessees lists of points on which they would like the assessees to come prepared for discussion or to produce further information. The Committee regret to find that these instructions are not being properly followed by the Income-tax Officers in actual practice at all places. The Committee would like the Ministry to enforce its instructions in the field and ensure that no notice of hearing is issued without a list of points attached to it.

(S. No. 8)

3·53 The Committee have examined the suggestion for introduction of summary assessment system in the case of Wealth-tax and Estate Duty also as is being done in the case of Income tax in the light of the Ministry's reactions thereto. They agree with the Ministry that in the case of Wealth-tax and Estate Duty, summary assessment system would not be desirable.

(S. No. 9)

3.54 A number of writ petitions are pending in the High Court of Jammu and Kashmir challenging the validity of the application of Wealth-tax Act to the State. The Committee learn that in some cases the petitioners have also obtained stay orders. This has made the future of Wealth-tax Act in the State of Jammu and Kashmir uncertain and the assessees are unable to make up their minds to pay the tax or not. The Committee take note of the steps being taken by the Ministry in defending the case in the High Court and, if necessary, in the Supreme Court. The Committee wonder if the Ministry could move the High Court to take up the writ petition and give its decision on the matter at the earliest.

(S. No. 10)

3·55. The assessees find various provisions of the Estate Duty Act quite complex and feel that these should be simplified. The Ministry has also admitted that the Estate Duty Act, which was modelled on a 19th century Act of British Parliament, is very complex and too difficult even for an expert to

understand it and some of its provisions are irrelevant to the socio-economic conditions in India. The Committee note that the Ministry had decided to bring forward a comprehensive bill to amend the Estate Duty Act but, before any action could be taken up in this regard, the entire matter was transferred to Economic Administration Reforms Commission for its consideration. The Committee hope that the Economic Administration Reforms Commission would give its considered opinion in this matter at an early date and the Ministry will thereafter take conclusive action to simplify the Act and orient it to suit Indian conditions without delay.

(S. No. 11)

3·56 Even though Section 57 of the Estate Duty Act casts a statutory obligation on the Controller, Deputy Controller and Assistant Controller of Estate Duty to issue certificate of payment of estate duty after it is paid or after satisfactory arrangement has been made for its payment, the rquired certificate, even a provisional certificate it has been represented to the Committee, is not issued by the authorities with the result that the heirs of the deceased person are put to inconvenience. The Ministry has stated that necessary instructions in this regard have been issued and it depends on the Commissioners and other officers to ensure that these instructions are followed. Obviously the instructions are not being followed at all places. The Ministry should not rest content merely with issuing instructions. It should also ensure through regular monitoring and inspections that the instructions issued by the Central Board of Direct Taxes not only in this case but in all other matters are actually observed by field formations. The Committee would like to be apprised of the action taken in this regard.

(S. No. 12)

3. 57 In regard to court fee in Estate Duty cases also the Committee regret to observe that even though Section 50 of the Estate Duty Act casts a statutory obligation that the amount of Estate Duty payable should be reduced by an amount equal to the court fee paid, this is not being done in actual practice at many places. The Committee find that recently Madras High Court has given a decision removing any doubt in this respect. At least now onwards the authorities concerned should not have any difficulty in allowing deduction of court fee from the amount of Estate Duty payable under the Act. The Committee would like the Ministry to issue categoric instructions in this regard and watch their implementation.

(S. No. 13)

3. 58 The Employees Provident Fund Organisation requires Estate Duty clearance certificate for payment of provident fund dues to the heirs of the deceased subscribers. It has been brought to the Committee's notice that the Estate Duty authorities do not issue clearance certificates expeditiously with the result that the heirs of the deceased subscribers are unable to got their dues from the organisation promptly. The Central Board of Direct Taxes has issued instructions that where the provident fund amount is less than Rs. 25,000/- the trustees of the provident fund can allow payment of the provident fund of the employee without waiting for issue of a formal certificate by the Estate Duty authorities. But these instructions are not of mandatory nature and if the Provident Fund Organisation chooses not to exercise its discretion in releasing payment to the heirs of the deceased subscribers, the heirs have no remedy against delay. The Chairman, Central Board of Direct Taxes, informed the Committee that recently a Committee constituted by the Ministry of Labour had recommended that the aforesaid procedure should be made

mandatory but the Ministry of Finance was not aware whether the Labour Ministry had given effect to this recommendation or not. The Committee regret that due to lack of coordination between the two Ministries and in the absence of mandatory instructions, the heirs of deceased subscribers of provident fund are being put to inconvenience and harassed. The Committee would like conclusive action to be taken in the matter without delay so as to avoid any delay in payment of provident fund dues to the heirs of the deceased subscribers.

(S. No. 14)

3.59 The Committee would also urge the Ministry of Finance to look into the phenomenon of delay in issuance of clearance certificate by Estate Duty authorities with a view to looking effective measures to remedy the position. The Committee would like to be informed of the action taken in the matter.

(S. No. 15)

3.60 The Committee see no reason why after an assessment under the Estate Duty Act has been completed and the duty, if any found due, paid or no duty is found payable, a discharge certificate cannot be issued automatically without a fresh application being required to be made to the Estate Duty authorities. The Ministry has agreed to this view. The Committee expect the necessary instructions would be issued without delay and discharge certificate would hereafter tbe issued along with the assessment order without the requirement of any fresh application.

(S. No. 16)

3.61 For disposal of Wealth-tax and Gift-tax assessment, a time limit of four years from the end of the relevant assessment year has been provided in the respective Acts. For Income-tax assessment, the time limit is two years. But there is no time limit for disposal of Estate Duty assessments. The Ministry has agreed that it is desirable to lay down a specific time limit for disposal of Estate Duty assessments also. The matter is stated to be awaiting consideration by the Economic Administration Reforms Commission. Choksi Committee had also suggested that a time limit of 4 years from the end of the relevant financial year should be laid down for completion of assessments under the Estate Duty Act. The Committee also feel that a time limit for completing assessments under the Estate Duty Act is a must and should be incorporated in the Act.

(S. No. 17)

3.62 Pending statutory provisions in this regard the Ministry it is learnt, has issued administrative instructions to the effect that cases pertaining to 1975-76 or earlier years of Estate Duty should be finalised. But all such cases, it is seen, had not been finalised upto the end of the year 1980-81. The Committee would urge the Ministry to direct the Estate Duty authorities that they should dispose of Estate Duty assessments within four years from the end of the relevant assessment year and pendency beyond 4 years should be reported to the Central Board which should take remedial action to expedite clearance of pending assessments.

(S. No. 18)

3.63 The Ministry agrees that it would be an ideal state of affairs to have the same time limit for assessments under the different Direct Taxes laws, as suggested by a number of non-official organisation. The Committee also feel that it will facilitate synchronisation of assessment work under all these

Acts if a uniform time limit for disposal of assessments is fixed. The Committee would suggest that the Ministry should give a serious thought to this matter.

(S. No. 19)

3.64 A view has been expressed by non-official organisations that the procedure for assessment of Income-tax, Wealth-tax, Gift-tax, Estate Duty, Interest Tax, Sur-tax, etc. which is at present laid down in the respective Acts, could be considerably simplified and rationalised if a common law is enacted by Parliament for all the Direct Taxes. Senior officers of the Income tax Department in the field also subscribe to this view. The Choksi Committee had also recommended a similar measure common to all Direct Taxes. But the Central Board of Direct Taxes is of the view that it is not a practical idea. The matter is now stated to be before the Economic Administration Reforms Commission. In the Committee's view it will be an ideal proposition if the procedural provisions in respect of Direct Taxes could be rationalised and consolidated in one Act. They would like the Ministry to consider this matter with an open mind and a bold approach. A common procedural law would be easier to comprehend and refer to and thus go a long way in making the administration of tax laws efficient and less time consuming.

(S. No. 20)

3.65 The system of refunds in the Income-tax Department continues to be the subject of widespread criticism. The Committee regret that even though after a detailed study of the problem they had made numerous recommendations for streamlining the refund system in their Report on the Income-tax Department (Paras, 2.115-2.120, 9th Report—1980-81) they find that the Ministry has not been able to bring about much of an improvement in this field. The same old complaints have been made to the Committee this year also. To recapitulate, assessment orders which result in refund are served late; when they are served, they are not always accompanied by refund vouchers; when assessees approach the Department for refund vouchers, the lower staff expects tips and if tips are not paid, harassment starts; refund vouchers, where issued, reach the assessees after the validity period is over necessitating revalidation; bank advice is not always issued simultaneously; and last but not the least, interest on refunds is not paid automatically. The Ministry has informed the Committee that it has issued instructions from time to time that refund must accompany the assessment order itself and that the refund, where due, must be issued within seven days of the completion of an assessment. If this is not done by any officer strict disciplinary action is required to be taken against the officer concerned. The supervisory officers the Ministry states, are supposed to look into these matters and take neccssary action. On the basis of a study made by the Ministry the Committee were informed that out of 250 cases only in five cases the refund had not been given within the time allowed. In 52 cases relating to appeals prompt refund was not given in 20 cases and interest for delayed refund was granted in 12 cases. This study amply corroborates the general feeling prevailing among assessees that system of refund is unsatisfactory and inefficient. The Ministry has attributed delays in issue of refunds to inadequacy of staff and certain other reasons. The Committee need not point out that these are the internal problems of the Department with which assessees are not at all concerned; they are interested only in getting refunds promptly and without difficulty and rightly so. It is a duty cast on the Income-tax Department to ensure prompt and full payment of refund and interest on delayed refunds without

any delays or harassment. For this purpose whatever administrative reform or augmentation of staff is required within the Department, should be done forthwith and the inadequacy of staff or any other constraint should not continue to be given as an excuse for delay in the issue of refunds.

3.66 Delay is not the only cause of complaint in this context. The assessees face harassment at the hands of the staff in various other forms, as indicated in the preceding paragraph. This shows failure of the supervisory officers to exercise a proper check on the lower staff and can't but be deplored. The Committee believe that if the Income Tax Officers and their seniors are efficient and honest no assessment order could issue without a concurrently dated refund voucher including interest for the period of delay where due, and no delay in its despatch could take place, where an assessee approaches the Department for obtaining a refund voucher on the ground of its non-receipt alongwith the Assessment order or for revalidation of a refund voucher, or for issue of a bank advices, the matter should be looked into with a view to fixing responsibility for the harassment to the assessee and officials concerned taken to task. The Committee would like the Ministry to pay serious heed to the assessees' dissatisfaction with the working of refund system and take conclusive measures to remedy the situation under intimation to the Committee.

(Sl. No. 21)

3.67 The Committee find that pendency of assessment in the case of Wealth-tax, Gift-tax and Estate Duty has been increasing noticeably from year to year. The number of pending assessments at the end of March, 1981 were 499905 in the case of Wealth-tax, 38226 in the case of Gift-tax and 35862 in the case of Estate Duty. The Committee are informed that the rising pendency of assessments due to the fact that the workload has outstopped the manpower available in the Department even though officers are disposing of work much more than the norms prescribed in this regard. The workload has increased among other reasons, due to intensive survey operations as result of which 20 thousand more assessments were added in 1979-80 over the previous year and 30 thousand more assessments were added in 1980-81 over 1979-80. The shortage of ministerial staff has also been very acute. The Committee regret to observe that the shortage on staff in Income-tax Department has been a persistent feature and in spite of the recommendations made by the Estimates Committee in their 9th Report on Income-tax Department, the shortage has not been made good so far. This is a wrong kind of economy. The Committee would reiterate that the staff needs of this Revenue earning Department at all levels should be assessed and shortages made good without delay to enable the Department to cope with rising workload.

(Sl. No. 22)

3.68 The Committee are concerned to note the heavy arrears of tax dues which have remained unrecovered for many years despite numerous measures stated to have been taken by the Department seeing the magnitude of the arrears in the context of yearly collections the Committee find that as against the collection of Rs. 66·09 crores of wealth-tax in 1979-80, there was an un-recovered tax demand of Rs. 180·53 crores at the end of that year. Similarly in respect of Gift tax as against a collection of Rs. 6·76 crores, in 1979-80 there was the arrears of Rs. 15·77 crores at the end of that year; and as against a collection of Rs. 13·93 crores under Estate Duty in 1979-80,

the unrealised tax demand during that year was of the order of Rs. 17·23 crores. The Committee note that the approximtely 64% of the Wealth-tax arrears, 73% of Gift tax arrears and 70% of Estate Duty arrears are more than one year old: From this the Committee cannot but conclude that the measures taken to liquidate arrears have not been effective enough and therefore there is an imperative need to review these measures and to intensify them.

(Sl. No. 23)

CHAPTER IV

VALUATION

Valuation Cell

4.1 The provisions for valuation of properties are contained in section 7 of the W.T. Act, 1957, section 6 of the Gift Tax Act, 1958 and section 36 of the Estate Duty Act, 1953.

The sum and substance of these provisions is that the value of an asset shall be estimated to be the price which in the opinion of the assessing officer it would fetch if sold in open market on the relevant date.

4.2 It was represented to the Committee that the valuation of immovable property is being referred to the departmental valuation officers indiscriminately without applying the mind judiciously to the point. The departmental valuation officers are in practice taking their own time with the result that they more often submit report in a hurry just before time-bar of any case.

4.3 The Ministry informed the Committee that the circumstances of each case are different and decision to refer the case to the Valuation Cell has to be taken by the Officer with regard to the provisions of law and the instructions of the Board from time to time. The Board has issued instructions to the officers to make such references to the valuation Cell well within time so that the assessments are not delayed. According to the Ministry, out of cases pending with the Valuation Cell at any given time a vast majority is of those that are less than 6 months old. In fact only about 10% of the cases pending with the Valuation Cell as on 31-3-81 were over 6 months old. Even in respect of these cases it has been reported that generally the delay was due to the non-co-operation of the assessees and due to the non-furnishing of the requisite information by them. It may not therefore, be correct to say that the Department Valuation Officers take their own time in valuation of properties and submit their reports in a hurry.

4.4 Under the following circumstances an assessing authority in terms of provisions of sec. 16A of Wealth Tax Act, 1957 and sec. 15(6) of Gift Tax Act, 1958 can make reference to valuation cell or valuation officers.

(a) in a case where the value of the asset/property as returned is in accordance with the estimates made by a registered valuer, if the Wealth-tax officer is of opinion that the value so returned is less than its fair market value;

(b) in any other cases, if the wealth-tax officer is of opinion—

(i) that the fair market value of the asset/property exceeds the value of the asset/property as returned by more than 33-1/3% of the value of the asset/property as returned or by more than Rs. 50,000/- or

(ii) that having regard to the nature of the asset/property and other relevant circumstances, it is necessary so to do.

4.5 With regard to estate duty cases, there is no statutory provision in the Estate Duty Act, 1953. The Board have, however, laid down guidelines for making references to the Valuation Cell in Estate Duty cases.

4.6 The Ministry has informed the Committee that the feasibility of laying down guidelines or rules for valuation of various kinds of assets is kept in view with the object of reducing the scope of disputes and bringing about uniformity in valuation. Pursuant to this rules for valuation of life interest, residential house, unquoted shares and of interest in partnership/ association of persons have been framed. The Board have also decided to frame rules for valuation of commercial properties and agricultural lands comprised in specific plantation.

4.7 The Ministry has also stated that a study to have an idea of the impact of the functioning of valuation cell had been undertaken by the Directorate of Inspection, Research Statistics and Publication as was suggested by the Estimates Committee in para 5.48 of their Ninth Report (1980-81). According to the Ministry the report has been received and is under examination.

Government approved Valuers

4.8 It was represented to the Committee in a number of non-official memoranda that there is a tendency on the part of the officers to reject, without proper reason, valuation by approved valuers filed by the assessees inspite of the fact that the department itself accords approval to certain valuers and calls them approved valuers under the various Acts.

4.9 When asked to comment on the aforesaid statement the Chairman, Central Board of Direct Taxes—stated during evidence that "In so far as the reference to the departmental valuers is concerned, it is not quite correct. When the assessee furnishes a certificate of the registered valuer and encloses it alongwith the returns, we accept it in most of the cases. We refer cases to the official valuer in a very discreet manner".

4.10 He added that a study of valuation cases for the year 1974-75 was made in respect of certain charges and it was found that out of 1152 cases, valuation certificates given by approved valuers in 1037 cases had been straightway accepted.

4.11 The Committee pointed out that these figures which the Chairman, CBDT had given related to period 1974-75. During their on the spot tours in 1981-82 the Committee were given a different picture by assessees and non-official organisations.

4.12 The Chairman, Central Board, informed the Committee that in most cases the department accepted the valuation certificates given by the registered valuers. Only in the remaining cases the reference was made to the departmental valuers. According to a study made by the department, it appeared that in 50% cases the valuation arrived at by the departmental valuer is accepted by the assessees. Only 50% of the cases go in for further appeal to the Tribunal. The Chairman, CBDT, stated that—the departmental valuer was supposed to take into consideration the detailed reports of the registered valuer and also to cross examine him. The witness added that in West Bengal out of 70 references made to the departmntal valuer where assessments were completed in 1974-75, 33 assessees straightway accepted the departmental valuation. Out of the remaining 37 cases the tribunal upheld the departmental valuation in 19 cases, partially disturbed the valuation in 13 cases and completely rejected it in 5 cases.

4.13 The Chairman, CBDT, further stated that "we had carried out a sample study to find out the correctness of valuation done by the valuation cell. At least, in West Bengal, there was a success in that upto 46% of the valuation cases stood fairly well before the Appellate Tribunal 1974-75".

4.14 The Committee asked if in only 50% cases offifficial valuation and in a much lesser number of cases private valuation was ultimately accepted. What in the opinion of the Ministry was the remedy or solution to the problem. The Chairman, CBDT, stated that "the best course is that we should frame rules for every type of asset so that dependence on valuers is reduced to the minimum. We are moving—in that dirction. We have framed rules for residential houses. We are attempting to frame rules for commercial properties. Similarly we have notified and invited comments in respect of valuation of unquoted shares and other types of assets". The witness added that the need for valuation by registered valuer or departmental valuer will cease to exist as soon as we frame rules in respect of assets which will come for inclusion in the Wealth-tax return—jewellery, unquoted shares, commercial property etc."

4.15 The Committee pointed out that in a number of cases the registered Valuer and departmental valuer differed. If the Ministry could not accept the registered valuer's certificate in a large number of cases, the Committee enquired as to why the institution of private valuers was not dispensed with. The Committee also pointed out that instances of harassment and use of questionable tactics by departmental valuers had been brought to the notice of the Committee. In this context, it was represented to the Committee that either the system of registered valuers might be dispensed with or the department should not refer their certificates to the departmental valuers. The Chairman, CBDT, agreed to consider this matter.

4.16 As Income Tax officer was not an expert and the registered valuer was an expert the Committee asked what was the criteria on the basis of which ITO rejected the registered valuer's certificate, the Chairman, CBDT, stated that "according to section 16A it is the opinoin of the Income tax Officer which matters". Asked whether the wealth tax officers gave reasons for rejection of valuation certificate by Approved valuers, the Chairman, CBDT, stated that "the wealth tax officer should communicate the grounds or the reasons on which he is rejecting the certificate of the approved valuer". The witness further added that the WTO had to give a certificate that in his opinion that was a fit case which should be referred to valuation call.

4.17 The Chairman, CBDT, agreed to a suggestion that when a approved valuer's certificate was rejected and the case was to be referred by wealth tax officer to a departmental valuer, the approval of the higher authority could be taken by the W.T. Officer.

4.18 When the Committee asked whether in such case the approved valuers should not be called to sit together with the ITO and justify his certificate the Chairman, CBDT replied "that can be done" but wealth tax officer would be governed by the departmental valuer's report. The witness added that the department would consider removing from the panel the names of those approved valuers whose valuations had been frequently found to be wrong.

4.19 Replying to a question about the appointment of departmental valuers the Chairman, CBDT stated that "they were taken from the C.P.W.D. and so long as they are working in this department they art supposed to be under our control. Their parent office is CPWD". The witness admitted that there were lot of defects in this system and assured the Committee that "we will try to streamline the system".

Valuation of properties

4.20 According to the present provisions, where the difference between the market value of property estimated by the wealth tax officer is more than the value admitted by the assessee by Rs. 50,000 or above, reference, may be made to the valuation cell. With rules for valuation of residential properties having been made, the aforesaid provisions will apply only in cases where the property to be valued falls outside rule IBB of wealth tax rules. 'It was suggested to the Committee that keping in view, the tax effect, it may be considered, is to whether this limit can not be raised to Rs. 1 lakh or difference of 33-1/3% between the fair market value and returned value, whichever is higher. This will limit the number of references to the Valuation Cell.

4.21 Commenting on the suggestion, the Chairman, CBDT stated during evidence that "this, to our mind is not quite correct and the present situation should prevail because that is a fairly correct position".

4.22 The witness added that "at present, difference between the fair market value and the value shown in the return should be Rs. 50,000 or more for making a reference. This limit can be considered and may be raised to Rs. one lakh. Then the reference will lie under 33-1/3% provision".

4.23 The witness further informed the Committee that "since we have already framed a rule which covers residential house/properties, and we are shortly going to frame rule which will cover commercial properties, then this rule is almost redundant. Whatever value is obtained under the rules, will be binding on the wealth tax Officer".

Uniform method for valuation of property

4.24 In a number of memoranda submitted to the Committee it was stated that the absence of uniform rules of valuation of property under different Direct Taxes Act, had led to unnecessary and unproductive litigation. They suggested that the capitalisation method valuation of property was a correct method for all properties residential as well as commercial.

4.25 When asked about the justification in valuing same property differently under different tax laws and why the value of a property arrived at for the purpose of wealth tax should not hold good for the purpose of Gift Tax or Estate Duty, the Chairman, CBDT stated that wealth tax is an annual levy while the estate duty is one time levy. When a person dies, only then estate duty is levied. Wealth tax rates are very low because they are annual taxes. We realise from the same property tax over and over again every year. In the case of the Estae Duty, it is a one-time levy. Gift tax also is one time levy. Then where a person sells his property, that property goes out of his control. And if we were to adopt the same concessional value for Estate Duty in respect of the assets, then probably there would be a loss of revenue. Now this is the basic difference between the wealth tax and the Estate Duty. But we have to realise that in respect

of certain assets, value should be same in the Estate Duty. There has been a sudden spurt of market value in the case of residential houses. If a family had purchased or constructed a house twenty years back and has been living there and the cost of construction at that time was Rs. 15,000/- now it may be 10 lakhs. If we were to take Rs. 10 lakhs as the value for estate duty, then we will only be increasing the population of pavement dwellers in cities like Bombay. So, we have to evaluate on a concessional basis as we have done for wealth tax. But this rule should not be applicable in all types of cases. Now, where a property is sold, in that case we are justified in valuing the fair market value and then charging tax on that".

4.26 The Committee desired to know what were the different guidelines in the case of same property for different taxes, the witness explained that "I can illustrate it by referring to the residential houses. So far as the wealth tax is concerned, as on today, we have to determine the value under Rule 1BB; but in the Estate Duty, we have to take market value on the basis of comparable sales or rent capitalisation method whichever is appropriate".

Valuation of rented houses and self occupied houses

4.27 During evidence the Committee drew attention to cases where tenents staying in the same house for long were paying low rents but the owners were required to pay wealth tax on a much higher amounts.

Asked to comment on the matter, the Chairman, CBDT stated that "if the rent is pegged and it cannot be increased under any state law; then that is the yield from that house and that has got to be capitalised".

4.28 When the committee pointed out that was not being done, the witness added that "the rules are binding on the wealth tax officers and if some body is doing it, he is going outside the statute. Clarifying the point further the Chairman,, CBDT stated that "if it is a commercial property, it is different, because we have yet to frame rules about them. But rule IBB operates in the case of non-commercial properties. Supposing the house is self-occupied, under section 7(4) of the weatlh tax Act we fix the ceiling on the valuation of the house which is self occupied, according to its value for the assessment year 1971-72. Had it been constructed after the assessment year 1971-72 we will go by the value in the year in which the house is constructed. In determining this value, we may go by rule 1BB. Suppose this value is 'X'. If the cost of construction is 'Y' and X is lower than Y, X will be taken into account for wealth tax purposes".

4.29 Clarifying the position regarding self-occupied houses, the witness added that "about self-occupation, we have to take into consideration the municipal valuation etc. The maintenable rent will be capitalised according to the formula given in the rule".

4.30 When the Committee pointed out that the market value of a house which is vacant is more than the market value of a house which has a tenant the Chairman, CBDT stated that "we do take into consideration this fact that the tenant is paying rent which was fixed 25 years back and it cannot be increased as against the property which is vacant and which is given by the owner to another person".

4.31 Asked whether in a case where an assessee calculated the value of his residential property on the basis of capitalisation method prescribed under rule 1BB, the Wealth Tax Officer would not refer the matter to Valuation Cell for fresh valuation, the Chairman, CBDT explained that "where a value of a house has been worked out on the basis of Rule 1BB, it is binding on the Wealth Tax Officer. But there is a proviso added that is contained in sub-section 5 of rule 1BB" under which he could refer the case to the Valuation Cell for valuation in certain situation. If he did that he would record his reasons and he would also obtain the approval of the next superior authority and then get the valuation made from departmental valuer.

Concessional Valuation for Estate Duty

4.32 When the Committee invited attention of the Ministry to the hardships faced by families in payment estate duty on inflated value of the properties left behind by the heads of the families, the Chairman, CBDT, stated that in respect of one residential house, the Finance Minister had already announced that the value thereof would be taken to be the same for the purpose of Wealth tax and Estate Duty. That is to say, it would be a concessional value so that when the owner died, his heirs were not put to hardship.

4.33 In this context, when the attention of the Ministry was invited to the follow-up action taken in respect of announcement made by the Finance Ministry in his budget speech (1980-81) wherein it was proposed that "the estate duty exemption limit would be raised from Rs. 50,000 to Rs. 1.5 lakh and that a residential house, or part thereof' would be valued on the same basis as for wealth tax purpose." It was also added that "the requisite, amendment would be made with the prior concurrence of the state legislatures", the representative of the Ministry of Finance informed the Committee during evidence that :—

> "The Law Ministry was of the opinion that only the Central Government cannot go ahead with that. It is under very active consideration. We hope to bring forward a Bill very soon. We are awaiting consideration of the States. We have sent a draft resolution to be adopted to the State legislatures."

4.34 When the Committee enquired about "the gap between the announcement by the Minister and the communication sent to the States," the witness informed the Committee that :—

> "After the announcement, we had to process this thing because there were many side issues which had to be taken into account. After making up our mind what the amendment would be, we sent those things to the Minister of Law. But, ultimately, I think it was in December that a resolution was drafted by the Ministry of Law and sent to some of the States. At the moment, I cannot give all the details, but I would like to assure this Committee that there are certain side issues which had to be settled."

4.35 The Ministry have also informed the Committee in a written reply (Dec., 1981) that "the Bill to give effect to the announcement made by the Finance Minister in his Budget speech for (1980-81) regarding modification in the provision of the Estate Duty Act is under preparation and is likely to be introduced in the next session of Parliament.

Formula for valuation of the House used for residential purposes

4.36 In an article appearing in Economic times dated 2-12-1980 it is stated that the Central Government has framed rule 1BB w.e.f. 1-4-1979 for properties used wholly or mainly for residential purposes. Under this rule the rate of capitalisation of 8% in the case of freehold and 9% in the case of lease-hold property prescribed is unrealistic.

Commenting on this the Ministry has stated as follows :

Rule 1BB of the Wealth Tax rules has been inserted with effect from 1-4-1979 for the purpose of laying down the method for valuation of a house which is wholly or mainly used for residential purposes. As per this rule the value of such a house shall be the aggregate of the following amounts :

(a) the amount arrived at by multiplying the net maintainable rent in respect of the part of the house used for residential purpose by the fraction 100/8; and

(b) the amount arrived at by multiplying the net maintenable rent in respect of the remaining part of the house, if any, by the fraction 100/9 :

provided that in relation to a house which is built on lease-hold land, this sub-rule shall have affect as if for the fraction 100/8 in clause (a) or as the case may be, the fraction 100/9 in clause (b), the fraction 100/9 and 100/10 respectively had been substituted.

4.38 It is true that the Government has accepted under this rule the earning power of a residential building as a recognised method for its valuation. The rate of capitalisation of 8% in the case of free-hold and 9% in the case of lease-hold property has been adopted after due consideration. This rate has to be applied on net maintainable rent and the net maintainable rent means the amount of gross maintainable rent as reduced by :

(i) the amount of taxes levied in the previous year by any local authority in respect of the house;

(ii) a sum equal to one-sixth of the amount by which the gross maintainable rent exceeds the amount referred to in sub-clause (i) in respect of the repairs of the house;

(iii) any sums spent during the previous year to collect the rent from the house, not exceeding six per cent of the amount by which the gross maintainable rent exceeds the amount referred to in sub-clause (i);

(iv) the amount of any premium paid during the previous year to insure the house against risk of damage or destruction.

(v) the amount of ground rent payable during the previous year, where the property is subject to ground rent; and

(vi) any sum paid in the previous year on account of land revenue or any other tax levied in the previous year by the State Government in respect of the house.

4.39 From the above it is clear that in view of the number of deductions allowed from gross maintainable rent the rate of capitalisation of 8 or 9% as the case may be is quite fair and reasonable.

4.40 It was suggested to the committee that the rent capitalisation method should be revised so as to provide return of at least 15% in respect of investment in buildings and the value of any rented building should not be fixed at more than 7 times the net rental calculated in the manner laid down under the Income-tax Act.

4.41 Asked to comment on this suggestion, the Chairman, CBDT stated that "in practice, an investment in building does not yield a net return of 15% after taking into account the house tax and other outgoings. The net yield is less than 15%. Hence, it would be rather unrealistic to fix the value of the rented building at 7-times the net rental income therefrom. We fix at 11 or 12 times. If the net yield goes up, the multiplier comes down".

Unproductive assets

4.42 It was suggested to the Committee that the reasonable method of valuation is to accept the cost of assets for the first five years and to add to the same 10% of such value every five years if assets continue as such. This is with regard to assets other than bank cash, shares and debentures.

4.43 Asked to comment on this suggestion, the Chairman, CBDT statad that "that would not be quite in order because of the inflationary trends these days". According to the Secretary Ministry of Finance "Direct Taxes are on current income".

4.44 It was also suggested to the Committee that in respect of an asset which does not yield any income, the valuation of the asset should be based on cost of acquisition of the asset, and not its open market value, so long as the asset remains within the family and is not sold.

4.45 Commenting on this suggestion, the Chairman, CBDT stated that "they enjoy an exemption under the wealth Tax Act. There is a special provision for that. But the difficulty arises in the case of an unproductive asset like a plot of land. As far as those things are concerned, they are already exempted".

4.46 Asked to explain the position of plots of land like a family 'grave yard' or 'land' attached to family 'temples' etc. the witness stated that such things had no market value. Secretary (Revenue), however, added that "we will have to examine it".

Valuation of property in North-Eastern Region

4.47 During the visit of the study group of Estimates Committee to North-Eastern Region, it was learnt that in Shillong landed properties could be sold to tribals only, as per a law prevailing in that State. It was represented to the Committee that the Income-tax department did not consider the paying capacity of the tribals, while valuing the properties. This, the non-officials felt was unjustified as the value of the land has to be related to the price that the land can fetch.

4.48 When asked to comment on the aforesaid statement, the Secretary (Revenue) stated during evidence that "For valuation of that, we will have to take into account the legal position, if it is not freely transferable. Secondly, in any case, the valuation of sales in that area are always taken into consideration". According to the witness "infact, they are a most important consideration".

Valuation of unquoted equity shares

Lack of uniformity in valuation

4.49 A large number of representations have been received by the Committee about valuation of unquoted equity shares. In a memorandum it was brought to the Committee's notice that the statutory Rules have been prescribed for the valuation of unquoted equity shares of manufacturing, trading and service companies, excluding investment and holding companies, for the purpose of wealth-tax. No such rules have, however, been provided for the purpose of Gift-Tax or Estate Duty. There are, of course, Rules for the valuation of shares in a controlled company for Estate Duty purpose.

4.50 The Ministry informed the Committee as follows :

(i) Section 7(1) of the Wealth-tax Act states that subject to any rules made in this behalf, the value of any asset, other than cash, shall be estimated to be the price which, in the opinion of the Wealth-Tax officer it would fetch if sold in the open market on the valuation date. Rule 1D of the Wealth-tax Rules lays down the manner in which the value of unquoted equity shares of companies other than investment companies and managing, agency companies shall be determined.

(ii) Section 6(1) of the Gift-tax Act states that the value of any property other than cash transferred by way of gift shall be the price which in the opinion of the Gift tax officer it would fetch if sold in the open market on the date on which the gift was made. Section 6(3) states that where the value of any property cannot be estimated under sub-section (1) because it is not saleable in the open market, the value shall be determined in the prescribed manner.

(iii) Section 36 of the Estate Duty Act states that the value of any property shall be estimated to be the price which, in the opinion of the controller, it would fetch if sold in the open market at the time of the deceased's death.

4.51 Rule 14 of the Estate Duty Rules, 1953 deals with the matter of valuation.

4.52 No specific rules have been framed under the Gift-tax Act or Estate Duty Act for valuation of unquoted equity shares.

4.53 Stating the reasons for non-framing of rules for valuation of unquoted equity shares for the purpose of Gift Tax and Estate Duty the Ministry have stated that Gift tax and Estate Duty are one time levies on the happening of a certain event whereas wealth-tax is an annual levy on the net wealth of the tax payer. Whenever any rule has been prescribed for the valuation of an asset for wealth-tax the value so determined in accordance with the rule is adopted for the levy of wealth-tax. The assessable value so arrived at appears to be, by and large much less than the prevailing market value in a large number of cases. The adoption of a lower assessable value determined on the basis of the rule framed for the purposes of wealth-tax can be justified on the ground that wealth-tax is an annual levey. This consideration does not hold good for the purposes of gift-tax or estate duty which are one time levies".

Break-up Value

4.54 It was represented to the Committee that Rule 10 of wealth-tax Rules (reg. valuation of shares) is not realistic. In several cases the market value of shares that are quoted on Stock exchange had been found much lower than the break-up value arrived at as per the rule. It was suggested that the assessee should be allowed to determine the value of shares on the basis of the principles enunciated by the Supreme Court in CWT Vs. Mahadev Jalan (1972) 86 ITR 621 and not necessarily be guided by Rule 10 of the Wealth-tax Rules. The same principle should govern valuation of shares for the purpose of gift tax and estate duty.

4.55 The Ministry informed the Committee as follows :—

> "The judgment of the Supreme Court in C.W.T. Vs. Mahadev Jalan (1972) 86. ITR 621 was delivered in relation to assessment years prior to the amendment of section 7(1) of the Wealth-tax Act by Wealth-tax Act, 1964 w.e.f. 1-4-65 when the words "subject to any rules made in this behalf" were added before the words, "the value of any asset other than cash, for the purposes of this Act, shall be estimated to be the price which in the opinion of the Wealth-tax Officer it would fetch if sold in the open market on the valuation date."

4.56 Rule 1D of the Wealth-tax Rules prescribed the method of valuation of unquoted equity shares of companies other than investment companies and managing agency companies. In framing these rules it was provided that the market value of the shares shall be taken at 85% of the break-up value. It was also provided that in cases where no dividend had been paid by the company for 3 years or more, suitable reduction would be made of the value so adopted. The rule is not on all fours with the principles enunicated by the Supreme Court in Mahadeo Jalan's case.

4.57 The method for valuation of unquoted equity shares prescribed in rule 1D is based on the 'break-up value' method which has not found favour with the Supreme Court as being an efficacious method for valuing shares of going concerns which are not ripe for liquidation. However, it may be relevant to note that it is not possible to form a reasonably clear idea of the maintainable earning capacity of a large number of companies. The unquoted equity shares of all such companies can be appropriately valued for wealth-tax purposes on break-up value method. Even in the case of profit making companies, those which have erratic or highly fluctuating or low earnings and have not distributed any dividends or are distributing a very small dividend, their unquoted equity shares may also have to be valued on the basis of break-up value method.

4.58 It is, therefore, considered that the break-up value method which is rational, and easily comprehensible would be preferable and has been adopted for the existing as well as proposed rule 1D.

4.59 The Ministry further stated that :—

> "A study group was appointed in June, 1976 by the Central Board of Direct Taxes for studying the various problems arising in the valuation of unquoted shares of companies for the purposes of wealth-tax and other direct taxes. The Study Group submitted its report in August, 1977. After consideration of the

report and recommendations of the Study Group, draft rules for amending the Wealth-tax Rules relating to the valuation of shares were notified in the official Gazette on 29th August, 1981. It was notified that any objection|suggestion with reference to the said draft rules would be considered by the Board. Objections and suggestions have been received from several quarters. These are being processed."

4.60 In another memorandum submitted to the Committee it was stated that the concept of break-up value of shares had some inherent defects inasmuch as any amount paid in excess of the paid-up value would be treated as profit and taxed in the hands of the shareholders but his built-in tax liability was altogether ignored in valuing the assets. It was suggested that the built-in tax liability should be taken into account. It was stated that the Supreme Court also decided that the tax liability of a company upto valuation date has to be taken into account in computing the net wealth.

4.61 Asked to justify the present position in views of the decision of Supreme Court on this specific points the Ministry informed the Committee that "in the draft rule 1D notified in the Gazette dated 29th August, 1981 provision has been made for deduction of all debts owned by the company from the value of all its assets. Debts owned include the ascertained tax liability of the company. In this connection it may also be stated that advance tax paid under section 209A of section 210 would not form part of "assets" for the purposes of determining the break-up value of the shares. Thus, in the new draft rule 1D for valuing unquoted equity shares, due consideration has been given for taking into account the tax liability of the company upto the valuation date."

4.62 In an article appearing in the Economic Times dated 15-10-80 it was stated that some of the rules which were subordinate to the parent Act. were contrary to the established concept of fair market value of assets.

4.63 For instance rule 1C & 1D of Wealth-tax rules provide for the manner of determination of the market value of preference shares and equity shares respectively. However, the provision of the said rules are so inflexible and irrational that the value of shares arrived at by the application is very much divorced from the real market value.

4.64 Further there is no similar provision about valuation of shares in any of the other tax laws or rules. The result is that the same officer has to adopt the value of the same shares on the same date at different amounts under different laws even though the basis concept of market value is common."

4.65 The Ministry explained the position as follows :—

"Rule 1C deals with determination of the value of unquoted preference shares and Rule 1D with valuation of unquoted equity shares. The object of framing the rules was to achieve a measure of uniformity in the procedure adopted for valuation of these shares. While there are instances of the market value of such shares being less than that computed under the rules, there are also instances where the market values of such shares

are more than that computed under the rules. The report of the Study Group appointed to study and report on the matter bears this out. By and large the rules provide a fair basis for valuation of unquoted shares. In order to remove the inflexibility of approach the Wealth-tax Officer has been given the discretion in appropriate cases to depart from the procedure laid down in the rule as per the new draft rule 1D published on 29th August, 1981.

4.66 It may not be appropriate to have uniform rules for valuation of shares under the Wealth-tax, Gift-tax and Estate Duty Act. As wealth-tax is an annual levy, a more liberal approach to valuation under that Act is considered desirable.

Valuation at Face Value

4.67 It was also represented to the Committee that in cases where the assessee do not have controlling interest in the company, the face value of the unquoted shares could be accepted and adopted as the market value unless the assessee claims and proves that the market value is much less than the face value. In the latter case, the market value as proved by the assessee can be accepted. The same procedure may be adopted in the case of Gift-tax assessments also as there is no provision for the valuation of unquoted shares as under the Wealth-tax Act.

4.68 In this connection, Ministry informed the Committee that :

(i) The suggestion is that in the case of unquoted equity share the W.T.O. should adopt the face value of the share or the market value, whichever is less. If the suggestion is accepted, a share with face value of Rs. 100 which may be changing hands at prices very much in excess of Rs. 100, shall have to be valued at Rs. 100/- only. This would be prima facie incorrect and detrimental to revenue.

(ii) In so far as gift-tax assessment is concerned, the valuation of shares is to be made in accordance with section 6(1) of the Gift-tax Act which states that the value of any property other than cash transferred by way of gift shall be estimated to be the price which in the opinion of the Gift-tax Officer it would fetch if sold in the open market. Section 6(3) of the Gift-tax Act states that where the value of any property cannot be estimated under section 6(1) because it is not saleable in the open market, the value shall be determined in the prescribed manner. Rule 10 of the Gift-tax Rules deals with valuation of property.

(iii) It is not considered desirable to adopt the same value for both wealth-tax and gift-tax assessments because, whereas wealth-tax is an annual levy, gift-tax is a one-time levy.

Capitalization Method of Valuation

4.69 It was represented to the Committee that having regard to the fact that wealth tax is an annual levy, the value of the shares for levy of the annual wealth-tax should be determined with reference to a value arrived

at by capitalising the return which a shareholder would get from the company, and not with reference to the assets which no shareholders can reasonably expect to get under normal circumstances. The main consideration for a prospective investor being the return or yield he would expect from the shares, it is suggested that the rules and/or instructions should prescribe how the maintainable profits for purposes of capitalisation should determine and at what rate the maintainable profits should be capitalised and guidelines for change in the rate of capitalisation on the basis of change in interest rates should be issued.

4.70 The Ministry informed the Committee that A Study Group was appointed in June, 1976 by the Central Board of Direct Taxes for studying the various problems arising in the valuation of unquoted shares of companies for the purposes of wealth-tax and other direct taxes. The Study Group in its report stated that the capitalisation method of valuation would involve the assessing officer/assessee obtaining and studying in detail the balance sheets for several years of the company, exercising discretion regarding inferences to be drawn from the facts, etc. This would be a source of harassment to assessees and delay in finalisation of assessments. Further, the exercise would involve the prescription in the rules of various percentages of retention of tax-paid profits for reserves depending upon the nature of industry, goods produced, etc. This will be a formidable task, 'For tax purpose, the practical advantages of a simple, precise and realistic formula of valuation, though an ad-hoc one, would, in the opinion of the Study Group, far outweigh the marginal disadvantages that may arise, some times to assessees and sometimes to the revenue, from not valuing equity shares of companies in strict conformity with the elaborate and sophisticated modes or methods of valuation followed by professional valuers.' In view of these observations of the Study Group and as there are a large number of companies showing no profit or loss, determination of the value of unquoted equity shares solely on the basis of capitalising the return which a shareholder would get is not considered desirable."

Shares of Investment Companies

4.71 It was represented to the Committee that under the draft rules of wealth Tax published recently it was proposed to value unquoted shares of investment companies and also companies other than investment companies on the basis of the market value of the assets held by the companies. Hitherto, the shares of the investment companies were valued on the basis of average rate worked out with reference to break-up value and yield basis. Now the proposal is to value the shares on the basis of market value of the assets held by the companies. It was stated that valuation arrived at on the basis of market value of assets in the case of investment companies would give a distorted and inflated figure which would not have any bearing on the true value of a share. The shares of investment companies which are not quoted on the stock exchange are mostly of private Ltd. companies. It will be very difficult to find buyers for such shares. The important factor that has been lost sight of is that there is a built-in tax liability. It has been suggested that the shares of investment companies should be valued only on yield basis which would reflect the true value of the shares.

Valuation of Quoted/Unquoted Shares

4.72 The Ministry stated as follows :—

"The Study Group which was appointed by the Ministry to study the question of valuation of shares, emphasised the practical difficulties involved in valuing shares on the basis of capitalisation of the yield. Besides, the following other points also merit mention :—

(i) Where no dividend has been declared by the company for some years, the yield basis cannot be a satisfactory method of determining the share value.

(ii) Investment companies with large investments in assets like urban land, jewellery etc. may not declare dividends at all for many years, or the dividends declared may be negligible, whereas the assets held would have generally appreciated in value. It would be unrealistic in such cases to ignore the steep rise in the value of the assets and consequent rise in the intrinsic value of the share and proceed to adopt the yield basis to determine the value of the share. The Study Group made the following observation regarding investment companies :—

"Investment companies are generally used by large business houses as repositories of valuable investment in real property and, in particular, in the shares of companies belonging mainly to their own group with the object of exercising majority or effective control over their affairs. Quite often, the shares of such investment companies are held by relatives, trusted employees and close confidants of the persons exercising effective control over the group. The capital structure, finances, dealings and dividend policy of these investment companies are so planned and managed that the persons controlling the group are able to minimise their tax liability while securing a steady accretion to their wealth."

In view of the above, it is not considered appropriate to value the shares of investment companies on yield basis."

Quoted Shares

4.73 It has been stated that the proposed rules in regard to quoted shares is drastic and impracticable for implementation. It is stated that in respect of quoted shares where two-thirds of the book value is more than the quotations, such shares should be deemed to be unquoted shares. Applying this principle logically, it is incumbent on the part of the assesses to work out the break-up value of every share and compared it with the stock exchange quotation. Only then, the assessees can know which value has to be adopted. To take, an illustration, even the quoted share of Tata Iron & Steel will be treated as unquoted share if the rule as proposed is applied.

4.74 Commenting upon the aforesaid statement the Ministry informed the Committee that "in respect of equity shares covered by the Explanation

below rule 1E of the draft rules notified on August 29, 1981 representations have been received from various quarters as to how the rule would operate harshly in some cases. Some modification of the draft rules appears called for on this point."

4.75 Explaining the implications of Rule 1D relating to valuation of unquoted equity shares and the new amendments proposed in this regard the Chairman, Central Board of Direct Taxes stated in evidence as follows :

> "According to Rule 1D we take the break-up value of the share as the intrinsic value or the value of the assets. What we do is that we take the value of all the assets and deduct from that, the value of the liabilities, that is to say, the assets minus liability is the intrinsic value of that company. The number of shares is there. That intrinsic value is divided by the number of shares and on this basis, we work out the break-up value of the shares. Because there were certain other circumstances like the liability which may arise to the Company or to the share-holders in the event of liquidation———What we suppose is that on a particular date the company was to go into liquidation———What would shareholder receive ? Some tax liability would be attached to the company and to the shareholder. Therefore, we thought that we would discount the break-up value by 15 years, in all cases. Further, if a company was not yielding any dividend for the last three years then, we will discount it further by a graduated slab and the maximum discount we provide is 10%. Thus in all cases the discount is 15% and in certain specified cases, we will discount further upto 18% and adopt 75% to 85% of the break-up value as the intrinsic worth of one share of that company. This is the formula which we have devised in the year, 1967.

4.76 The witness added "Now we are proposing to revise this formula because in certain cases we found under-valuation. In certain other cases, we thought that it was leading to over-valuation. We had devised draft rules and those draft rules have been notified and the objections from the general public have been invited. The last date for sending the objections was 1st December (1981). All those objections have been received and we are examining them."

4.77 The witness further added "the first question is whether the valuation should be made on the basis of the break-up value, that is, based on the intrinsic value or on the basis of the capitalised value—capitalising the yield from those companies and then arriving at the value. We find that the capitalised value would not be possible for certain reasons. One consideration is that if a company has just been formed, it does not declare any dividend. It is running into a loss. There is no income. Unless there is income, we cannot capitalise the loss. Then capitalisation necessarily means the working out of the maintainable yield. That is to say, we will have to determine what the company would in future be able to give to the shareholders. For that, we will have to work out the average of the last four or five or six years profits in order to find out what is the maintainable yield or maintainable profits of the company which can be capitalised. If a company is existing for more than four years, no difficulty will arise. Then also, it will be difficult to operate because now under the Wealth Tax Act, the tax payer is supposed to

make self-assessment and pay the tax thereof. Suppose he is called upon to make self-assessment, he will have to look into all the balance-sheets of the various companies for the last five or six years, make lot of adjustments in the sense that there are abnormal profits and abnormal losses to be taken into account in order to determine the maintainable yiled. All that will have to be worked out by him. It will cast enormous burden on him. Considering all that, we thought that we would take up the break-up value.

4.78 The next point which we decided was whether the break-up value method should be based on the valuers as reflected in the balance-sheet or it should be on their market value.

4.79 We should revalue the assets, land, machinery, etc., and try to find out what is the real worth or market value of all the assets shown in the Balance-sheet and, similarly, what are the real liabilities because sometimes some contingent liabilities which are not exactly liabilities are also included and will have to be taken out. We thought that, if we were to base our draft rules on the basis of the market value of the assets as reflected in the Balance Sheet, it would again throw up a lot of burden both on the tax-payer as well as on the taxing authorities because it will be very difficult for a person sitting in Amritsar to find out what is the market value of the land, plant and machinery in Calcutta if the head office of the company is in Calcutta. We ultimately decided that, in the interest of simplicity and in the interest of uniformity and in order to cut out litigation, we should adopt the break-up value as per the book values of the assets and liabilities. On this basis we thought that generally in all the cases this formula that has been worked out, that is, the break-up value according to the book value of the assets and liabilities in the Balance Sheet, would work satisfactorily but it would not work in certain types of cases. One such case is investment companies. These investment companies are floated by big monopoly houses in order to hold shares and control over other companies. In case we were to go by the book value, it will yield a very unrealistic value which will be far lower than the real intrinsic worth. So, we made a rule—beause the number was small—that we would revalue these assets according to their market value. This was the first exception that we made. The second exception that we made was in respect of subsidiary companies. In the case of subsidiary company again where the shares are held entirely by the holding company, we have also to see that there is no escapement of tax by not valuing the assets according to the market value. These are the two exception that we have incorporated in the draft rules for determining the break-up value of the shares.

4.80 The Chairman, Central Board of Direct Taxes, further stated "the third point which we thought of was this. We had said that the quoted share would be taken as one which was regularly quoted in a recognised stock exchange. There are certain shares which are regularly quoted, but the valuation is mainpulated by certain people; on the last day some transactions may take place from A to B and from B to C which would reflect the market value but would depress the artificial value. So, in order to guard against that, we have introduce a provision in the form of an explanation to the main rule that, where the market value is less than two-thirds of the break-up value of the share determined according to this method which I have explained, that share will be deemed to be an unquoted share. These controversies are before the public. They have sent

us all these points, objections, etc., and they are under our examination. It is possible that these draft rules may undergo changes, may be of any order; we might devise some other method of valuing the shares."

4.81 The Committee pointed out that it had been represented to us that it would work very harshly on the average, middly-class shareholders who had invested in shares if the break-up value was taken into consideration. The Committee asked whether the Ministry would be prepared to incorporate a clause that, should a shareholder surrender his shares to Government, Government would be prepared to give him the break-up value.

4.82 The Chairman, Central Board of Direct Taxes, replied that "it is something which will be difficult for any government to accept." The Chairman, Central Board of Direct Taxes assured the Committee that "all these objections are under our examination. We might revise the draft rule also."

4.83 The Committee asked whether in case where shares were pledged as security in the nationalized bank, the bank would take the break-up value into consideration.The Secretary (Ministry of Finance) assured the Committee that " we will certainly keep all these aspects in mind."

4. 84 The first step in the process of determining tax liability of an assessee under Wealth Tax, Gift tax and Estate Duty Acts is the valuation of his/her properties. Provisions for valuations of properties have been made in the respective laws. The sum and substance of the provisions is that the value of an asset shall be estimated to be the price which in the opinion of the Assessing Officer it could fetch if sold in open market on the relevant date. Government has approved certain private valuer whom the assessees can approach direct for having assets of various typed valued before filing their returns Government has also laid down rules for valuation of life interest, residential house, unquoted shares and of interest in partnership/association of persons.

4. 85 According to the extent procedure an assessee may obtain certificate of valuation of his asset from Government approved valuer and submit it for the consideration of the Assessing Authority who may either accept it or in certain circumstances refer the matter to official valuer (valuation cell) for determining its value. The valuation certificate issued by the official valuer is binding on the Assessing Officer. Government has also laid down a statutory rule—1BB of Wealth-tax Rules—under which an assessee can himself work out the value of his residential property without going to the Government approved valuer.

4. 86 What has irked the assessees most is that certificates of private valuers who are appointed and approved by the Government after thorough cosideration, are rejected by Wealth-tax Officers without assigning any reason. The Ministry has, however, stated that in most of the cases the approved valuers' certificate are accepted by the Department. The Ministry referred to a study made in respect of the year 1974-75 which showed that out of 1152 cases of valuation, in 1037 cases certificates of approved valuers were accepted by Assessing Officers. But the Committee have got a different picture from the memoranda received from non-official organisations and the discussion held during on-the-spot study visits paid to different parts of the country during the

year 1981-82. The Committee feel that existance of two parallel institutions of valuers—one private valuers approved by Government and the other official valuers—is not a very happy state of affairs. If the Department has no faith in the certificates issued by private valuers approved by Government, the assessees to have similar grievance against official valuers who are working under the operational control of Department, even though the Ministry has tried to prove by statistics that upto 46% (in West Bengal charge) of the valuation cases where valuation was done through the valuation cell have stood fairly well before Appellate Tribunal. But this figure again relates to 1974-75. The Committee are of the opinion that if the system of valuers has to continue and it will have to be continued till alternatives are provided, Government may better set up one independent institution of values who should be qualified experts in the field but should not be under the operational control of income-tax Department, and whose certificates should be binding on the Assessing Officers. (Sl. No. 24)

4. 87 Pending institution of a system of independent valuers, as recommended above, the Committee suggest that where the Assessing Officer differs with the Government approved valuer, he should send for the approved valuer and cross examine him in regard to the certificate issued by the latter before in taking a view in the matter.

(Sl. No. 25)

4. 88 The Committee also suggest that the Assessing Officer should record reasons for not accepting the certificate of Government approved valuer and convey these reasons to the assessee. Before referring such a case to departmental valuer the Assessing Officer should take the piror approval of a higher authority. This would make the Assessing Officer more careful in dealing with the certificates issued by the Government approved valuers.

(Sl. No. 26)

4. 89 The Committee are of the view that Government approved valuers, whose certificates have been found to be unreliable in a large number of cases, should be removed from the panel of approved valuers.

(Sl. No. 27)

4. 90 Where in the opinion of the Assessing Officer the fair market value of an asset exceeds the value of the asset, as returned, by more than 33⅓% of the value of the asset or by more than Rs. 50,000/-, the Assessing Officer can make reference to valuation cell (official valuer) for determining its correct value. The Ministry has agreed to consider a suggestion that this provision may be amended so as to require that the reference to official valuer may be made only if the difference between the fair market value and the value shown in the return appears to be 33⅓% of the value of the asset or more than rupees one lakh. This may be examined and the Committee apprised of the outcome.

4. 91 The Committee agree with the Chairman, Central Board of Direct Taxes that the ideal solution to the problem of valuation is that suitable formulae should be provided to workout the value of every type of asset and when such formulae are provided, the need for valuation by approved valuers or departmental valuers will nearly cease to exist. Rules in this regard have already been made for residential houses and certain other assets and the rules for valuation of commercial properties and agricultural lands are stated to be

under way. These steps are in the right direction. The Committee hope that the rules for valuation of commercial properties would be framed soon and then the scope for disputes between the Department and the assessees in the matter of valuation of assets would be minimised.

(Sl. No. 28)

4. 92 The Committee hope that the Assessing officers will also be advised to accept the values worked out by assessees in accordance with the formulae prescribed in the statutory rules without demur if these measures which are aimed at ending the assessees' dependence on valuers—private or official—have to fulfil the underlying objective.

(Sl. No. 29

4. 93 The Committee do not see any reason why a property should be valued differently under different Acts for the purpose of taxation though the Ministry has sought to justify on revenue consideration the different methods of valuation laid down under Wealth-tax, Gift-tax, and Estate Duty Laws. The reasoning given by the Ministry that unlike the Estate Duty and Gift-tax which are one time levies Wealth-tax is an annual levy and therefore calls for a more liberal approach does not sound rational. Different valuation methods lead to confusion, litigation, harassment and avoidable expense. The Committee strongly urge that the system of valuation of properties under all the Direct Taxes laws should be uniform and this uniformity should be brought about without avoidable delay.

(Sl. No. 30)

4. 94 The Committee take note of the clarification given by the Ministry that where the rent of a residential property is pegged at a certain level for many years and cannot be increased, the rent actually realised by the owner of the property would be the basis for arriving at the value of the property under Rule 1BB, Wealth Tax Rules for the purpose of Wealth-Tax. This rule being a statutory rule is binding on the Wealth-tax Officer and the latter cannot disregard it, except in circumstances provided in the Rule itself and with the prior approval of the superior authority.

(Sl. No. 31)

4. 95 The Committee also take note of the clarification given by the Ministry that in the case of self-occupied residential property, the maximum valuation of the house would be the value for the assessment year ening on 31st March 1971; if it has been constructed later, its value will be the value for the year in which the house is constructed. In determining this value the rent capitalising methods as outlined in Rule 1 BB of Wealth Tax Rules would be followed and for this purpose municipal valuation would be taken as the rent. The Chairman, Central Board of Direct Taxes, explained that if the value of such a self-occupied house is 'X' and the cost of its construction is 'Y' and 'X' is lower than 'Y', 'X' will be taken into account for Wealth-tax purposes. The Commitee would like this clarification and clarification referred to in the preceding paragraph to be brought to the notice of all Assessing Officers so that they do not harass the owners of self-occupied houses in the matter of Wealth-tax assessments.

4. 96 The Finance Minister has already announced that value of a residential house for the purpose of Estate Duty would be taken as the same as that adopted for the purpose of Wealth-tax. This concessional value would avoid hardship to the heirs of the deceased owners of properties. The Committee

hope that this concession would be available to the assessees with effect from the date of announcement.

4. 97 That in 46% of valuation cases the certificates given by official valuation cell had stood fairly well before Appellate Tribunal in 1974-75—an argument advanced by the Department to show the reliability of valuation done by the officials valuers—in fact goes against the official valuation cell. This figure amply shows that in majority of the cases the valuation certificates of official valuers had been rejected by the appellate bodies and this proves that assessees' distrust in the impartiality of official valuers is not unfounded. The Committee would like the Ministry to take cognizance of this fact and take remedial action.

(Sl. No. 32)

4. 98 The Committee find that an un-productive asset with a family, like a plot of land, is posing difficulties even to the Department in the matter of valuation. The Committee are of the view that an un-productive asset with a family which may have no market value and which may not yield any income should not count for Wealth-tax or Estate Duty purposes.

(Sl. No. 33)

4. 99 In the Committee's opinion, it is but fair that the circumstances prevailing in tribal areas of North-Eastern Region and other tribal areas where the properties may not be freely transferable except to the tribals are taken into account while valuing those properties for the purpose of taxation. The Committee would like that the Ministry should issue clear instructions to Assessing Officers particularly those dealing with tribal areas in this regard so that they do not even unwittingly harass the assessees in such areas.

(Sl. No. 34)

4. 100 Valuation of shares, particularly unquoted shares, has been the subject of great criticism in non-official circles. Rule 1D of the Wealth-Tax Rules lays down the manner in which the value of unquoted equity shares of companies other than investment companies and managing agency companies shall be determined. No specific rules have been framed under the Gift-tax Act or Estate Duty Act for valuatin of unquoted shares. According to the Ministry, Wealth-tax, being an annual levy, calls for a liberal approach in the matter of valuation. That need not be the approach in the case of Gift-tax and Estate Duty which are one-time levies. If the method of valuation prescribed for the purpose of Wealth tax is extended to Gift-tax and Estate Duty, the assessable value so arrived at would be much less than the prevailing market value in a large number of cases. The Ministry therefore thinks that it would not be appropriate to have uniform rules for valuation of shares under these three Acts.

4. 101 This approach betrays an excessive obsession for revenue prevailing the Ministry. While the revenue should be raised and Committee also would not wish that the revenue due to the Government should be lost, but in their opinion the consideration for revenue should not be carried to irrational limits.

4. 102 The idea approach should be to blend the revenue consideration with the need to make the rules of valuation simple, uniform and rational so that while Government gets its dues, the assessees may also not feel harassed. The Committee, therefore strongly urge the Ministry to review its approach and

bring in uniformity in the matter of valuation of shares as also of other assets under the three Direct Tax Acts, namely Wealth-tax, Gift-tax and Estate Duty.

(Sl. No. 35)

4. 103 Rule 10 of the Wealth-Tax Act Rules relating to the valuation of unquoted equity shares of companies other than Investment companies and Managing Agency companies is based on the break-up value method which has not found favour with the Supreme Court. The Ministry has also admitted that the break-up value method has resulted in under-valuation in some cases and over-valuation in some others.

4. 104 The Committee note that the Ministry has propose certain amendments to the rules relating to the valuation of shares and has published a Notification in this regard in August 1981 inviting objections and suggestions from the public. To sum up, Government proposes to value the sharesas follows :—

(1) Unquoted shares of companies other than Investment companies and Managing Agency companies—by break-up value of assets and liabilities as per books;

(2) Investment companies and Managing Agency companies—by break - up value of assets and liabilities as per market price ;

(3) Where market value of quoted shares is less than two-thirds of the break-up value of the shares, the shares will be deemed to be unquoted share and valued accordingly.

4. 105 A large number of non-official organisations who have submitted memoranda to the Committee do not consider break-up value method of valuation for unquoted shares fair or correct. Representations have also been made against the proposal to deem quoted shares as unquoted shares as proposed in the draft amendments notified by Government.

4. 106 The Committee have given considerable thought to ths matter. In the Committee's opinion, the ideal methods of valuation of shares would be as under :—

Unquoted Shares

(1) Companies (other than Investment companies and Managing Agency companies)—yield basis or face value,whichever is higher;

(2) Investment companies and Managing Agency companies—Average of the break-up value of the shares as per books and the yield basis, as at present.

Quoted Shares

(3) As per quotatios in the recognised Stock Exchanges.

(Sl. No. 36)

44.107 In case Government chooses to fix different methods of valuation, it should also provide in the rules that in the event of any shareholder deciding to surrender his shares to Government because of too high value placed on them under the rules, Government will be obliged to accept the shares at the break-up value rate arrived at by the Central Board.

(Sl. No. 37)

CHAPTER V

EXEMPTIONS

Exemptions

5.1 Wealth-tax is payable by individuals and Hindu Undivided Families in respect of the net wealth on the valuation date. Firms and Associations of Persons are not subject ot Wealth-tax assessment. However, certain associations of Persons are assessable to wealth-tax as individuals in terms of specific provisions in this behalf in the Wealth-tax Act, 1957. Companies were assessable to Wealth-tax upto assessment year 1959-60 only.

5.2 The term net wealth is defined in Sec. 2(m) of the Wealth-tax Act, 1957. In simple language, it means the excess of the sum total of the values of chargeable assets over the sum total of liabilities determined in the manner prescribed in the Act. The assets which are to be included in the net wealth are not enumerated as such. Barring certain excluded and exempted items, property of every description—movable or immovable—is to be included in the net wealth.

5.3 The excluded properties which are not assets as per sec. 2(e) of the Wealth-tax Act are :—

(i) Agricultural lands and growing crops etc. other than land comprised in tea, coffee, rubber or cardamom plantation.

(ii) Agricultural buildings other than those owned or occupied by cultivators of land comprised in the tea, coffee, rubber, cardamom plantation.

(iii) Animals.

(iv) The right to annuity, not being annuity purchased by the assessee or by any other person in pursuance of a contract with the assessee in any case where the terms and conditions preclude, commutation of any portion of the annuity.

(v) Interest in property which subsists for a period of six years or less.

5.4 Wealth-tax is chargeable upon not wealth. The net wealth may briefly be said to be determined by taking into account the value of various assets and deducting them from the value of assets exempt under the provisions of sec. 5 of the Act and debts/liabilities allowable under the Act.

5.6 According to the Ministry the exemptions available to an assessee under the Wealth Tax Act but not available under the Estate Duty over the following assets :—

1. Interest in coparcenary property of HUF of which he is a member.
2. Agricultural land other than those comprised in tea, coffee, rubber or cardamom plantation.
3. One building or group of buildings owned by a cultivator of agricultural land comprised in any tea, coffee, rubber or cardamom plantation.

4. One or more dwelling units each having plinth area not exceeding 80 square metres and the land appertenant thereto for a period of 5 years following the date of completion of construction.
5. Rights under a patent or copyright belonging to the assessee.
6. Interest in any insurance policy before the moneys covered by the policies become due and payable.
7. Right to annuity under section 280 D of the Income-tax Act.
8. Right to receive pension or other life annuity in respect of past services under employer.
9. Deposits under any scheme notified by the Central Government.
10. Deposits with banking companies.
11. Deposits with financial corporations and public finance companies.
12. Deposits by a member with a co-operative society.
13. Deposits of Member of whom a flat is allotted in a co-operative housing society.
14. Debentures issued by a co-operative society.
15. 10-Year Treasury Savings Deposits Certificates, 15-Year Annuity Certificates, deposits in post office savings banks, post office Cash Certificates, post office National Savings Certificates, 12-Year National Plan Savings Certificates, 10-Year Defence Deposit Certificates and 12-Year National Defence Certificates.
16. 6½% Gold Bonds 1977, 7% Gold Bonds 1980 and National Defence Gold Bonds 1980.
17. Credit balance of Provident Fund Account to which the Provident Funds Act, 1975 applies and credit balance with Public Provident Fund.
18. Property received from Government in pursuance of any gallantry or merit award institute or approved by the Central Government.
19. Value of equity shares in a company of the type referred to in section 45(d) where such shares form part of the initial issue of capital for a period of 5 years following the date on which such shares were first issued.
20. Any security of the Central Government or State Government not being a security referred to in section 5(1) (xvi) or (xvia).
21. Any shares not being shares referred to in section 5(1)(xx) or (xxa) in any Indian company.
22. Units of the Unit Trust of India.
23. Shares in a co-operative society.
24. Value of any building where the building is used solely for the purposes of residence of a person employed by the assessee in a plantation or industrial undertaking belonging to the assessee and the income of each such person chargeable under the head "Salaries" under the Income-tax Act is Rs. 10,000 or less.
25. The value of assets other than land and building forming part of an industrial undertaking belonging to the assessee.

26. The value of the interest of the assessee in the assets of an industrial undertaking belonging to a firm or an association of persons in which the assessee is a partner or a Member, as the case may be.

27. The value of assets brought by a person of Indian origin who was ordinarily resident in a foreign country into India and the value of assets acquired by him out of such moneys for a period of seven successive assessment years. Commencing with the assessment year next following the date on which such person returned to India.

28. Special Bearer Bonds, 1991.

29. Animals.

30. Annuities.

5.7 Asked about the reasons for the exemptions being different under these Acts, the Ministry informed the Committee as follows :—

(i) Wealth-tax is an annual levy on the net wealth of an assessee whereas Estate Duty is a one-time levy on the principal value of the estate left behind by a deceased person.

(ii) Wealth-tax is levied on the holding of property whereas Estate Duty is a levy on the passing of property.

(iii) Consequent to the above, under the Wealth-tax Act exemptions have been provided in a manner calculated to encourage savings and investment. Under the Estate Duty Act the exemptions are designed to cover suitable provision for marriage of female dependent relatives, items like house-hold goods, books, wearing apparel not intended for sale, etc. Allowance has also been made for quick succession to property.

Exempted Assets held for less than 6 months

5.8 It has been stated in a memorandum that as per Sec. 5(3)(b) of Wealth-Tax Act :—

> "In case of assets other than shares unless the assets exempted under Sec. 5 are owned by the assessees for a period of at leat 6 months ending with the relevant valuation date, they do not qualify for exemption. Retirement money such as provident Fund, Gratuity and Commutation of pension in case of persons retiring after September in any year is subjected to this restrictive clause. This restriction should be removed."

5.9 Asked to comment on the suggestion the Chairman Central Board of Direct Taxes stated during evidence that "the reason for fixing this six month period is that more than one assessee should not get the benefit of exemption." Elaborating the point the witness added that as per the existing law under section 5(3), an explanation had been added, whereby in case an asset which was exempt was converted into another asset, then the period for which the first asset was kept was to be added, to count 6 month period. He stated that it would not be correct to say that in the case of salaried people, the Provident Fund amount which was exempt from tax till he served, must be held for six month. In case it is held for six months,

and within 30 days it is put into some fixed deposit, even then it would be eligible for exemption. According to the Ministry whatever is exempt under the wealth tax Act, if it is converted into another exempted asset within 30 days, then the period for which the earlier asset was held, will count towards exemption.

Exemption limit for Bank Deposits Etc. for Wealth tax

5.10 It was represented to the Committee that at present bank deposits etc. upto Rs. 1.50 lakh remaining with the bank for a period of 6 months or more are exempted from wealth-tax. It has been suggested that this limit should be raised to 3 lakh. The exemption limit should also be extended to the deposits made with the partnership/proprietership concerns, particularly in backward and hilly areas and in priority sectors like handicrafts, small scale industries, horticulture, tourism and transport sectors.

5.11 In this context the Ministry informed the Committee (Dec. 1981) that the monetary limits fixed under the direct taxes enactments were under constant review of the Government and the Government's decision in regard to alternation in the said monetary limits is reflected in the annual Finance Bill. According to the Ministry the suggestion to raise the overall ceiling of Rs. 1,50,000 in section 5(1A) of the Wealth-tax Act, 1957 would be considered at the appropriate time. (It is seen that this limit is proposed to be raised to Rs. 1,65,000, in the Finance Bill 1982).

5.12 As regards the suggestion to extend the concession to deposits made with partnership/proprietory concerns in backward and hilly areas, and in other priorty sectors, the Ministry stated that "the concessions are extended from time to time keeping in view the general economic situation, priority and non-priority areas in the economy, etc. The instant suggestion, therefore, would be considered by the Government at the appropriate time."

5.13 In another memorandum it was suggested to the Committee that in calculating the exemption of Rs. 1.5 lakh available in respect of company shares, Bank Deposits etc., the fixed deposits with companies and in company debentures should also be included.

5.14 Asked whether the deposits made with companies and investment in debentures should not be treated at par with bank deposits and company shares, the representative of the Ministry stated during evidence that "after the Finance Minister has given permission to some selected public sector companies to accept deposits from public this suggestion requires consideration. We can give exemption to other public sector companies also."

5.15 The Chairman Central Board of Direct Taxes clarified that it would not be quite correct to equate an exempt asset-investment in National development Bonds and such others with the deposits in a company. The deposits in companies earn a very high rate of interst. Debentures and fixed deposits there get about 15%, while the rate in the case of Government Bonds is hardly 7% now."

5.16 The Chairman CBDT added that "in the case of private companies, we cannot probably extend it. About public sector units we can agree to that extents, because it would be a certainly desirable investment."

5.17 The Chairman CBDT agreed that they could consider placing the deposits in public sector units at par with bank deposits for the purpose of granting exemption under Wealth tax Act.

Slab System

5.18 In a memorandum submitted to the Committee it was stated that once an assessee's net wealth exceeds the threshold of Rs. 1.5 lakhs, the entire net wealth becomes liable to tax at specified rates. In other direct taxes, rightly, no tax is charged upto certain limits of income, gift or estate, as the case may be.

5.19 Asked the reasons for not adopting the same system in the case of Wealth Tax as applied to other direct taxes, the representative of the Ministry of Finance stated during evidence that "some sort of slab system should be adopted in the Wealth Tax also. Then there are budgetary constraints. The second aspect is that the intention to counteract concentration of economic power. We have given marginal relief also."

Monetary limits in respect of professional Tools and Personal conveyances

5.20 The following suggestion/observations have been made in a number of memoranda submitted to the Committee :—

(i) The monetary limits governing certain exemptions under Sec. 5 of Wealth-tax Act, should be revised, in particular, exemption in case of professional tools and instruments.

(ii) In view of the rising price of indigeneous cars, the exemption in respect of a car should be increased from Rs. 30,000 at present to the market price (60-70 thousand).

5.21 Asked to comment on the aforesaid suggestions the representatives of the Ministry informed the committee that "we have taken note of all the monetary limits provided under the direct taxes Acts. There are prescribed limits under the Income Tax Act, Wealth Tax Act, Estate Duty Act, etc. They are all under consideration. We have prepared a list and we are examining them."

5.22 It is seen that in the Finance Bill 1982, it is proposed to increase exemption limits in respect of personal conveyance of an assessee from Rs. 30,000 to Rs. 75,000 and of tools and professional instruments from Rs. 20,000 to Rs. 50,000.

Social and Cultural Clubs

5.23 Social and Cultural Clubs it is stated are non-profit making associations and incomes of those clubs are not taxed. It was brought to the Committee's notice that the Department was now seeking to levy wealth-tax on such clubs. The Ministry in a written reply stated that the criteria for taxation under the Wealth-tax Act of social and cultural clubs were different from those under the Income-tax Act. If a club is a "limited company" or an "association of persons", it is not taxable at all because these entities are not chargeable to Wealth-tax.

5.24 A club could be a body of individuals and, as such, taxable under the Wealth-tax Act in the status of "individuals". It is, however, provided in section 2(h)(iii) of the Wealth-tax Act that Board can declare any institution etc. as a "company" with the result that it would not be subjected to wealth-tax.

Section 2(h)(iii) reads as under :—

> "Any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which the Board may, having regard to the nature and objects of such institution, association or body, declare by general or special order to be a company."

5.25 The Board have laid down guidelines for declaring institutions, associations or bodies as companies for the purposes of section 2(h)(iii) of the Wealth-tax Act.

5.26 In short, a social or cultural club which otherwise is chargeable to Wealth-tax can always apply to the Board for declaring it as a limited company under section 2(h)(iii) of the Wealth-tax Act so as to make it exempt under the Wealth-tax Act.

Increase in Market value of Property remaining within family

5.27 It was suggested to the Committee that so long as a property remains within the family, Wealth-tax or Gift-tax should not be based on unrealised increases in the market value, unless and until such increases are actually realised by the owner by sale to outsiders.

5.28 The Ministry stated that "the suggestion appears to be that when the property changes hands within the family (assuming that the term "family" has been properly defined), the value for the purpose of the transfer should not be the market value as on the date of transfer but the value which was being assessed or could be assessed for Wealth-tax purposes in the hands of the original owner/transferor.

5.29 From the point of view of incidence of Gift-tax, Estate Duty and Wealth-tax, the applicability of the suggestion appears to be relevant in the following situations :—

(i) X (a member of the family) gifts the property to Y (another member of the family);

(ii) X dies and on his death the property passes on to Y;

(iii) (a) property is gifted by X to Y as per (i) and how is to be assessed in his hands for Wealth-tax; and

(b) property passes to Y on the death of X as per (ii) and is now to be assessed in his hands for Wealth-tax.

5.30 As regards (i) of para 2 above, the suggestion that the value in the hands of the original owner/transferor should be adopted for gift-tax (and not the market value) is not acceptable because that will go against the very concept underlying the gift-tax Act. If the value adopted for the purpose of gift-tax is not taken to be the fair market value, it will lead to many malpractices in-as-much-as unscrupulous assessees would be able to reduce the incidence of Income-tax and Wealth-tax etc. without paying on account of Gift-tax.

5.31 Regarding (ii) above, this also would go against the concept of Estate Duty in-as-much-as the State should get its due share when the property passes on death. It may, however, be relevant to mention that the question of hardship to the accountable person in this regard has been

considered by the Government and, as we know, the Hon'ble Finance Minister has already announced that one house for the purpose of Estate Duty would be valued on the same basis as for Wealth-tax.

5.32 Regarding (iii)(a) again the suggestion is not acceptable. The donee cannot be put in a position more advantageous than that he would have been if he had acquired the property by means other than the gift.

5.33 Regarding (iii)(b) of para 2 above also, the position normally is the same as in (iii)(a). However, it appears that in certain cases this may mean a little hardship. For instance, where the deceased was being assessed for wealth-tax under section 7(4) of the wealth-tax Act (i.e. on the valuation as on 31-3-1971 or the valuation date following the date of acquisition of the house, whichever is later) and the property passes to his widow or minor children who continue to remain in the same house, it may cause hardship if higher value is adopted for wealth-tax purposes in their hands. The adoption of the same value in such situations can be considered.

B. Gift Tax

5.34 Gifts not chargeable to Gift Tax are enumerated in section 5(1) of the Gift Tax Act, 1958. Under section 5(2) of the Gift-tax Act, without prejudice to the provisions contained in sub-section (1), gift-tax shall not be charged under this Act in respect of Gift made by any person during the previous year, subject to a maximum of rupees [Five] thousand in value.

5.35 The various exemptions in the Gift Tax Act have been provided with a view to relieving hardship to the tax payers and in the light of the policy of the Government on the subject. If and when it is brought to the notice of the Government that the assessees have taken certain undue advantage which is not in keeping with the spirit behind such exemptions necessary steps are taken to modify the law.

5.36 The Ministry informed the Committee that an amendment to sec. 5(1)(xii) of the Gift Tax Act is under the consideration of the Government with a view to providing an overall limit to the gifts which can be claimed as exempt under the provisions of this section. This clause lays down that gift tax shall not be charged as gifts made by any person for the education of his children. (Please reproduce for Act).

Aggregation of Gifts

5.37 From the assessment year 1976-77 a provision has been made for aggregation of gifts given in the previous four years. In a number of memoranda submitted to the Committee it was stated that the provision for aggregation of gifts under sec. 6A of the Gift-Tax Act puts the donor to unwarranted hardship by way of higher tax apart from creating compilcations and difficulties in the matter of Gift-tax assessment. They suggested that the said provision be deleted. This would not entail any significant loss of revenue.

5.38 Asked about the rationale of such an aggregation, the representatives of the Ministry of Finance explained during evidence that "As a result of the recommendation of the Wanchoo Committee, this provision

was brought. The purpose was to counteract tax avoidance in the case of gifts. Suppose a man makes a gift first on the 31st March, then on 1st April and then again after a month. The spread of gifts over a period of time should be avoided; and if the aggregation is done, then the rate of tax should also be higher. The Wanchoo Committee has strongly expressed its view and said that this aggregation is absolutely essential in order to counteract this type of tax avoidance."

Change in the Constitution of Firm

5.39 In another memorandum it was suggested to the Committee that an explanation may be added at the end of Sec. 2(xii) to clarify that where there is a bona-fide change in the constitution of a firm engaged in one of the learned professions the admission of new partner without payment of good-will may not be regarded as resulting in a gift. Another explanation may be added to clarify that a bona-fide change in the constitution of firm carrying on any business on grounds of commercial expediency shall not be regarded as gift.

5.40 Asked to state the factual position in this regard the representatives of the Ministry of Finance stated during evidence that :—

> "We have given detailed instructions. Probably there is some difficulty in interpreting the circular. We will examine this again and see if any classification is necessary."

Reasonable gifts for Education of Children

5.41 It was brought to committee's notice that under the Gift Tax Act "reasonable" amounts are allowed to be given in gift for education of children. The expression "reasonable" is vague and leaves too much discretion with the Gift Tax officer which at times is used to harass the assessee. It was suggested that it should be clearly defined with reference to the donor's income.

5.42 Asked whether it would not be better to remove the ambiguity in this regards, the representatives of the Ministry stated during evidence that "I feel it was deleberately left vague because we had originally felt that it would cause a hardship if any monatory limit is fixed. There are various factors which have to be taken into consideration. One is the quantum of expenses which are necessary and all that. Recently, in some Kerala cases, actually it has worked against the revenue. The Government is considering whether this vagueness can be removed. So, this matter is under consideration".

Market value exceeding value of consideration

5.43 It has been represented to the Committee that the provisions of sec. 4(1)(a) for Gift tax Act are sweeping in nature. According to it, the amount by which the market value of the property at the date of the transfer exceeds the value of consideration is deemed to be gift made by the donor and is assessable to gift-tax. The problem arises in the determination of the market value. At times, the donor may not be able to get the full market value due to several constraints. It has been suggested that the Gift-tax Rules should provide for such contingencies.

5.44 Explaining the position the representatives of the Ministry stated in evidence that "it will be difficult to envisage all the circumstances."

Liability for Gift-Tax

5.45 It was represented to the Committee that in many countries the liability of gift tax was on the donee rather than on the donor and the desirability of introducing this change needed to be considered.

5.46 The Ministry in a written reply have informed the Committee that under the existing provisions of the Gift-tax Act, gift-tax is payable by the donor, but if in the opinion of the Gift-tax Officer the tax cannot be recovered from the donor, it may be recovered from the donee. From this provision, it is apparent that though the main responsibility of paying gift-tax rests on the donor, the tax may also be recovered from the donee.

5.47 According to the Ministry the primary liability to pay gift-tax is shifted from the donor to the donee, there is unlikely to be any gain to revenue. The provision relating to aggregation of gifts contained in section 6A inserted in the Gift-tax Act by the Taxation Laws (Amendment) Act, 1975 with effect from 1-4-1976 ensures that the rate of tax is determined not only by the quantum of gifts made in the previous year but also by the quantum of gifts made in the earlier years by the same donor. If tax were to be levied on the donees, it would lead to inequitable incidence of tax as between donees.

5.48 In the case of a donor who has made several gifts in the previous year, there would be multiplicity of assessments in the case of donees instead of one assessment only in the case of the donor.

5.49 On the considerations noted above any change in the liability to gift-tax from the donor to the donee does not appear desirable at this stage.

5.50 The Ministry further stated that the basic objective of Gift-tax is to prevent fragmentation of wealth through gifts *inter-vivos*. This principle will be set at naught if a number of gifts are made to different donees of small amount (each of them below the exemption limit) and the donees are to be assessed to gift-tax as suggested by the Committee.

5.51 In this context, the representatives of the Ministry stated during evidence that "this provision is already there in our Act. If the tax cannot be realised from the donor, then it can be realised from the donee. Apart from the conditions prevailing in this country, we find it is convenient to assess the donor rather than the donee. The whole idea of gift tax is to prevent fragmentation of wealth in order to avoid wealth tax. It can be taken of if we assess the donor."

5.52 Chairman Central Board of Direct Taxes added that "suppose a person makes 10 gifts in a year. If we are to take the wealth of the donor we have to run after one assessment. Otherwise, we have to run after 10 persons. It will defeat the aggregation of gifts because it is in the hands of the donor that we aggregate. We do not take into consideration the donee."

Premium for Insurance Policies

5.53 It was represented to the Committee that premium paid under Insurance Policies taken out by a tax payer for the benefit of members of his family under Married Women's Property, Act are designed to cover the risk of life under the contract of insurance and it is inequitious to levy gift tax either on the premium or any other notional sum as gift in the hands of the tax payer.

5.54 The Ministry in a written reply informed the Committee that the question of taxability of the premia paid under a policy taken out in pursuance of sec. 6 of the Married Women's Property Act has been considered by the Ministry in consultation with the Ministry of Law. Gift is defined in sec. 2(xii) of the Gift-tax Act, 1958. It includes transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money's worth. 'Donee' has been defined in the Act as a person who acquires any property under a gift and where the gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary. If an insurance policy is taken out in accordance with section 6 of the Married Women's Property Act for the benefit of a person's wife or his wife and children, it is deemed to be a trust for the benefit of his wife. Accordingly the premia paid in respect of such policy by an assessee are *prima-facie*, liable to gift-tax.

5.55 The Ministry further stated that the question of exempting such premia from gift-tax is under the consideration (of the Economic Administration Reform Commission set up by the Govt.) in the light of the recommendations on the subject made by the Choksi Committee.

5.56 Elucidating the position in this regard, the representatives of the Ministry stated during evidence that "the legal position as far as the premium payable is concerned is that if the life insurance policy is in the name of son, daughter or wife it is admissible as deduction under the Income Tax Act. The theory is that the husband pays from his income and therefore a reduction has to be given. But when it comes to the question of gift tax the the property which a lady acquires, under the Hindu Women's Property Act the premium will be treated as a gift. Because the person who gets the property does not pay the premium. Finally the property that culminates as a result of the insurance comes to the wife under the Hindu Women's Property Act is the basis for purposes of Estate Duty. If a policy is taken out and if it is endowed in her name, not in the name of the husband, even then Estate duty is payable, because even in the case of gifts the theory is that under the Hindu Women's Property Act, as the property is hers and the payment is being made over a period of years, but it does not detract from the quality of the gift. But the question can be considered whether we can have a more human approach in this matter and that can be considered. That is being looked into by the EARC."

C. Estate Duty

5.57 Estate Duty is leviable on property passing on the death of a person. However, section 33 provides for certain exemptions and stipulates that no estate duty shall be payable in respect of property of certain kind belonging to the deceased which passes on his death.

5.58 If the Central Government is of opinion that in respect of any class of property or class of persons the circumstances are such that some relief in addition to the reliefs provided in sub-section (1) should be given, it may, by notification in the Official Gazette, make any exemption, reduction in rate or other modification in respect of estate duty in favour of any such class of property or the whole or any part of the property of any class of persons, and any notification so issued shall be laid before both Houses of Parliament as soom as may be after it is issued.

5.59 The exemptions are generally provided with a view to affording some relief to the tax-payer and mitigating hardship to him. They can, of course, be withdrawn if there is an abuse of these reliefs. No instance of abuse of the exemptions enumerated in sub-para (a) has come to the notice of the Board.

No levy of estate duty on non-assessees of wealth-tax

5.60 It was suggested in a memorandum that instead of trying to solve the problems caused by continued escalation of property value through increase of general exemption limit, for estate duty, as is proposed to be done by raising it to Rs. 1.5 lakhs, it should be provided that there will be no levy of Estate Duty on non-assessees of wealth-tax. This will also greatly facilitate the procurement of probates and succession certificates etc.

5.61 The Committee asked the Ministry whether, in view of the facts that now the exemption limits for Estate Duty and Wealth Tax laws are proposed to be equal and the method of valuation of residential property is also proposed to be the same, it would not simplify matters without much loss of revenue if non-wealth tax assessees are exempted from estate duty. The Chairman Central Board of Direct Taxes stated in evidence that "the exemptions provided under the wealth tax Act and the estate duty Act are quite different because there is a basic difference between the two levies. For example, we have exempted agricultural land from wealth-tax, but we have not done so in the case of estate duty. It will be difficult to say that those people who do not pay wealth tax should be exempted from estate duty. This to my mind is not quite acceptable."

5.62 In this connection the Ministry further informed the Committee as follows in a Post evidence reply :—

The difference between the Wealth Tax Act and the Estate Duty Act may have to be considered under different heads. The first is relating to the objectives behind the Act. The Wealth Tax Act is designed as an annual levy on the value of the Wealth held by a person on a particular date, called the valuation date. The Estate Duty is an Act devised to reduce concentration of economic power and to prevent persons of one family inheriting large economic power without any exertion on their part.

5.63 The Wealth Tax Act being a yearly levy has to take into account :—

(i) Administrative convenience i.e. facility of making assessments and collecting the taxes;

(ii) Easy understanding of the provisions by the tax payers; and

(iii) Requirements of budget.

Besides, Wealth Tax has also to keep in view the yield from the asset and the total income of the taxpayer in a particular year because all tax payments have to come out of the revenue or yield from a property. The Estate Duty, on the other hand, being a one time levy, need not take into account these constraints. The main objective of the Estate Duty Act is to prevent the concentration of economic power and the transfer of the economic power to a few persons.

5.64 According to the Ministry the Estate Duty Act was passed in 1953 and after that the Government has not reviewed the performance of the Estate Duty Act.

5.65 This will have to be now undertaken and wherever necessary modifications of the Estate Duty Act will have to be made. While doing so, the monetary limits provided in several sections of the Estate Duty Act will also have to be kept in view.

Insurance Policies for Payment of Estate Duty

5.66 It was suggested to the Committee that if a person takes up an insurance policy for payment of estate duty, he should be granted some rebate on his ultimate liability in view of the advance payments arranged by him. Similar rebate should be given if a person pays estate duty in advance of his death.

5.67 Asked to comment on the aforesaid suggestions, the representative of the Ministry stated that "provision for exemption in respect of policies and for payments made in anticipation of death would not be necessary at the moment. We are not accepting it."

5.68 In another place it was further suggested to the Committee that life insurance policies taken by persons should be exempted from estate duty as these are taken for social security of the families. It was also suggested that 'accident' policies should be completely exempted for estate duty.

5.69 During evidence, the representatives of the Ministry of Finance stated that "life insurance policies upto Rs. 5000 are exempt at the moment. As far as the accident policy is concerned, we do not give any rebate. The higher exemption from Rs. 5,000 can perhaps be considered."

Exemption under Estate Duty

5.70 In a memorandum submitted to the Committee it has been suggested that the exemption which are given under the Income-tax Act and Wealth tax Act for investment in certain specified manner should be granted under the Estate Duty Act also. Such exemptions may cover *inter alia*, units of UTI agricultural land, balances in provided Funds etc. Appropriate limits may be provided for such exemption.

5.71 Elucidating the aforesaid suggestion, the representative of a professional body stated during evidence that the objective of the Estate Duty was to remove economic disparity through legislation "which is partly revenue and partly social". "An exemption under wealth tax is given which

is also primarily for social equality purposes. If you give exemptions under wealth tax there is no reason why under state Duty you should give exemptions for provident fund, gratuity, LIC contributions, etc." the witness added.

5.72 When asked to comment on this suggestion, the representatives of the Ministry of Finance stated during evidence that "there are some differences between the two. We have to examine the provisions in detail. When we implement the new Estate Duty Act, we will keep all these things in mind."

Estate Duty Allowed as Deduction

5.73 It was suggested to the Committee that Estate Duty should be allowed as deduction from the estate just as the wealth tax payable is allowed as deduction in computing the net taxable wealth under the Wealth-tax Act.

5.74 The Committee asked the Ministry as to why a provision similar to that in wealth tax Act could not be included in the Estate Duty Act the Ministry informed the Committee that the suggestion was not acceptable since the provisions of the Wealth tax Act and that of the Estate Duty Act are not in *pare materia*. Under the Wealth tax Act the deduction allowed in view of the provisions of sec. 2(m) of that Act which specifically provides for allowance of such liabilities. Under the Estate Duty Act the liabilities/debts are allowed under section 44 which does not provide for allowance of the state Duty payable, as liability.

5.75 The representatives of the Ministry maintained during evidence that the estate duty could not be allowed as deduction from the estate and the position taken by the Government in this regard had been upheld by High Courts.

5.76 In a note furnished after the evidence the Ministry of Finance explained the position as follows :

> Wealth tax deductible as debt from the net wealth was also a controversial point earlier. The controversy was set at rest by the decision of the Supreme Court in the case of H.H. Setu Parvati Bayi vs. Commissioner of Wealth Tax, Kerala (1968) 69 I.T.R. page 864 which followed the principles laid down in its earlier decision in the case of Kesho Ram Industries Vs. Commissioner of Wealth Tax (1966) 59 I.T.R. page 767. Where is however, a basic difference between the levy of wealth-tax and that of estate duty. Vide court decision it was held that the liability to pay wealth-tax arises on the valuation date itself and since it is the net wealth of a person on the valuation date which is chargeable to wealth-tax, the wealth tax payable becomes an allowable liability in wealth-tax assessments. However, under the Estate Duty Act the position is different. The liability to pay estate duty arises on passing of a property and not on the death of a person. The courts have held that the passing of the property takes place a split second after the death. However, the debts and encumberances to be allowed to the estate

are those existing at the time of the death and thus being those which have been creating during the life time of the deceased. Since the passing of the property takes place a split-second after the death, the liability to pay estate duty arises subsequent to death and accordingly is not a liability existing at the time of the death. In view of this basic difference between wealth-tax and estate duty an amendment to the Estate Duty Act to provide for allowance of this liability does not appear to be called for.

5.77 According to the Ministry the matter has come up before various High Courts and it has been held by them that estate duty payable is not deductible from the value of the estate passing.

Funeral Expenses allowed under Estate Duty Act

5.78 It was suggested to the Committee that reasonable amount of expenditure for performing funeral rites and other related ceremonies be allowed to be deducted in the computation of dutiable estate. The present limit (Rs. 1000) is very low.

5.79 Commenting upon the aforesaid suggestion the representative of the Ministry of Finance assured that the question raising exemption limit in this regard would be examined.

Estate Duty on Gifts made before death

5.80 It was stated in a memorandum submitted to the Committee that the Gifts made by the deceased for charitable purpose or otherwise, within certain period before the death are subject to estate duty. This is not fair. Unless the Gift was exempt from gift tax, the deceased should have paid the gift tax on the gift property. Levying estate duty again on the same asset amount to double taxation. All assets which have gone out of the control and possession of the deceased before his death should be therefore excluded from the purview of estate duty.

5.81 The representative of a leading Chamber of Commerce stated during evidence before the Committee that "there are certain properties which do not attract gift tax. It is not uncommon for an individual in his advanced years of life to give charity. It is our custom. Unfortunately, if that individual passes away within six months the whole thing is added." The witness added that "It should be for general public utility".

5.82 Asked about the justification for levying estate duty on gifts made before death unless it was proved that gift were made solely with the purpose of evading estate duty, the representative of the Ministry of Finance stated during evidence that

> "There can be several issues in this matter. When the Estate Duty Act was enacted, there was a provision that *inter vivos* and gift *mortis causa* made at the time of death should be included. The idea was that as far as estate duty enactment was concerned, a person could avoid payment of estate duty by making substantial amounts of gifts. That is why a period of two years was put in, with an additional condition under Section 10 where the gift

is a partial benefit, or some indirect interest was derived; even then it will be included, even if it is beyond a period of two years. The philosophy underlying this is that upto a period of two years close to the period of death, it can be taken as an act for avoiding estate duty. Whether it should be restricted, to one year or enlarged for five years, is a matter of budget policy to be carefully considered. But if you take Estate Duty Act into account, which is supposed to bring about a reduction of disparity in wealth etc. and if a person delibrately tries to reduce the impact of estate duty it cannot be allowed. As long as the gift tax is paid, it is allowed for deduction from estate duty, where it happens, the gift tax is liable as a reduction".

Unmarried daughters and dependent children

5.83 It was suggested to the Committee that in case of unmarried daughter the exemption limit under the Estate Duty Act should be raised from Rs. 10 thousand to Rs. 25 thousand per head. This exemption should extend to grand daughter, niece and grand niece if they are totally dependent on the Estate. Exemption should be introduced for bringing up and maintaining of dependent children and disabled dependents of the deceased.

5.84 The following suggestions have been made by the Ministry in the written replies :

(i) Exemption limit u/s 33(1)(k) should be raised from Rs. 10,000/- to Rs. 25,000/- in respect of provision made for marriage expenses of unmarried daughters.

(ii) Exemption u/s 33(1)(k) should be available for respect of dependent grand daughters, nieces and grand-nieces even if the deceased is not a natural guardian.

(iii) Exemption should be provided in respect of expenses to be incurred on bringing up and maintaining of dependent children of the deceased.

(iv) Exemption should be provided from the Estate in respect of expenses to be incurred on maintenance of disabled dependents of the deceased.

5.85 As to the suggestion at (i) u/s 33(1)(k) of the Estate Duty Act, 1953 a deduction has been provided in computing the dutiable estate of the deceased for moneys earmarked under policies of insurance or declarations of trusts or settlements effected or made by a deceased parent or natural guardian for marriage of any of his female relatives dependent upon him for the necessaries of life to the extent of Rs. 10,000/- in respect of marriage of each such relative.

5.86 The limit prescribed in the Act at the time of the original enactment was Rs. 5,000/- and was raised to Rs. 10,000/- by the Finance Act 1966 with retrospective effect from 1st April 1965. The basic objective behind the provision was to provide for a deduction in respect of an important social obligation.

5.87 In respect of the suggestion that the monetary limit be raised to Rs. 25,000/- from Rs. 10,000/- it may be said that there does appear to be a case for such an increase in view of the ever increasing cost of articles and the resulting increase in the cost of performing a marriage.

5.88 Regarding the suggestion at (ii), viz., that the exemption should be extended to other relatives (as mentioned above). It may be said that this appears to be an acceptable suggestion in view of the fact that in Indian society the social obligation of marriage is carried out by grand parents/uncles/grand-uncles in those cases where the father of the girl has expired. If in such a case money has been earmarked under policies of insurance or declarations of trust it would be reasonable to provide for exemption. Such a provision in the Act would recognise the prevailing social practice in the country. A safeguard could be provided in these cases by ensuring that such exemption is enjoyed only in one Estate Duty assessment in respect of the same dependent".

5.89 Regarding the suggestion at (iii), viz. that exemption may be introduced in respect of expenditure likely to be incurred for bringing up and maintaining the dependent children of the deceased it may be said that in view of the fact that acute financial hardship is often caused in cases where a deceased leaves behind children, it may be reasonable to provide for a deduction from the estate, being the amount which is reasonable in the opinion of the Controller of Estate Duty keeping in mind the number of children, their respective ages and the status of the family. An overall limit of say Rs. 10,000/- per dependent child could be fixed to ensure against misuse of this provision.

5.90 As to the last suggestion at (iv) above, it may be stated that quite often disabled dependents of the deceased required financial support all their lives. The obligation in respect of disabled dependent has been recognised in the Income-tax Act by providing for a reduction u/s 30.D of the Income-tax Act. Keeping this principle in mind the suggestion for introducing a deduction from the estate in respect of expenditure on disabled dependents appears to be reasonable subject to safeguards and overall limits being incorporated in such a provision".

5.91 Dealing with the point during evidence the representative of the Ministry of Finance stated that "the question of increasing all the limits is under consideration. But about extending it to grand daughters and other relatives, I do not know; we will consider it."

Capital Gains Tax and Estate Duty

5.92 It was suggested to the committee that if a property has to be sold by an heir of the deceased in order to pay Estate Duty, either the estate duty should be deducted from the capital gains or the capital gains tax should not be levied in such a case.

5.93 During evidence the representative of the Ministry explained that "Under Section 50B of the Act, tax on capital gains is allowed as deduction. Suppose a property has been sold for Rs. 1 lakh and there is a capital gain of Rs. 10,000/- that portion is allowable. The Chairman, Central Board of Direct Taxes added that "the deduction is allowed in proportion to the net proceeds which are deposited against estate duty payment. If capital gain is to be allowed, then 100% of the net proceeds has to be paid as estate duty."

5.94 Section 50B of Estate Duty Act 1952 reads as follows :—

Relief from estate duty where tax has been paid on capital gains

"Where any property on which estate duty is leviable under this Act is transferred within a period of two years following the death of the deceased and tax under the Income-Tax Act, 1961 (43 of 1961) has been paid in respect of the capital gains arising from such transfer, the estate duty payable shall be reduced by a sum which bears to the total amount of tax so paid the same proportion as the amount paid towards estate duty out of the proceeds of the transfer bears to the gross proceeds of such transfer provided that the Board may, on an application of the accountable person, extend the period of two years aforesaid if it is satisfied that the accountable person had sufficient cause for not effecting the transfer of the property within that period".

5.95 Certain assets and transactions are exempt, party or whole, from Wealth-tax, Gift-tax and Estate Duty. Need for giving certain additional exemptions and removing certain ambiguities in this regard have been brought to the notice of the Committee. The Committee have examined all the suggestions in the light of the views expressed by the Ministry.

5·96 Under Section 5(3)(b) of Wealth-tax Act assets other than shares exempted from Wealth tax under Section 5 do not qualify for exemptions unless these assets are held by an assessee for a period of atleast six months ending with the relevant valuation date. This provision would apparently be harsh on the salaried people who might be retiring after September in any year as in that case the terminal payments such as Provident Fund, Gratuity, Commutation of Pension even if originally exempt, would not qualify for exemptions. The Ministry stated that in accordance with an 'explanation' added to the Section, if an asset which is exempt is converted into another exempted asset within a prescribed period, then the period for which the first asset is kept counts towards exemption. This 'explanation' comes to the rescue of a salaried employee only if an asset earlier exempted is converted into an asset which continues to be under the exempted category. It is not clear whether commutation value of pension or cash equivalent of unavailed leave in the case of salaried persons enjoys this exemption or not. The Committee feel that assets like terminal payments received by a salaried person if exempted under the aforesaid section should continue to qualify for exemption even if they are held for less than six months and are not converted into any other exempted assets. (S. No. 38)

5.97 Suggestions for raising exemption limit in respect of bank deposits etc. as laid down in Section 5 (1A) of the Wealth-tax Act from Rs. 1 ·5 lakhs to Rs. 3 lakhs or so were made to the Committee. The Committee find that in the Finance Bill, 1982 a provision has been included to raise this limit from Rs. 1 ·5 lakhs to Rs. 1 ·65 lakhs. The Committee feel that savings covered under Section 5 (1A) deserve a higher exemption limit. They hope that the exemption limit under this Section would be reviewed and further raised to an appropriate level. (S. No. 39)

5.98 Fixed deposits in and debentures of companies are not covered under this exemption at present. Government has recently permitted selected public sector companies to accept deposits from the public. In view of this latest development, the Committee feel that atleast such fixed deposits as are made with public sector companies should also qualify for exemption under Section 5 of the Wealth tax Act like similar deposits made in banks. (S. No. 40)

5.99 When the net-wealth of an assesseee exceeds the cut off point of Rs. 1.5 lakhs, his entire wealth becomes liable to wealth tax at specified rates. In other direct taxes namely: Income tax, Gift tax and Estate Duty, no tax is charged on amounts below the exemption limits. The Committee feel that under Wealth tax Act also, the portion of net wealth below the exemption limit should not bear any tax. (S. No. 41)

5.100 The Committee are glad to note that exemption limits in respect of professional tools and instruments and personal conveyance which were at too low a level of Rs. 20 thousand and Rs. 30 thousand, respectively, are proposed to be raised to Rs. 50 thousand and Rs. 75 thousand in the Finance Bill, 1982. (S. No. 42)

5.101 The position of social and cultural clubs which are non-profit making associations is somewhat ambiguous under the Wealth tax law. The Committee find that the Central Board of Direct Taxes has been given powers under Section 2 (h)(iii) to declare any such institution as a "company" and when it is so done the institution is not subjected to Wealth-tax. To avail of relief, the institution has to make an application to the Board for déclaring it as a company under the aforesaid section. The Committee feel that this provision is not widely known. The Ministry should consider how deserving non-profit making Social and Cultural clubs can be given the admissible relief in actual practice. (S. No. 43)

5.102 Suggestions have been made to the Committee that when a property changes hands within the family the value for the purpose of the taxation should not be the market value as on the date of transfer but the value which are being assessed or could be assessed for Wealth-tax purposes in the hands of the original owner/transferor. In so far as this suggestion relates to gifts under the gift tax Act, the Committee agree with the Ministry that there is no justification to adopt a value other than the fair market value for the purpose of assessing tax liability on it. But the Committee strongly feel that when a property passes on the death of a person to his/her heir who happens to be a member of the deceased's family, the value of the property for the purpose of Wealth-tax and Estate Duty should not be the fair market value but the value which was placed on the property when it was in the hands of the deceased. This is a relief which is needed badly to avoid hardship to members of the bereaved, family particularly widows and children, after the death of the head of the family. (S. No. 44)

5.103 The Committee learn that an amendment to Section 5(1)(xii) of the Gift tax Act, which relates to exemption of gifts made for the purpose of education of children of an assessee, is under consideration of the Government. The Committee hope that it would be finalised soon. (S. No. 45)

5.104 There is a widespread feeling against aggregation of gifts for the previous four years under Section 6A of the Gift tax Act for the purpose of determining the rate of tax. This procedure, it is stated, puts the donor to hardship and creates complications in assessment.

5.105 The Committee find that this provision was introduced from the assessment year 1976-77 in pursuance of a recommendation of the Wanchoo Committee with a view to counteract tax avoidance in the case of gifts. While

the Committee agree with the underlying objective, they wonder whether the aggregation of gifts given in the previous four years which might include even genuine gifts is the best method to prevent such avoidance. The Committee would suggest that this matter might be reviewed. (S. No. 46)

5.106 Need for issuing clarification to the effect that where there is a bonafide change in the constitution of a firm engaged in one of the learned professions, the admission of a new partner without payment of good-will may not be regarded as resulting in a gift. Another clarification suggested is that a bonafide change in the constitution of firm carrying on any business on grounds of commercial expediency should not be regarded as a gift. The Ministry informed the Committee that it had given detailed instructions in this regard. There is probably some difficulty in interpretating the instructions. The Ministry agreed to examine the matter again and issue clarifications, if necessary. The Committee would like to be informed of the action taken in the matter. They desire that the matter should be placed beyond any ambiguity. (S. No. 47)

5.107 Under the Gift Tax Act "reasonable" amounts are allowed to be given in gifts for education of children, but the term "reasonable" has not been defined and it leaves too much discretion in the hands of Gift-tax Officer. The Committee do not see any logic in leaving this matter deliberately vague as is stated to have been done by the Ministry. Such agueness can lead to harassment of the assessees at the hands of the officials. The Committee recommend that the parameters of the term "reasonable" should be clearly laid down with reference to the income of the assessee. (S. No. 48)

5.108 Under Section 4(1) of the Gift tax Act the amount by which the market value of the property at the date of the transfer exceeds the value of consideration is deemed to be a gift made by the donor and is assessable to Gift Tax. It has been represented to the Committee that at times the donor may not be able to get the full market value due to several constraints. The Committee feel that restrictions under which such transactions take place should be taken into account and the Ministry should make the position clear beyond any shadow of doubt for the benefit of the assessees. (S. No. 49)

5.109 The Committee agree with the Ministry that the present procedure under which normally the donor, and not the donees of gifts, is liable to pay gift tax is quite reasonable and may continue to be followed. (S. No. 50)

5.110 The question of taxability of the premia paid under a policy taken out in pursuance of Section 6 of the Married Women's Property Act has been raised before the Committee. While the assessees feel that the premia or on any other national sum should not be treated as gifts and should not be subjected to Gift tax, the Ministry feels otherwise.

5.111 The Committee are informed that the question of exemption of such premia from Gift Tax is under the consideration of the Economic Administration Reforms Commission set up by the Government in the light of the recom-

mendations on the subject made by Choksi Committee. The Committee hope that a fair decision in the matter will be taken before long. (S. No. 51)

5.112 Net Wealth upto Rs. 1·5 lakhs is exempt from Wealth tax. The exemption limit for the purpose of Estate Duty is also proposed to be raised to Rs. 1·5 lakhs. It was suggested to the Committee that now when exemption limits for Estate Duty as well Wealth tax are proposed to be made equal and the method of valuation of residential property is also proposed to be the same under the two laws, it will simplify matters if the estates of only those assessees who pay Wealth tax are subjected to Estate Duty after their death. The Ministry has voiced objection to this approach on the ground that the objectives of the two laws are different and they should remain applicable separately in their respective spheres. The Committee find that ever since the Estate Duty Act was passed in 1953 its performance has not been reviewed by the Government and a review in this regard is proposed to be undertaken by the Government in the near future. The Committee feel that it will not only simplify matters greatly but also facilitate easy identification of dutiable estates and smooth collection of duty if non-wealth tax assessees are exempted from estate duty in respect of the estates left by them at their death. The Committee would like the Government to examine practical utility of this simple approach dispassionately. (S. No. 52)

5.113 Though the Ministry is not prepared to accept the suggestion that where a person takes up an insurance policy for payment of Estate Duty or makes advance payment of Estate Duty before his death, some rebate need be allowed on the tax liability of this estate after his death under the Estate Duty Act, the Committee feel that it will be fair if some consideration for advance payment is shown in such cases. (S. No. 53)

5.114 The Committee feel that on conceptual plane there is a case for taking a more compassionate view of deaths in accidents and insurance amounts which accrue in such cases to the members of the bereaved family and which should qualify for some sort of exemption. (S. No. 53A)

5.115 The exemptions granted to various types of properties under the Income-tax Act, Wealth-tax Act and Estate Duty Act are not the same. The Ministry is of the opinion that they need not be the same as the objectives of the three Acts are different. The Committee suggest that when the working of the Estate Duty Act is reviewed by the Government a comparative study of the exemptions under the three Acts, should be made to see how far diversity in exemptions under these three Acts is desirable and unavoidable and whether such of them as relate to similar assets cannot be made identical to avoid confusion. In doing this exercise, revenue considerations alone should not weigh with the Government; the ease in tax administration and fairness to assessees should also be given due weight. (S. No. 54

5.116 The Committee find that while Wealth-tax payable by an assessee is allowed as deduction in computing the net taxable wealth under the Wealth-tax Act, Estate Duty payable on an estate is not allowed as deduction from the estate or a deceased. The Ministry informed the Committee that Wealth tax deductible as debt from the net wealth was also a controversial point earlier but the controversy was set at rest by the decision of the Supreme Court in the case of H. H. Setu Parvati Bayi *vs.* Commissioner of Wealth tax, Kerala (1968)..

The Ministry has taken the view that Estate Duty cannot be treated likewise. The Ministry has also informed the Committee that the question regarding Estate Duty had come up before various High Courts and it was held by them that Estate Duty payable is not deductible from the value of the estate passing. This must be the position under the Estate Duty Act as it stands at present. But there is a non-legalistic angle to the problem also and it is from this angle that the Committee feel that Estate Duty payable on an estate should be allowed as deduction from the Estate just as is the case of Wealth-tax under Wealth tax Act and if necessary, a suitable amendment in the law should be made. (S. No. 55)

5.117 There is great weight in the suggestions made to the Committee to raise exemption limit under the Estate Duty Act for amount earmarked for the marriage of unmarried daughters of the deceased and also to allow deductions from dutiable estate for the marriage of grand-daughters, nieces and grand-nieces who are totally dependent on the estate and for bringing up and maintaining dependent children and disabled dependents of the deceased. The Committee are glad to note the sympathetic and appreciative response of the Ministry to these suggestions. In view of the family and social obligations which have come to acquire a customary force in the Indian society, the Committee feel that it will be in the fitness of things if reasonable deductions are allowed in computing dutiable estate of the deceased for amounts intended for marriage and maintenance of dependent children as also for disabled dependents. The Committee hope that something concrete will be done in this regard before long. (S. No. 56)

5.118 There is a case to allow a higher level of deduction from dutiable estate towards exenditure for performing funeral rites and other related ceremonies. The present limit of Rs. 1000 is far too low. (S. No. 57)

5.119 At present gifts made by a person for charitable purposes within a certain period before his death are also subject to Estate Duty after his death. The Committee do not think it is fair to subject such gifts to double taxation.

5.120 The Committee feel that a sympathetic view should be taken in respect of gifts given for charitable purposes and these should be exempted from Estate Duty. (S. No. 58)

5.121 Under Section 50(b) of Estate Duty Act, 1953, a part of tax on capital gains is allowed as deduction according to a certain formula laid down therein. There is force in the suggestion that if a property has to be sold by an heir of the deceased in order to pay Estate Duty thereon, either the Estate Duty should be deducted from the capital gains or the capital gains tax should not be levied in such a case. The Committee recommend that the present provision in the Estate Duty Act should be suitably liberalised. (S. No. 59)

CHAPTER VI

APPEALS

Appeals/Revision

6.1 The Wealth Tax Act, Gift Tax Act and Estate Duty Act provide for and elaborate heirarchy of appellate and revisionary authorities to hear and settle disputes under these Acts.

Pendency of Appeals : Wealth-tax, Gift-tax and Estate Duty

6.2 A Statemnt showing the number of appeals and the period of pendency in respect of cases of Wealth-tax, Gift-Tax and Estate Duty pending with the CS/CIIs (Appeals) is given below :

		As on 31-3-1977			As on 31-3-1978			As on 31-3-1979			As on 31-3-1980			As on 31-3-1981		
		W.T.	G.T.	E.D.	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.	W.T.	G.T.	E.D.
1		2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Upto one Year old	AACS	19755	1137	2062	21521	1472	2391	29699	1801	1964	56038	2365	1151	32981	1655	667
	CIIs(A)	—	—	—	—	—	—	1334	84	684	3657	195	811	1628	121	1247
Over one year and upto two yrs. old	AACs	6376	401	717	7038	347	1037	10426	637	1474	17596	1153	1261	33255	1440	641
	CIIs (A)	—	—	—	—	—	—	267	36	143	554	65	469	1862	113	654
Over two Yrs. and upto three yrs. old	AACs	1764	125	223	2671	114	344	3821	171	686	6008	384	1092	9091	716	829
	AIIS (A)	—	—	—	—	—	—	110	14	39	113	24	106	385	44	383
Over three Yrs. old	AACs	596	20	163	864	27	156	1412	92	315	3453	132	764	6186	308	1072
	CIIs (A)	—	—	—	—	—	—	73	8	11	106	10	86	152	17	311
		28491	1683	3165	32124	1960	3928	47142	2843	5316	87525	4228	5740	85540	4414	5802

Note : CIT (A) charges were created in July 1978.

6.3 From this statement it is seen that there has been a tremendous increase in the pendency of appeals under Wealth-tax, Gift-tax and Estate Duty during the last 5 years with the Assistant Appellate Commissioners/ Commissioners Income-tax (Appeals).

6.4 Inviting the Committee's attention to a great backlog of appeals pending before the Departmental Appellate Authorities, it was represented in the non-officials memoranda that in metropolitan cities, the turn for an appeal normally comes for hearing in about 2 years time from the date of its filing. It was suggested that a time limit of say six months to one year for disposing of appeal if fixed even administratively may improve the situation.

6.5 Asked to comment on the aforesaid position the Chairman, Central Board of Direct Taxes stated as follows during evidence that "the position as on 1-11-81 about the pendency of appeals before the departmental appellate authorities is as under :

6.6 There are 175 Appellate Assistant Commissioners at present including 24 posts of Appellate Assistant Commissioners which were sanctioned recently. The number of appeals pending as on 1-11-81 with these Appellate Assistant Commissioners was 3,27,192. The average number of appeals pending with each Appellate Assistant Commissioners comes to 1870 which is more than one year's workload. With the Commissioner of Income-tax (Appeals)—they also hear appeals—the pendency on the same date is 62,196. The average per Commissioner comes to 900 appeals. If we exclude the current year's filing, that is to say from April to November as well as the one-year old appeals which were filed in 1980-81, then the average comes down to 900 in the case of each Appellate Assistant Commissioner which is equivalent to 6 months workload because we expect a disposal of 150 appeals per month by the Appellate Assistant Commissioner. If we exclude the current year's institution and the institution made in the immediately preceding year, that is, 1980-81, the balance of appeals pending with the Commissioner of Income-tax (Appeals) comes to 250 appeals per Commissioner. This is about 5 months workload. With regard to old appeals, we normally expect that the AAC would dispose of 150 appeals per month in a metropolitan city and 165 in a mofussil charge. In the case of Commissioner of Income-tax (Appeals), we have laid down the quota of disposal which varies from 30 to 75 because if the Commissioner of Income-tax (Appeals) is in charge of central cases, that is to say, appeals emanating from Central charge, then he has a lower quota. If he is in charge of ordinary territorial circles, he gets a higher quota."

The witness pointed out that unless the number of Appellate Assistant Commissioner and Commissioner of Income-tax is adequately increased, we will not be able to come to an ideal stage which will be 4 months workload to AAC or Commissioner of Appeals."

6.7 When the attention of the witness was invited to the recommendation made by Estimates Committee in their 9th Report (1980-81 para 3.26) wherein it was recommended that "appellate procedures should be so reorganised that each one of these appellate authorities should be able to reduce the pendency to six months workload at the earliest, he informed the Committee that "we have been able to get only 24 posts of Appellate Assistant

Commissioners and 54 posts in regard to commissioner of Income-tax. Seven more Commissioners of Income-tax—Senior rank Chief Commissioners—have been sanctioned. Fifty-four more posts have also been sanctioned of which we have to deploy about 30 to 35 as Commissioners (Appeals) while the rest have been deployed for attending to investigation, surveys etc."

6.8 When the Committee pointed out that "unless enough staff is given, Government will be the loser. Apart from the difficulties faced by the assessees, if the appeals are disposed of soon, it is the Government that ultimately gains. Secretary (Revenue) stated "that is true". The Committee further pointed out that adequate staff should be given not only at the top level but at the bottom level also. Secretary (Revenue) assured the Committee that 'we will do that' and that the department would also simplify the procedure in the light of the Committees recommendations so that there was less time taken in disposing cases. In this context the Chairman, Central Board of Direct Taxes informed the Committee that instructions have been issued. We have been reiterating the same that the AACs as well as Commissioners should strictly take up the cases in chonological order in which the appeals have been filed and they are disposed of within a short period of time. We have also asked them to see that the arrears are brought down. If these appeals involving arrears of demands are also taken up in chronological order, then the arrears will get reduced. We have also told them to see that administratively a certain time limit is fixed. However, this can be effective only if the number of AACs is adequate enough. Otherwise it is not possible. Even if we prescribe something by way of norms of disposal, it will be very difficult to enforce it."

Time Lag between Hearing and Order

6.9 It was brought to the Committee's notice that time taken between hearing of appeals/revision petition etc., and passing of the order in the case was generally very long. It was suggested that an Appellate Authority who had heard the first appeal should pass order within one month of the final date of hearing just as the Tribunal was doing presently.

6.10 Asked to state the time normally taken at present by the Department appellate authorities to pass orders after the final date of hearing in wealth-tax, gift-tax and estate duty cases, the Chairman, Central Board of Direct Taxes stated that "it is certainly possible to pass an order within one month of the conclusion of the hearing. In fact our instructions are that they should be passed within ten days of the conclusion of the hearings. Within ten days they have to pass the appellate orders. If a person goes on leave or is transferred, he has to see that the disposes of all these appeals which were partly heard. Also we have issued instructions to our supervisory officers that the Commissioners have to carry out the inspection of the AACs. Of course they cannot comment upon the judicial discretion exercised by the AACs. He only looks into matters like whether the appeals are being disposed of in a chronological order in which they were filed. They have to see that the orders are passed within ten days of the conclusion of the last hearing of the appeals and so on and so forth. We are trying to monitor this."

6.11 On the Committee desiring to know how far these instructions had been implemented, the Chairman, Central Board of Direct Taxes explained that the Commissioners do send their inspection reports to us and they also

send us the monthly report which will show whether the disposal is adequate and is according to the quota fixed in respect of each AAC.

6.12 After the evidence, the Ministry furnished the following statement showing the number of orders passed by Appellate Authorities within 10 days, 10—30 days and more than 30 days after the final hearing in 1980-81 in Delhi charge :

	Commissioners of Income-tax (Appeals)	Appellate Asst. Commissioners	Total
A. Total number of appellate orders passed in 1980-81	5150	15455	20605
B. Out of item 'A' above			
(i) Number of orders passed within 10 days after the final hearing.	4363	14458	18821
(ii) Number of orders passed within 10 to 30 days after the final hearing . . .	684	770	1454
(iii) Number of orders passed more than 30 days after the final hearing . .	103	227	330

Written arguments at appeal stage

6.13 A suggestion was made to the Committee that, at appeal stage, the assessee and the Department should be required to submit written argumented. Thereafter, if the appellate officer feels necessary, he may hold a personal hearing; otherwise he may decide on the basis of written arguments. This procedure which has been suggested to speed up the appellate process has been welcomed by income tax authorities in the field.

6.14 Asked about the thinking of the Ministry in this regard, the Chairman, Central Board of Direct Taxes replied during evidence that "The suggestion can be examined further but it gives discretion to the appellate authority whether to hear or to dispose of the appeal on the basis of the written arguments. May be some of the taxpayers may object to it. This suggestion can be adopted in a modified form".

Appellate Authorities

6.15 It was represented to the Committee that appellate officers and Tribunal should meet at various places in their jurisdiction in rotation to dispose of appeals pertaining to the respective places. The Committee were informed that such a practice was in vogue at certain places.

6.16 Asked to state whether this practice should not be made a regular feature of the appellate system, Chairman, CBDT stated that "our instructions are that all Assistant Appellate Commissioners should hear the appeals at the respective stations. So, they go on tour and hear the appeals as far as possible at that station. These are the instructions and we think they are being followed strictly by all".

Fresh Grounds for Appeals

6.17 Under Rule 5A of the W.T. Rules, and Rule 5A of the G. T. Rules, the appellant is not entitled to produce before the A.A.C. additional evidence other than that produced by him before the Wealth-tax Officer. It was represented to the Committee that many times, additional grounds of appeal have to be taken before the appellate authorities as a result of certain developments which come to the notice of the assessees later. It was suggested that in the interest of justice, it should be provided that appellate authorities should admit additional evidence as well as additional grounds of appeal in all cases there omission to produce the evidence or to raise this grounds of appeal earlier was not *mala fide* on the part of the assessee.

6.18 Asked to comment on the aforesaid suggestion the Chairman, CBDT stated during evidence that "the provisions of Rule 46 of the Income Tax Rules prescribe the circumstances in which the Assistant Appellate Commissioner can permit the appellant to produce additional evidence which was not produced earlier. There are four such situations. They are :

(i) where the ITO has refused to admit evidence;

(ii) where appellant was prevented with sufficient cause from producing evidence which he was called upon to produce by the I.T.O.

(iii) where appellate was prevented with sufficient cause from producing evidence which was relevant to the grounds of appeal;

(iv) where the ITO made the order appealed against appeal without giving sufficient opportunity.

6.19 The general rule is that Assistant Appellate Commissioner should not allow any fresh grounds of appeal to be raised but where it was not for wilful default than there is some discretion which vests in AACs to allow the assessee to raise fresh grounds of appeal".

Relinquishments of office by Appellate authority

6.20 It was suggested to the Committee that an appellate officer who had heard an appeal should not relinquish office on transfer till he had passed orders on the appeal. A recommendation to this effect was made by the Committee in their report on Income-tax Department last year (para 3.28, 9th Report 1980-81) Chairman, CBDT—stated in evidence that "Before a Commissioner or an Appellate Assistant Commissioner is transferred or goes on leave he has to pass the orders on part-heard cases. The Commissioners do inspection annually where such things are pointed out".

6.21 The witness added that the Central Board had instructions in this regard on 15th September, 1981 in which the Board had reproduced the observations of the Estimates Committee.

6.22 Secretary, Ministry of Finance assured the Committee if there was any such case where these instructions were not followed the Ministry would certainly take action.

Hearing of appeals of same assessee

6.23 At present appeals of varying value for different years in respect of the same assessee lie before different officers, viz. AAC as well as CIT(A). It was suggested that appeals in respect of the same assessee should be heard by the same officer. This suggestion was welcomed by income tax authorities in the field.

6.24 Asked whether the Ministry had any objection to the aforesaid suggestion, Chairman, CBDT stated "I have no objection. This is a good proposition and in fact we are moving in that direction. If we have to amend law, we will consider that".

Earmarking a day in a week to hear wealth tax appeals

6.25 It was brought to the Committee's notice that appellate officers, who are the same in the case of income-tax and wealth tax, give priority to income-tax appeals and neglect wealth-tax appeals. It was suggested that at least one day in a week should be earmarked to hear wealth tax appeals.

6.26 Asked about the Ministry's reaction in this regard, the Chairman, CBDT, considered it a good suggestion and assured the Committee that the department would try to adopt it.

Appellate Tribunal's Powers to Enhance an Assessment or Penalty in case of wealth-tax and Gift tax

6.27 It was stated in a memorandum submitted to the Committee that under sec. 24(5) of the wealth tax Act and Sec. 23(5) of the Gift tax Act, the Appellate Tribunal has been empowered to enhance an assessment or penalty. The Income-tax Act, 1961 does not have such a provision. As the tribunal is the final authority on facts, any enhancement of the assessment of penalty by it would leave the tax payer without any remedy, excepting moving the court on points of law. It was suggested that this power to enhance an assessment or penalty should be withdrawn.

6.28 Commenting on the aforesaid suggestion, Chairman, CBDT stated that "These relate to property valuation. Tribunal is the final fact finding authority. So this power is given to the tribunal. In Income tax, there are other matters also".

6.29 According to the witness "the Choksi Committee made a recommendation; this is now before the Economic Administrative Reforms Commission. We are awaiting their recommendations".

Appeal against final orders in case of Estate Duty

6.30 In a memorandum submitted to the Committee it has been stated that Sec. 62 of the Estate Duty Act, 1963 povides that the 1st appeal to the Appellate controller of Estate Duty lies only against specified orders. The range of orders specified in the Section is not exhaustive with the result that there are some orders of assessing authority against which no appeal lies to the Appellate Controller. It was suggested that every final

order of the assessing authority should be appealable to the first appellate authority.

6.31 Asked about the implications of section 62 of Estate Duty Act and the reaction of the Ministry to this suggestion; Chairman, CBDT stated that "though the appeal is provided in respect of certain sections, yet there are certain important sections about which no appeal has been provided for example, against the order of rectification under Sec. 61. We think that the suggestion is very reasonable and an amendment to the Estate Duty Act should be brought about to make the final orders appealable".

6·32 The Committee find that there has been a tremendous increase in the pendency of appeals under the Wealth-tax, Gift-tax and Estate Duty laws during the last 5 years. It has been brought to the Committee's notice that in many cases it takes about two years for an appeal to be heard by the Appellate authorities. As on Ist November, 1981 there were as many as 3,27,192 appeals pending with the Appellate Assistant Commissioners in the country, each AAC having on an average 1970 appeals pending with him which was more than one years work-load. On that date the pendency of appeals with the Appellate Commissioners was 62196, the average per Commissioner coming to 900 appeals which was more than 17 months workload.

6·33 The Ministry has pleaded shortage of Assistant Appellate Commissioners and Appellate Commissioners for the heavy arrears of appeals. According to the Ministry the ideal state of affairs would be for an Assistant Appellate Commissioner on Appellate Commissioner not to have more than 4 months workload pending at any point of time. The Ministry informed the Committee that some additional posts of Assistant Appellate Commissioners and Appellate Commissioners had recently been sanctioned to speed up the appeal work but more were needed to achieve the optimum level of efficiency. Secretary (Revenue) accepted that if adequate officers and staff were not given it was the Government which would be the loser because of delay in disposal of appeals.

6·34 The Committee had recommended in their 9th Report (1980-81) on Income-tax Department (para 3·26) that the administrative set-ups and appeal procedures should be so re-organised that each one of the appellate authorities should be able to reduce the pendency to six months workload at the earliest. The Committee cannot overemphasise the need for providing adequate strength of Appellate officers as well as supporting staff to bring down the pendency of appeals to four months workload which is the ideal norm according to the Ministry or, at the most to six months workload as suggested by the Committee last year. The Committee would like to be informed of the steps taken in this regard within six months.

(Sl. No. 60)

6·35 According to the instructions issued by the Ministry, final orders of appeals are required to be passed within 10 days of the conclusion of the hearings. The Committee find that out of 23605 appellate orders passed in 1980-81 in Delhi charge, 18821 orders were actually passed within 10 days after the final hearing. 1454 orders were passed within 10-30 and only 330 orders took more than 30 days to be passed. But the representations made to the Committee had given them a different impression. The Committee would suggest that the Ministry should make an assessment of the position in all the charges

in the country to ensure whether the position everywhere is as satisfactory as that in Delhi charge and, if not, it should take remedial measures to reduce the timelag between the final hearings and the passing of appellate orders to 10 days.

(S. No. 61)

6·36 The suggestion that at the appeal stage the assessee and the Department should submit written arguments and the Appellate Officer may, unless personaly is considered necessary, decide the case on the basis of written submissions, is a welcome suggestion and if implemented is sure to accelerate disposal of appeals. The Ministry is also of the view that the suggestion can be adopted though in a modified form. The Committee would like the Ministry to give this suggestion a concrete shape.

(S. No. 62)

6·37 The Ministry has informed the Committee that Assistant Appellate Commissioners are required to visit various places in their charge and hear appeals relating to those places at the respective stations. The Committee suggest that this system of hearing appeals at various places should be extended to Appellate Commissioners and Appellate Tribunals also.

(S. No. 63)

6·38 While the Income-tax rules allow fresh grounds of appeals and additional evidence at the appeal stage in certain special circumstances, this is not the case under the Wealth-Tax or Gift-tax Rules. The Committee would like the Ministry to examine as to why the right to produce additional evidence or fresh grounds of appeal should not be given under the Wealth-Tax and Gift-Tax Rules in *bona fide* cases.

(S. No. 64)

6·39 Though there are instructions already in force that an Appellate Officer who has heard an appeal should not relinquish office on transfer till he has passed orders on appeals already heard by him, these instructions, it has been brought to Committee's notice, are not being followed at all places. The Committee note that instructions to this effect were issued in September 1981 in pursuance of one of their recommendations made in the course of examination of the subject of Income-tax Department. They would like the Ministry to enforce strict compliance with these instructions in all charges and, as assured by Secretary, (Finance), take stringent action against officers who do not follow these instructions.

6·40 The Ministry has welcomed the suggestion that the appeals filed by the same assessee at different times regardless of their value should be heard by the same Appellate Officer. The Committee expect that instruction to implement the suggestion will be issued soon.

(S. No. 65)

6·41 The Committee also expect that the suggestion to earmark atleast one day in a week to her Wealth-tax appeals, which has been welcomed by the Ministry, would also be implemented and thereby the cause of grievance of assessees whose Wealth-tax appeals remain unattended for long will be removed.

(S. No. 66)

6·42 While under the Income-tax Act the Appellate Tribunals do not have the power to enhance assessment or penalty, such a power has been given to the Appellate Tribunal under the Wealth-tax and Gift-tax laws. It has been represented to the Committee that enhancement of assessment or penalty at the Tribunal stage leaves the tax-payer without suitable remedy moving the High Court on point of law. The power given to Tribunal to enhance assessment or penalty should be withdrawn. The Committee have been informed by the Ministry that a recommendation to this effect was also made by the Choksi Committee and the matter is now awaiting consideration by the Economic Administration Reforms Commission. The Committee would like to be apprised of the outcome of this consideration.

(S. No. 67)

6·43 The Ministry has admitted that there are certain orders issued under the Estate Duty Act against which no appeal lies to the Appellate Controller under the Act. The Ministry has accepted the suggestion that right of appeal should be provided against all final orders issued under the Act. The Committee hope that the necessary provision in this regard will be made in the law as early as possible.

(S. No. 68)

CHAPTER VII

TAX EVASION

Vigilance/Intelligence set up

7.1 The Intelligence set up of the Income-tax Department is headed by Director of Inspection (Investigation) who reports to Member (Investigation) in the Central Board of Direct taxes.

7.2 The functions of the Intelligence set up are as follows :

(a) Collection of information regarding tax evasion.

(b) Investigation in cases of large tax evasion.

(c) Organising search and seizure operation.

(d) Processing cases for prosecution.

Prosecution and Convictions

7.3 The Committee observed from the statistics furnished by the Ministry that the number of cases in which prosecution was launched in Wealth Tax cases was very small as compared with the total number of searches carried out by the Income-tax Department during the last five years as shown below :

Year	No. of searches	No. of prosecutions relating to W. Tax	Gift tax	No. of convictions got		
				W.T.	G.T.	E.D.
1976-77 . .	3571	19	1	—	—	—
1977-78 . .	617	12	—	—	—	—
1978-79 . .	1345	—	—	—	—	—
1979-80 . .	2109	64	3	—	—	—
1980-81 . .	3746	18	—	—	2	—
TOTAL . .	11388	113	4	—	2	—

7.4 There was no conviction obtained in Wealth-tax cases during the above years and only 2 convictions were got under Gift Tax Act in 1980-81.

7.5 Asked to explain the phenomenon of a very small number of prosecutions launched in respect of Wealth Tax and Gift Tax cases as compared with the number of searches conducted and no conviction obtained under Wealth Tax Act, Chairman, CBDT stated during evidence that "the Board has also taken note of the fact that the number of prosecutions launched, as compared to that of searches and seizures is very small, so far as Wealth Tax and Gift Tax are concerned. But for launching of prosecutions we have to see whether there is some clinching evidence, so that we ultimately succeed, and our cases are not thrown out by court. We have amended the Act and made the punishment more stringent. But I do admit

that the number of prosecution launched under Wealth Tax Act for concealment of net wealth in respect of years 1976-77 to 1980-81 which have been listed here is quite few".

7.6 The witness further added "if we take income tax and wealth tax prosecutions this year, the number is not so less. Income tax, wealth tax and Gift tax are combined in most cases. Raid taxes place when there are certain concealed assets and concealed incomes. Incomes will be assessed under IT Act, and the wealth tax under WT Act".

7.7 The Chairman, CBDT clarified that in 1980-81 3746 searches were made, 18 prosecutions launched, that year were only in respect of wealth tax. Otherwise, the total number of prosecutions launched was 454, including both IT and WT, because they are inseparable in a way.

7.8 Referring to the small number of prosecutions launched from year to year, the witness expressed an opinion that "the conclusion that these searches are conducted on frivolous grounds, in my opinion and with great respect, is not called for. During the year 1981-82, we have (upto Dec. 81) conducted 2689 searches and we have seized assets of the value of Rs. 24.27 crores".

7.9 Clarifying the procedure adopted in searches, the Chairman, CBDT, stated that unaccounted assets found during searches are seized and sealed and are left in the custody of the persons concerned who cannot open them till the matters are finally decided. The witness added that "I am collecting information about these matters where the assets have been placed under seal and no action has been taken".

7.10 It had been brought to their notice when an particular seizure was made, the Income tax Department did not disclose the name of the persons concerned but by and large, the people of that locality come to know about it. Ultimately, when the findings were in his favour, there was no declaration from the Department side; and as a result of that, it affected that particular person's reputation. The Committee observed that suggestions had been made to them if a person whose premises had been raided is ultimately found guilty, let it be known that he had been found guilty. But if a person is not found guilty, then let it be known also that he has not been found guilty. Chairman, CBDT, assured the Committee that "We will certainly look into it" and added that "according to our practice we do not give the name of the assessee."

Informants

7.11 It was brought to the Committee's notice that there was a considerable delay in paying rewards, interim or final, to the informants who gave information about tax evasion to the income-tax Department.

7.12 It was suggested that the payment of rewards should be expedited.

7.13 Chairman, CBDT, stated "There are three types of cases in which the rewards become payable. First is the case where some information has been supplied to the department and as a result of that, the assessments have been completed and some concealed wealth or income has been detected; where the assessment has been completed and the tax has been collected, then the reward can be paid under the rules varying from one to ten per

cent. Generally the ceiling is Rs. 1 lakhs, but it is not applicable where the concealed assets have been found. In that case it is 10% without a ceiling.

7.14 The second type of cases where rewards can be given are those where the assessments have been completed but the tax has not been realised. In that case we can give an interim reward upto Rs. 25,000/-. But that limit of 10% will be applicable. And—because assessment has been completed, but tax has not yet been realised, in that case limit of the reward is Rs. 25,000/-. Where even assessment has not been completed, but it has led to seizure of assets or wealth there again the interim reward can be given and the ceiling is Rs. 25,000/-. There is a set procedure whereby the informants who are entitled to reward have to give in writing the information and then later on the department has to evaluate what was the reason and gain to the revenues involved. Therefore, there are unnecessary disputes about the further awards to be given. That matter will take time. Until, we reach that stage, the case has to pass through various appellate stages. Really, speaking, there is no delay, but informers' demand that they should get the entire award in the first instance, cannot be agreed to".

7.15 When the Committee pointed out that Commissioners of Income-Tax had also felt that rewards to informants had been delayed in some cases and even where certain quick payments were to be made, these were not made promptly, the representative of the Ministry stated that "About the interim rewards, normally there is no delay. We are surprised about the complaint, because the Commissioners have the powers. The Board gets cases involving only over Rs. 50,000/-. Upto Rs. 50,000/- Commissioners have their own powers. But there is a point in the rules, about payment of final reward which is related to collection of taxes. It will take a long time. There also, we are examining as to the extent to which it can be expedited".

7.16 The Committee asked whether the department was thinking of giving incentive to the officers who made successful raids, Chairman, CBDT, informed the Committee that "we make entries in their CRs. which stands them in good stead later on. The representative of the Ministry also informed the Committee in this context that "it is a part of their duty; but for the best quality work done, we are considering a scheme whereby anybody who has passed on order and found concealment on his own, will be duly rewarded, although Government has its own constraints. Probably, the rewards may not be quite adequate".

Survey operations

7.17 The following table shows the number of assessees of Wealth-tax, Gift-tax and Estate Duty during the last five years :

Year	Wealth Tax	Gift Tax	Estate Duty
1976-77	249306	96432	40605
1977-78	282864	91160	39879
1978-79	318450	98077	36756
1979-80	346291	87069	35179
1980-81	390326	93400	35862

[Source reports from the DI (RS & P) for March]

7.18 The Income-tax Department indentifies new income tax as well as Wealth-tax assessees through 'survey'. For gift-tax, and Estate Duty, no separate survey is carried out. However, the information relevant to Gift-tax and Estate Duty collected at the time of survey operations for income-tax and wealth tax is passed on to assessing Officers of Gift tax and Estate Duty for necessary action. Survey is an integrated operation involving tapping and utilisation of information from external and internal sources. The objects of survey are (i) to bring into tax register all the persons liable to tax; and (ii) to collect relevant information from various sources with a view to detect evasion of tax. It is a continuous activity in pursuance of this object and includes door to door survey of all premises in various localities and collection of information from various localities, and collection of information from various sources.

7.19 The number of new assessees discovered through survey operations and/or to whom notices for assessment/re-assessment have been issued during the last five years is as under :

Year	Number	
	Income-tax	Wealth-tax
1975-76	82890	5719
1976-77	70566	2644
1977-78	63656	2315
1978-79	53608	4452
1979-80	81746	7722
1980-81	87304	3119

(For Gift-tax and Estate Duty, the number of new assessees cannot be furnished as no such recor d is maintained by the Department)

7.20 According to the Ministry, the practical difficulties faced by the I. T. Department in detecting Wealth-Tax, Gift Tax and Estate Duty assessees are as follows :—

7.21 The main difficulty experienced by the Department in detecting new assessees of Wealth-tax, Gift tax and Estate Duty is lack of sufficient man-power and their connected facilities to carry on regular survey operation on large scale. The law also does not authorise the Department to collect information of a general nature from Banks without reference to any particular tax payer or tax payers. It is difficult for the Department to gather information regarding gift of moveable which do not require registration or where the donors are not assessed either to Income tax or Wealth-tax. In the Estate Duty Act there is no statutory obligation on the State Government authorities to furnish the information about the deaths to the Income tax department.

7.22 Steps taken to resolve difficulties regarding detection of New Assessees by the Ministry :

The Machinery for survey has recently been strengthened and the Department has set-up a survey organisation on a permanent footing and efforts are being made to collect as much information as possible within the constraints of the existing man-power. The assessing officers have been asked to ensure that

the fact of the death of an assessee is immediately intimated to the concerned Assistant Controller of Estate Duty. The I.A.C.s (Acquisition) have been asked to pass on to the Income-tax Officers the information received from the registring offices regarding statements furnished by the transferees at the time of registration of documents relating to sale, gift or exchange of immoveable property.

7.23 In a memorandum submitted to the Committee it was stated that survey had been resumed by the Income tax Department only recently after suspension of the same for many years. It was suggested that survey should be undertaken speedly and effectively on a mass scale. Survey should be followed up by prompt assessment action. Survey should be supervised by a special squad to re-check the areas surveyed as to the effectiveness and the completeness of survey.

7.24 Asked to comment on the aforesaid suggestion, Chairman, CBDT informed the Committee that "the survey operations were intensified and put on a permanent footing with effect from 1-10-1979. We got additional 500 inspectors exclusively to be deployed for the survey work. Now we have set up a permanent survey organisation whereby we are trying to cover upto 31-3-1982 all business premises. After that our programme is to start house to house survey and to see how much amount has been invested in the construction of various houses. We have also deployed a number of income tax officers exclusively for this purpose. We have recently created eight posts of commissioner of Income tax (Investigations) but the main responsibility given to them is that of carrying the survey work. We also at the centre created the post of Director of Inspection. We have to draw up an All-India programme and to monitor the carrying on the survey in the entire country".

Tax Defaulters

7.25 It was stated in an article which appeared in the Hindustan Times dated 17-1-81 that the tax defaulters, who are charged penal interest at a rate lower than the market rate or even the rate at which banks lend, have managed to pare down their tax as well as interest liability with the abetment of inflation, through sheer flux of time.

7.26 Stating the factual position, the Ministry of Finance have stated as follows :—

"The provisions for levy of interest for delayed payment of wealth-tax and gift-tax are contained in sec. 31(2) and 32(2) of the Wealth Tax Act and Gift Tax Acts respectively. As per these provisions if the amount specified in any notice of demand is not paid within the period allowed under these Acts, the assessee is liable to pay simple interest at the rate of 12% for the period of default. This interest is payable irrespective of the fact that instalments of extension of time has been allowed to the assessee for such payment. It is also provided that if the amount on which interest was payable is reduced subsequently on appeal, rectification etc., the interest shall also be reduced accordingly."

7.27 Section 70(1) of Estate Duty Act empowers the controller to allow the payment of Estate Duty demanded to be postponed on payment

of such interest not exceeding 4% or any higher interest yielded by the property and on such other terms as he may think fit. (There is, however, no general provision for charging-interest for the period during which the Estate Duty demand remains outstanding if the Accountable person has not applied for extension of time to pay the demand).

7.28 Considering the special circumstances in which the Estate Duty is levied the rate of interest has been linked with the rate of return yielded by the property. This is so because quite often the property inherited by the accountable person may consist of assets that yield little or no income and in the absence of ready cash the person has no alternative but to sell the property for payment of Estate Duty demand. The property may be a plot of land or jewellery etc., which yield no income at all. Under these circumstances it may perhaps not be fair to charge a higher rate of interest from the accountable persons.

7.29 Apart from the payment of interest the defaulter in respect of the Wealth-tax and Gift-tax demand are liable to levy of penalty u/s 32 of the Wealth-tax Act read with Section 221 of the Income tax Act and u/s 33 of the Gift tax Act read with section 221 of Income tax Act. This penalty may be levied from time to time in respect of a continuing default, however, that the total amount of penalty does not exceed the amount of tax in arrears. The penal and coercive provisions of the Income tax Act in regard to collection of demand are also applicable to proceedings under the Wealth-tax and Gift tax Act respectively. These provisions act as a safeguard against undue tendencies on the part of the assessees to delay the payment of the demand due. Similarly u/s 73(5) of the Estate Duty Act read with section 46 of the Income tax Act, 1922 penal and coercive provisions of the income tax Act, 1922 are applicable in respect of outstanding estate duty demand. A penalty not exceeding the total amount in arrears may be levied upon the accountable person in case of default in payment. These provisions act as a suitable deterrent in respect of the tendency to demand.

7.30 During evidence, Chairman, CBDT, further explained that "under the Income Tax, Wealth Tax and Gift Tax Acts, the rate of interest is 12% p.a. for delay in payment tax but in respect of estate duty, the rate of interest is 4%. It is very much on the low side. It is also true that the present rate of interest which the banks are charging is much higher than 12%. We have to take into consideration some facts. One is that we can levy penalty for not making the payment of tax and we can also take other coercive measures. So, whether the rate of interest should be higher than 18-19%, it has to be considered in the background of that".

7.31 Secretary (Revenue) assured the Committee that "We will examine it".

7.32 During the five years 1976-77 to 1980-81, the Income-tax Department conducted 11388 searches, as a result of which prosecutions relating to Wealth tax were launched in 65 cases and those relating to Gift-tax in four cases. During these five years the Department secured only two convictions in cases relating to Gift Tax and none in respect of Wealth-Tax or Estate Duty. The searches are not conducted separately for Wealth Tax or Gift Tax or Estate Duty but are conducted as a joint operation to detect unaccounted wealth and assets and tax evasion keeping all the direct taxes in view. In 1980-81 as against 3746 searches made, though only 18 prosecutions were

launched for Wealth Tax, the total number of prosecutions launched were 454. Even then, this explanation cannot conceal the fact that the number of prosecutions launched by the Department has been only a small fraction of the searches made and the Chairman, Central Board of Direct Taxes has also, admitted that the number of prosecutions during these five years is quite few".

Even if the searches cannot be said to have been made on frivolous grounds, as stated by Chairman, CBDT, delays in launching prosecutions and very few convictions secured reflect upon the efficiency and competence of the Income-tax Department.

(S. No. 69)

7.33 The Committee had dealt with the question of searches and delays in their 9th Report (1980-81) on the Income-tax Department and had observed that "Such unconscinable delay in completing investigations, launching prosecutions and bringing the defaulters to book defeats the very purpose of searches and seizures and lowers the Department's prestige in public eye" (para 4.73). The committee cannot do better than reiterate their recommendation made in that report that the Ministry should take serious view of the Income-tax Department's incapacity to complete investigations in search cases expeditiously and take concrete action to bring the Prosecution Wing of the Department up to a reasonable level of efficiency. The Committee would like the Department to draw up a time bound programme to liquidate the pending cases and ensure that in future investigations in search cases are completed within a specified time failing which the matter should be examined by the Board for remedial action.

(S. No. 70)

7.34 The committee were informed during evidence that the Central Board was collecting information about unaccounted assets found in searches which were seized and sealed and were left in the custody of the persons concerned till the matters were finally decided and in which cases no action was taken for a long time. The committee would like this information together with an analysis of reasons for inaction and remedial action taken to be communicated to them within six months.

(S. No. 71)

7.35 The Committee find that the names of the parties whose premises are searched for unaccounted incomes and assets are not published by the Department though their names normally get widely known in the localities/cities in which their premises are located. A suggestion was made to the Committee that when the matter is finally decided and the person concerned is ultimately found quilty or not quilty, his name should be published so that the people of the locality city know the truth, as established, and the persons who are not found guilty can ride themselves of the stigma which is inherent in a search of this kind. The Ministry may examine this suggestion.

7.36 The Committee have been informed that there is considerable delay in paying rewards to the informants who give information to Income tax Department about tax evasion. Even payments which are required to be made quickly are not made quickly. The Ministry has stated that according

to the prescribed procedure, a part of the reward—called interim reward—is given without delay but the final instalment has to wait till the case has passed through all the stages. The Committee would like the Central Board to study this phenomenon in detail in respect of each charge to determine whether rewards have been paid promptly according to the prescribed procedures and to take remedial measures to avoid delays.

(S. No. 72)

7.37 The Committee feel that Income-tax Officers and staff who make successful raids and unearth unaccounted assets and whose efforts ultimately yield dividends should also not go unrewarded. The Committee note that the Central Board is considering a scheme in this regard. They would like that the scheme should be concretised expeditiously and implemented.

(S. No·73)

7.38 The Committee note that survey operations have been intensified recently and placed on a permanent footings with effect from 1-10-79. Additional officers and staff have been deployed exclusively for survey work and certain programmes for carrying out intensive surveys have been undertaken. The Committee are of the opinion that there is tremendous scope for detecting new assessees and bring them into tax register and also for detecting tax evasion, if survey operations are organised in a regular and systematic manner. The main difficulty experienced by the Department in detecting new assessees is stated to be lack of adequate manpower to carry on survey operations on a large scale. The Committee cannot over emphasise the need to provide adequate manpower and other connected facilities to the survey organisation if it has to make a success of its task. The Committee would like the Central Board to make a study of the manpower requirements and other facilities needed by this organisation in the context of the survey operations planned by it and take prompt steps to provide it with adequate number of officers and staff.

(S. No. 74)

7.39. The Committee have gone into the question of tax evasion in detail in Chapter IV of their Ninth Report (1980-81) on the Income-tax Department and have made specific recommendations to deal with this evil. They would like the Ministry to take these recommendations seriously and pursue them quickly with a view to detecting and checking tax evasion.

(S. No. 75)

7.40 It has been brought to the Committee's notice that the interest charged on outstanding tax dues is much lower than the bank rate of interest. Payment of tax dues is being deliberately delayed by tax defaulters to take advantage of the low rate of interest. The Ministry has informed the Committee that the rate of interest is 12% for delay in payment in the case of Income-tax, Wealth-tax and Gift-tax but in respect of Estate Duty the rate of interest is 4%. Secretary, Department of Revenue assured the Committee that they would examine the matter. The Committee would like to be apprised of the outcome of this examination.

(S. No. 76)

CHAPTER VIII

TAXATION—CERTAIN POLICY ISSUES

Taxation Policy—Expenditure Oriented

8.1 It was represented to the Committee that Wealth is nothing but accumulated savings made by a person over a period of time after he has paid taxes on the income. There can at best be justification for levying wealth tax on unproductive assets so that the tax-payers are encouraged to save and invest in productive assets.

8.2 If a person spends all his income on luxurious living, he saves no money and can create no wealth in the shape of immovable property, shares etc. and he pays no wealth tax. But if he saves money after paying tax and invests his savings on creating social assets, he is again caught in the wealth tax and estate duty nets.

8.3 Asked to comment on the feeling that the present taxation policy was expenditure oriented and not savings-oriented, Chairman, CBDT stated during evidence "This is a point which has great relevance in the taxation policy. It goes to the root of the taxation policy. We have enacted the Wealth Tax Act in the year 1957 after we had received the report of Professor Kaldar. He had suggested the integrated system of taxation where we could tax the income earned, we could also assess the wealth; the capital gains can be taxed, and if the person were to save by means of investments, in terms of property he can be assessed for wealth tax, and if he spends, he will be caught by the expenditure tax, if the gifts it away to somebody he has to pay the gift tax, and finally if he dies he has to pay the estate duty tax, etc. etc. We are doing some thing in the income tax and wealth tax assessments. We give deductions for savings to encourage savings. In wealth tax, we allowed a deduction upto Rs. 1,50,000 if the amount is invested in Unit Trusts or bank deposits, shares etc. and this, encourage savings. But if there is an item of asset and somebody wants to invest in gold there is no exemption for that. He has to pay wealth tax on the entire amount of the wealth possessed by him. We are taking them into account by giving him exemptions and deductions and taking care of the fact that more and more investment is made on assets like National Defence Bonds, etc."

Wealth-tax and Estate Duty

8.4 It was also represented to the Committee that the Estate Duty and Wealth tax were more or less alike. The former is levied on the wealth/estate of a person after death and the latter is levied on his wealth before death.

8.5 First, this amounts to double taxation on the same property for no valid reasons and secondly, this amounts to procedural harassment to the assessees/heirs of the deceased who have to comply with the provisions of two different laws, in filing two different returns and having two different valuations of their assets.

8.6 It was suggested that the wealth tax should remain the basic law which should additionally provide that when a wealth tax assessee dies, his heirs should pay a certain specified percentage of "surcharge" (in place of estate duty) calculated with reference to the wealth tax paid or payable by him the year in which he dies. The separate Estate Duty Act should then be rescinded. This will avoid harassment to the heirs and enable Government to recover 'estate duty' under the lable of "surcharge" on wealth tax without difficulty or delay.

8.7 Asked to state the views of the Ministry in this regard, Chairman, CBDT explained during evidence that "The basic difference between Estate Duty and the Wealth Tax is that the wealth tax is imposed every year while the Estate Duty is one time tax which is levied when the person dies. That is the basic difference. But we have provided different exemptions and different reliefs for computing estate duty as compared to the wealth tax. Now, if we were to combine the two it will lead to lot of difficulties. Thus it is not correct to say that it leads to double taxation, because one we are doing during the life time of a person and he is also in a position to gift away his property by paying gift tax. The Committee desired to know the view of the Ministry on the pointed suggestion whether it would not simplify matter if estate duty was collected as wealth tax after the death of assessee, the witness stated that "some time back this suggestion came to us that a certain percentage of the wealth tax may be charged in the last year, in addition to the wealth tax, which should be about five to six times the wealth tax towards estate duty. All this is now before the Economic Administration Reforms Commission".

Exemption of Non-resident Indians from Wealth Tax

8.8 In a memorandum submitted to the Committee it was suggested that Indian nationals remaining outside the country as non-residents should be exempted from wealth tax in respect of their deposits and assets acquired out of remittances from outside India.

8.9 Asked to comment on this suggestion, the representative of the Ministry stated during evidence that "Already there are concessions for remittances from non-residents in the form of investments in equity shares of certain companies, and of external accounts. Giving any further exemptions on investments in property for instance on land, will only add to the present difficulties. Certain States have some objections. Thereby, we will be giving encouragement where encouragement is necessary. It will come in any case". The Chairman, CBDT, further added that "there is already an existing provision in section 5. His assets are exempt from Wealth Tax Act for seven years. If out of moneys brought by them into India he acquires any asset, the value of that asset will also be exempt for seven years. We think that exemption is sufficient to safeguard his interest. As far as non-resident is concerned, the money which is remitted to non-residential (External) external account is exempt from the Wealth Tax".

8.10 When the Committee laid emphasis on the need to provide more facilities to those "Who want to invest or send money home", the witness stated "This can be considered but not the investment of the foreigners in real estate".

8.11 The representative of the Ministry further assured the Committee that "Regarding investment in assets, there is already some exemption; whether it should be increased in the case of non-resident accounts, that can be considered".

Conflict between Central and State Laws

8.12 It was brought to the Committee's notice that in certain areas due to special legislation by the State Governments there was an apparent conflict with the Central Law and there was considerable litigation on the question of valuation of immovable property other than residential property. It would be desirable to evolve some standard procedure for evaluation of such properties preferably linked to the actual rent realised which is usually capable of verification. An instance of apparent between the Central Law and the State Law is the Kerala Joint Hindu Family System (Abolition) Act, 1976 under which all Hindu Undivided Families in Kerala tend automatically disrupted with effect from 1-12-1976. The wealth tax Act, however, seems to contemplate (Sec. 20) that there has to be a partition in 'metes and bounds' and the wealth tax officer should record such an order, after which only the partition of the Hindu Undivided Family can be recognised.

8.13 Another State legislation is the Kerala Private Forests (vesting and assignment) Act, 1971, under which the ownership and possession of private forests stood transferred to and vested in the Kerala Government free from all encumbrances. This has resulted in the inclusion of the value of the private forests in the estates of the deceased, without, however, any means of recovery of the estate duty.

8.14 Asked whether the Ministry had studied this problem, the representatives of the Ministry of Finance stated during evidence that "As far as the Joint Family System Abolition Act of the Kerala Government is concerned, we have not heard anything from any of our field officers in Kerala. We are looking into it and we are expecting a report. The other Act, the Abolition of Forests Act is under consideration of the Ministry, in consultation with the Ministry of Law".

8.15 The Ministry in a post evidence note stated as follows :—

> "By virtue of Kerala Private Forests (Vesting and Assignment) Act, 1971 persons owning private forests have been dispossessed of this property without being entitled to any compensation and the property has vested in the State Government w.e.f. passing of the said Act."

As a consequence of this enactment hardship has been caused in cases where the death has occurred before the passing of this Act. In such cases the property which passed on the death has been taken away from the successors who continue, however, to be liable for estate duty in respect of the same without being left with any means for paying the same.

8.16 Under Section 74 of the Estate Duty Act the estate duty payable in respect of a property passing on the death of the deceased shall be a first charge on the property so passing in whomsoever it may vest on his death and any private transfer or delivery of such property shall be void against any claim in respect of such estate duty.

8.17 In the light of the above provisions of Section 74 it is being examined as to whether the transfer to the State Government of these private forests can be held to be void against the claim of estate duty in respect of such assets. In other words it is being examined as to whether the State Government can be made liable for payment of estate duty in respect of the property acquired by it (and which was included in any estate duty assessment).

8.18 In view of the peculiar circumstances leading to obvious hardship in such cases it is also being examined in consultation with the Ministry of Law as to whether a notification under section 33(2) of the Estate Duty Act can be issued exempting such properties as are acquired by the operation of any law from being included in the estate. However, whether such a notification can be issued in such cases is not free from doubt since it has to be seen whether the powers under section 33(2) vested in the Government can be exercised in such a manner as to have retrospective effect.

8.19 These issues mentioned above were referred to the Ministry of Law in October, 1981 and their opinion is awaited. Appropriate action will be taken on receipt of the same.

Controlled Companies

8.20 In a memorandum submitted to the Committee it was suggested that the provisions governing controlled companies might be removed from the Estate Duty Act in view of their complexity. It was explained during non-official evidence that "We have copied this from the UK. It might have been relevant at that time but today it may not be relevant. The retention of this complicated piece of legislation is not necessary".

8.21 Asked to comment on the aforesaid suggestion, the representative of the Ministry stated during evidence that "we agree that this Estate Duty has become slightly complicated. After the Choksi Committee recommendations we have examined the provisions in detail. In fact, we had even some draft proposals ready. The recommendations on Estate Duty of the EARC are awaited now. We will take some action then".

8.22 A view has been expressed that at present wealth tax and Estate Duty laws are more expenditure oriented than savings oriented. If a person spends all his income and saves no money, he can create no asset and has thus to pay no wealth tax, but if he saves money after paying taxes and invests his savings on creating assets, he is again caught in the wealth tax and Estate Duty nets. The Ministry has explained that under the wealth tax Act deductions are allowed on savings in various forms. For example, investments in Unit Trust, bank deposits, etc. qualify for deduction from the total wealth of an assessee. Savings are no doubt shown consideration under the Wealth-Tax Act, but this consideration is shown only upto a certain limit. Savings beyond that limit attract Wealth-tax. The feeling that the Wealth tax and Estate Duty laws are not savings and investment oriented cannot therefore be said to be entirely unfounded. In the Committee's opinion there is need for a dispassionate and bold review of the approach to taxation under the Direct Taxes laws so as to completely exempt as far as possible savings and investments in socially desirable assets from taxation and subject luxurious and unproductive expenditure to stiffer doses of taxation.

(S. No. 77)

8.23 Both Wealth-tax and Estate Duty laws apply to the property of a person, the former applying to his property before death and the latter after his death. The existence of two separate laws with reference to the same property, it is stated, amounts to procedural harassment to the assessees/heirs of the deceased who have to comply with the provisions of two different laws in filing two returns and having two different valuations done of their assets. The committee have considered the suggestion made to them in this regard that while wealth tax may remain an annual levy as at present, after the death of an assessee, the Estate Duty on his estate may be recovered at the rate of a certain percentage of the wealth tax paid or payable by him in the year immediately preceding his death in the form of "surcharge on wealth tax" and the separate Estate Duty Act may be rescinded. The suggestion appears to be quite reasonable. The committee find that a suggestion to this effect already stands referred to the Economic Administrative Reforms Commission. The Committee feel that it should be possible to evolve a suitable scheme under the wealth tax Act of raising revenue, that is raised at present in the form of Estate Duty, by levying a one time "surcharge on Wealth-Tax"without having a separate Estate Duty Act on the Statute Book. Such a course will simplify tax administration without any loss to revenue.

(S. No. 78)

8.24 The Committee note that remittances made by non-resident Indians in various forms qualify for certain concessions under the Direct Taxes laws. A suggestion has been made to the Committee that deposits and assets acquired out of the remittances made by non-resident Indians should be exempt from Wealth-Tax. The Ministry has stated that there are already some exemptions available under the taxation laws for investments in certain assets but whether these exemptions should be further enlarged can be considered. The Committee would like the Ministry to give this matter a serious thought with the object of encouraging Indians settled abroad to remit higher amounts to India for the purpose of investment in socially approved schemes and assets.

(S. No. 79)

8.25 It has been brought to the Committee's notice that certain legislations enacted in certain States come in conflict with Direct Taxes laws resulting in considerable litigation in regard to valuation of immovable property. The Kerala Joint Hindu Family System (Abolition) Act, 1976 and Kerala Private Forests (vesting and assignment, Act, 1971 are two examples of such State laws which are reported to have created complications. The Ministry are aware of the implications of these State Acts vis-a-vis Direct Taxes laws and is looking into the matter with a view to finding solutions to the problem. The Committee hope that the Ministry would arrive at the solutions expeditiously.

(S. No. 80)

CHAPTER IX

MISCELLANEOUS INCLUDING ORGANISATIONAL MATTERS

Administrative Set-up (Wealth tax, Gift Tax & Estate Duty)

9.1 The Central Board of Direct Taxes (for short referred as Board) is statutory authority constituted under the Central Boards of Revenue Act, 1963. It functions as Division of the Ministry of Finance in the Department of Revenue and deals with matters relating to levy and collection of all direct taxes. It is the apex body of the Income-tax Department. The composition of the Board is as follows :—

1. Chairman,
2. Member (WT & J)
3. Member (IT)
4. Member (Inv.)
5. Member (B&A)
6. Member (S & T)
7. Member (L)

9.2 A Commissioner of Income-tax is an authority under the Income Tax Act u/s 117 of the Act. These officers also function as Commissioners of Wealth-tax and Gift-tax, In respect of Income-tax, Wealth-tax and Gift-tax Commissioners derive their powers by virtue of notifications issued by the Board u/s 121 of the IT Act which specify their functions in respect of such areas, such persons and classes of cases as may be thought fit.

9.2(a) Out of 80 Commissioners of Income-tax 36 Commissioners have also been appointed as Controllers of Estate Duty u/s 42 of the Estate Duty Act.

9.3 As far as possible the officers have been asked to complete the income-tax, wealth-tax and gift-tax assessments simultaneously so that information under one direct tax can be simultaneously utilised in the other assessments. There may, however, be occasions where due to practical difficulties like non-availability of records of other direct taxes, income-tax assessments are framed separately from the other assessments. However, efforts are made to ensure that this is avoided as far as possible.

Shortage of supporting staff

9.4 Shortage of staff, particularly, Class-II and Class-III staff, has been reported at a number of places. Because of this shortage the progress of assessments is stated to be very slow.

9.5 It has been brought to the Committee's notice that a cadre review for Class-I posts has already been done and additional staff sanctioned, but no such cadre review has been done for lower staff.

9.6 The Chairman, CBDT, stated that "in order to determine the shortage we have already undertaken a study by our Director of Organisation

and Management Services and they have determined it on an all India basis. The study indicated that we need about 10,000 ministerial staff."

9.7 The witness informed the Committee that "they decided that the shortage was 10,000. The Government decided that the study made by the departmental organisation should be test-checked by the Staff Inspection Unit. S.I.U. checked it and said that we need 5,000. When it want to the Department of Expenditure they said 3,500 would do. When it went further up they said 3500 should not be given in one year but in two or three years".

9.8 The Committee asked whether the main reason for inefficiency of the department was deficiency in the staff, the witness replies, "I would agree one hundred per cent. I would not call it inefficiency but non-performance".

Stagnation

9.9 The Committee pointed out that representation had been made to them that there was stagnation of staff and that their future prospects were not bright; that there were no promotional avenues and that they had been in dialogue with the department for many years, and that nothing had been done. Chairman, CBDT, stated that "There are two classes of officers one recruited by direct recruitment and the other, by promotion. The promoted class of officers is larger in number; they are about 2200 out of 3,800. Remaining are class I Officers. The promoted officers have a grievance that there is stagnation in the cadre. They want certain number of posts to be upgraded. We have already moved in the matter. We have agreed to upgrade a certain number of posts from Class II to Class I which should directly benefit this classes of people who are agitated". The witness added that "It is now going to the other Ministries. Probably in the Cabinet, if they approve of it, we will upgrade them immediately".

9.10 After the evidence, the Ministry furnished the following note on the study conducted by the DOMS on the requirement of staff by the Department, subsequent developments and the present position.

9.11 The norm of 4.75 clerks per assessing officer fixed by staff Inspection Unit in 1969 has turned out to be grossly inadequate. While the Department has assumed increasing responsibilities and workload, adequate attention has remained to be paid to strengthening the crucial links in the organisational chain. Shortage of staff for assessment work has become an acute problem and is being forcefully agitated year after year at the annual conference of Commissioners.

9.12 In the face of mounting demands from the field officers of additional staff, the Directorate of Organisation & Management Services (Income-tax) took up a fresh study to assess manpower requirements at the clerical level for assessment work. The study completed in 1978 showed that the norm of 4.75 clerks fixed in 1969 had become grossly outmoded and that there was a substantial gap between requirement and availability of clerical staff for assessment work. The report of the DOMS (IT) was checked by the S.I.U. of the Ministry of Finance. The S.I.U. agreed that on the basis of workload data for 1976-77 (during which year the DOMS (IT) study was carried out) and the norms as revised by them after a detailed check, the clerical staff will have to be augmented by about 5,000 against the existing clerical strength of 21,494 including supervisors

and Head Clerks. It was estimated that the additional 5,000 clerks would give a norm of 6.5 clerks per assessing Income-tax Officer.

9.13 The requirement of additional clerical posts was further examined closely in the Central Board of Direct Taxes and the Internal Finance Unit after revising the working on the basis of latest available statistics for 1978-79 and after making certain adjustments in respect of 456 UDCs and LDCs regarded as surplus in the Tax Recovery Units of the Department; the net number of clerical posts that would require to be created was worked out at 3474. This was the absolute minimum number needed to arrest further growth of arrears in various areas of work in the Income-tax Department.

9.14 However, taking into account the need for economy in expenditure, it was proposed that the augmentation of clerical strength be restricted to 50% of the assessed requirements, as the first phase of augmentation. Having regard to the proportion 1 : 2 : 1, which exists between Tax Assistants, UDCs and LDCs and also the leave reserve of 10% at the lowest level of LDCs, the requirements of additional staff at different levels will be as follows :

(1) Tax Assistant (Rs. 380-640)	499
(2) DUC (Rs. 330-560)	768
(3) LDC (Rs. 260-400)	470
Total	1737

This proposal is now being processed for clearance from the Department of Expenditure and Department of Personnel and Administrative Reforms for obtaining government approval for creation of the posts.

9.15 There has been sizable increase in recent years in the number of Wealth-tax payers, as may be seen from the following table :—

Year	Wealth-tax payers
1978-79	3·18 lakhs
1979-80	3·46 lakhs
1980-81	3·90 lakhs

Similarly, the pendency of Wealth-tax has also been going up, as will be seen from the table below :—

As on	Total pendency
31-3-1977	2,88,949
31-3-1980	4,32,988
31-3-1981	4,99,905

No separate staff is deployed for Wealth-tax assessments. The work relating to Income-tax, Wealth-tax and Gift-tax is performed by the same set of assessing officers. In view of the low revenue potential of taxes other than Income-tax, the Income-tax officers generally give priority to the disposal of Income-tax cases. This is an important reason for the large Wealth tax cases pendency.

9.16 The imperative need for bringing down pendency to a reasonable level has been considered. A tentative plan for bringing down the pendency has been thought of. This would mean augmenting the strength of not only Income-tax officers but also the supporting clerical staff. In the report of DOMS received, the requirements have been worked out. These are being critically examined, taking also into consideration, the financial constraints, the actual facilities at present available and the minimum needs of the Department to bring down the pendency to a reasonable level.

9.17 There is also heavy pendency of assessments of new cases discovered as a result of survey operations and there has not been adequate follow up of the survey reports furnished by the Inspectors. The need for strengthening of the survey organisation to be looked after by the Commissioners is thus imperative and urgent. It is in this context that, very recently, 8 posts of Commissioners of Income-tax (Investigation) have been created. Although no work study could be carried out on the officer and staff requirements of these Commissioners for effectively conducting survey operations, a rough estimate has been made of the requirements, based on the profile of work allotted to those Commissioners. According to this estimate, Commissioner of Income-tax (Investigation) will require officers and staff as follows :—

Inspecting Asstt. Commissioners	8
Income-tax Officer (20 × 8)	160
Clerical staff (160 × 6·5)	1040

This is also being critically examined.

9.18 It will be seen from the position explained above that a proposal for augmenting the clerical strength by 3474 for making up the existing deficiency is at present under consideration. As and when the recent reports of the DOMS are critically examined by the Government, action will be initiated for further augmentation of staff strength.

9.19 The DOMS (IT) have made a number of other studies and on the basis of their recommendations, proposals have been framed for augmenting staff strength at various levels. The number of additional non-gazetted posts proposed for creation is as indicated below :—

Sl No.	Category of Post	No. of posts	Purpose and the stage of consideration
(1)	(2)	(3)	(4)
1.	Inspector	921	The proposal for 405 posts as 'leave reserve' and 515 ad hoc requirement pending detailed work study consequent to new duty list is under consideration.
2.	Stenographer .	445	These are 'leave reserve' posts and the proposal is under consideration in consultation with the Financial Adviser.

(1)	(2)	(3)	(4)
3. Daftries		150	The proposal is for ad-hoc increase pending work study by the SIU, and is under consideration in consultation with IFU.
4. Notice server		3028	The proposal is under consideration in consultation with IFU.
5. Group 'D' posts			
Sweeper		535	The proposal is under consideration of the Financial Advisor.
Farash		228	
Chowkidar		1256	
6. Creation of posts of complementary staff for newly created post of Chief Commissioners Commissioners of Income-Tax and Assistant Commissioners of Income-tax, is at present awaiting clearance of the Deptt. of Per. & AR.			

9.20 In addition to the studies conducted by the DOMS (IT) referred to above, the SIU have also undertaken work measurement studies for Headquarters offices of the Commissioners and Inspecting Assistant Commissioners. As a result of these studies, the strength of the supporting staff of the headquarters offices of the Commissioners and Inspecting Assistant Commissioners is expected to be augmented. The DOMS will no doubt make further studies in areas where augmentation of strength is needed, covering all groups of employees.

9.21 There is a shortage of Stenographers. The recruitment of Stenographers is being done through the staff Selection Commission. The shortage is due to time lag between the sponsoring of demand and actual nomination of the persons by the S.S.C. It is proposed to take up the matter with the Department of Per. & A.R. so that the Commissioners of Income-tax are allowed to make direct recruitment of Stenographers locally through other channels. Similar action is proposed in respect of LDCs and UDCs also.

Shortage of Stenographers

9.22 It was brought to the Committee's notice that one of the categories of staff in which there is acute shortage, was that of stenographers. Even the sanctioned posts had not been fully filled up even though selection tests at all India level were held from time to time. The difficulty was compounded by the lack of authority with the Commissioners to recruit stenographers locally to make up the shortage.

9.23 The representative of the Ministry stated during evidence that "We had periodical discussions with staff Service Commission (SSC). They have changed the method of recruitment. Now, they are having it on zonal basis. Now we have written to the Commissioners to let us know about it. This power was with our Commissioner. They thought that the Central agency would be able to do it better. He had pointed out their deficiencies.

9.24 The Chairman, CBDT, stated that "Our shortage in the Stenographers' Grade is as high as more than 10 percent. Without a stenographer it is very difficult for a Commissioner or ven an Asstt. Commissioner to function." The witness agreed to the suggestion that power should be given to Commissioners to recruit stenographers locally. He added that "In so far as the LDCs/UDCs are concerned even the powers to recruit them should also be given to the Commissioners".

Staff at Mangalore, Goa and Bangalore

9.25 It was brought to the Committee's notice that the staff working at Mangalore and Goa are deputed for a term of one year and even then most of the time the staff remained on leave and away from their places of work with the result that assessment work at these places suffered. The reasons for this are stated to be high cost of living and scarce residential accommodation at these places. These two reasons were acknowledged by the Income tax authorities also.

9.26 In a written reply the Ministry stated :

Due to scarcity of residential accommodation at Mangalore and Goa, Income-tax Department staff are posted to these stations for one year term only. This policy is strictly adhered to. Of the two stations, the problem of residential accommodation has been more acute in Goa. Out of the sanctioned strength of 119 staff, the present working strength is 114 of which the locals account for only 16 and the balance i.e. 98 are from outside the station. As against this, the number of quarters available in Types I, II and III is 22. However, in March 1981, construction of 96 quarters in Types I to Type III was approved jointly for three Departments, namely, Income-tax, Customs and Central Excise Departments. When thest quarters are completed, a share will go to the Income-tax Department. Apart from this, proposals are under consideration for purchasing some ready-built flats from the Housing Board of Goa to meet the requirements of the Income-tax Department. Thus, the Government are fully alive to the problem of scarcity of residential accommodation for the Income-tax staff at Goa and are taking necessary action in this regard.

9.27 As regards Mangalore, the sanctioned strength of staff is 74 and the working strength 71. Out of these, 19 are locals and the balance 52 from outside the station. No Government accommodation exists at Mangalore. However, sanction for construction of 88 quarters jointly for the Income-tax, Customs and Central Excise Departments has been issued. When these quarters are completed, the Income-tax Department will have its share.

9.28 At Bangalore, the sanctioned strength of staff is 843 and the working strength 812, of which locals account for 336 and these from outside Bangalore 476. Against this, the number of Government quarters in Types I to IV is 75. A proposal for purchase of property in Bangalore for putting up staff quarters is under active consideration.

9.29 Generally speaking, subject to the constraints on availability of funds and land, Government are poised for a massive programme to provide residential accommodation to Income tax Department employees at all stations. For example, over 700 quarters are coming up at Annanagar, Madras, and 800 quarters in Bombay jointly for the Income tax, Customs and Central

Excise Departments, 600 and odd quarters have been sanctioned for construction at Delhi etc., etc.

Transfer Policy

9.30 The Ministry furnished the following note explaining the transfer policy of the Gazetted officers under the Income tax Department :

> "Under the transfer policy, Income tax Officers (Group 'B') are liable for transfer after a stay of 5-6 years at a particular station. Income-tax officers (Group 'A' Promotees) and Income-tax Officers (Group 'A'), Direct recruits, are liable for transfer to another charge of Commissioner after 5 years regular service/6 years service respectively. However, Income tax Officers, both of Group 'B' and Group 'A', are not to be allowed to stay in the same ward/circle at the same station for more than 3 years. Assistant Commissioners of Income tax are liable for transfer out of the charge after a stay of 8 years including the period of service as Income tax Officer (Group 'A') in the same charge of Commissioner of Income-tax".

9.31 Asked whether the officers were not liable to transfer after 3 years and what was the policy regarding posting of officers to place to which they belonged, the Ministry stated that "Gazetted officers of the Income tax Department are not liable for transfer to another station after a stay of 3 years. Among nearly, 4600 Gazetted Officers in the Income tax Department, there may, therefore, be several officers holding posts for 3 years at the same place. Further, transfers of Income tax Officers to posts within the same charge from one circle/ward or to other stations within the same charge are made by the local Commissioners of Income tax. Also under the transfer policy, the posting of officers to the same State to which they belong or to stations where they were born or pose such belongings is not barred".

9.32 According to the Ministry the following guidelines are laid down for transfers.

(i) *ITOs (Group 'B')*

ITOs (Group 'B') are borne on a charge wise cadres. They are not normally transferable from one charge to another, except on grounds of extreme compassion or for administrative reasons. Even if they are to be transferred on administrative grounds transfers will ordinarily be made on zonal basis.

9.33 The zones will be comprised of the Commissioners charges as indicated below :—

(A) Zone I	Patiala, Amritsar, Jullundur, Rohtak, Delhi, Rajasthan (Jaipur and Jodhpur) Agra, Meerut and Kanpur.
(B) Zone II	Allahabad, Lucknow, Patna, Ranchi, and Bhopal;
(C) Zone III	Orissa, West Bengal and Assam;
(D) Zone IV	Bombay, Pune, Nagpur, Nasik and Gujarat.
(E) Zone V	Karnataka, Andhra Pradesh, Tamil Nadu and Kerala.

9.34 A Group 'B' officer may not, however, be allowed to stay at a particular station for more than 5-6 years. During his stay at the particular station, the officer should not be allowed to stay in the same ward for more than 3 years and should be shifted to another ward/circle at the same station. In city charges, where the officer cannot be shifted to another station, it should be ensured that they are not be allowed to remain in the same ward/circle etc. for a period of more than 3 years. The career planning of Group 'B' officers should be arranged in such a manner that the officers are enabled to acquire not only assessment experience, but also are rotated to various other jobs.

(ii) *ITOs (Group 'A')*

9.35 (a) In the Commissioners' conference it was decided that the Direct Recruits on initial appointment should be so dispersed that they are posted away from their home States. At the initial stage if they are conditioned to accept transfers, there may be no opposition in subsequent years to accept a cross country posting. This will be kept in view by the Board while making postings of the direct recruits in various charges.

(b) A promotee officer would normally be liable to tarnsfer to another charge after he has rendered five years regular service as ITO (Group 'A') in a particular charge.

(c) The Directly recruited ITOs (Group 'A') will be shifted to another charge after 6 years stay in a charge. During their stay in a charge, the Group 'A' ITOs whether promotees or direct recruits should not be allowed to stay in the same ward for a period beyond 3 years.

(d) Presently Group 'A' officers take 8-10 years to become Assistant Commissioners of Income tax. Within this period the officers should be given postings at different jobs. Upto 4th year of service class I officers (direct recruits) are generally posted to less important circles/wards. As soon as a Class I Officer is placed in the Senior Scale he should invariably be posted to Company Circles, Special Investigation Circles and other important Business Circles and Internal Audit. During the 7th-10th years service, he should be posted as ADI/Central Circle and J.A.Rs etc.

(iii) *Assistant Commissioners of Income tax*

9.36 An assistant Commissioner who has stayed in a particular charge for 8 years including the period as ITC (Group 'A') will be liable for transfer to another charge in a State other than the State where he is presently posted.

9.37 Presently, Assistant Commissioners of Income tax generally tender 14-15 years service at that level before promotion as Commissioner of Income tax. During the first 8 years of this period, they would be given postings on work such as IAC (Astt.), IAC (Acq.) AAC and Range IAC (company Circle). During the 9th to 14th years they would be expected to hold senior posts like that of Deputy Director, IAC (Audit) and Sr. A.R. They would also be encouraged to go on deputation to Public Sector Undertakings and various Ministries/Departments of the Government of India. A suitable professional or management training either in the country or abroad will also be aimed at during this period.

(iv) *Commissioners of Income tax*

9.38 The Commissioners of Income tax would be liable for transfer at any time to any station in India.

9.39 If an officer is working or has worked on deputation at the same station, the period spent on deputation will not be taken into account for the purpose of counting his stay at a particular station.

9.40 Notwithstanding what has been stated above, the Board can, for administrative reasons, transfer any officer at any time to any place in India.

9.41 On promotion, any officer can be transferred from one charge to another regardless of study. *Ad hoc* promotion will not be treated as promotion for this purpose.

9.42 As far as possible, no ITO will be transferred to another charge during the last years of his service and an Assistant Commissioner within the last two years of his service.

9.43 Certain stations are considered unpopular for various reasons and officers are unwilling to continue there for normal periods of posting. An officer posted to such unpopular station will be eligible for transfer to another place after a stay of 2 years at that station. A list of stations as are treated as unpopular will be circulated separately.

9.44 It has been noticed that some officers resort to the undesirable practice of applying outside pressure in the matter of securing, modifying or cancelling transfer orders. Attention is drawn to Rule 20 of the CCS (Conduct) Rules, 1964 under which no Government Servant shall bring or attempt to bring any political or other influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Govt. The Board will be prepared to consider genuine cases of hardship if representations are sent through proper official channels. However, any violation of Rule 20 of the CCS (C) Rules, 1964, will be taken serious note of and severely dealt with.

9.45 Explaining the position during evidence, Chairman, CBDT stated that "Class II officers become liable for transfer after 5 to 6 years of service in a particular station. After three years we change their ward or circle. After five to six years they are transferred from the charge of one Commissioner to another in a multi-Commissioner charge. Class I officers are liable to be transferred any Commissioner's charge in India. On administrative grounds or compassionate grounds Class II Officers can be transferred with a region. For instance, Punjab, Haryana, and Rajasthan, constitute one region. But usually they are not sent outside a Commissioner's charge. If somebody wants to be transferred on compassionate grounds, he can get it. Usually, they cannot be transferred outside the Commissioner's charge. But in city like Delhi or Bombay we transfer them every three years from one ward to another; and after 5 or 6 years because it is a multi-Commissioner charge we transfer them from the charge of one Commissioner to another. In Class III Cadre on account of constraints of economy, we have not been able to transfer people out of the Commissioner's charge to far-off places".

9.46 The witness gave the following statistical information in this regard :

> "Officers retained at the same place for more than three years. Commissioners of Income tax 31; Assistant Commissioners 223 and ITOs 491. Out of the above, officers retained in the same State to which they belong (or the station at which they hold some assets) 15 out of 31 Commissioners, 39 out of 223 Assistant Commissioners, and 286 out of 491 ITOs." The witness added that "we have not recieved information from all the Commissioners, but this gives a rough picture."

9.47 He further informed the Committee that "Officers retained in the same place where they were born, and they possess their belongings :—in the case of Commissioners, we don't have the information. But 13 out of 39 Asstt. Commissioners have been retained at the same place where they were born and possess their belongings. Normally our policy is to change at least the wards in the case of Class II ITOs we do it after 3 years; and we transfer them to another Commissioner's charge, after 5 to 6 years".

9.48 When asked whether the transfer policy of the department was being properly applied, Chairman, CBDT stated "This is a revenue department and we have got to apply very strict standrads so far as transfer policy is concerned. I would also admit that sometimes it is not possible to transfer a man out. There are certain basic problems which a person has to face. First is accommodation. It is very hard".

9.49 When the Committee pointed out that officers had stayed in the same place for over 10 years and whether transfer policy should not be followed strictly. Chairman, CBDT, replied that "I agree that this is not a healthy practice and he should be transferred out of the station, and out of that Commissioner's charge".

9.50 The witness further clarified that "Class II officers cannot be transferred out of the Commissioner's charge" under the rules. According to the witness the difficulty in amending these rules was from the Associations side.

Complaints

9.51 It was brought to the Committee's notice at a number of places that complaints filed with Income-tax authorities were not attended to promptly and sometimes no action was taken on complaints. Besides, assessees themselves are afraid of making complaints for fear of reprisals.

9.52 Asked to explain the position in this regard, Chairman, CBDT, stated during evidence that "so far as the grievances are concerned, a Grievances Cell has been set up in the Board's office. It is working under the direct supervision of the Chairman and similar cells have been set up in the charges of Commissioners of Income-tax. These Grievances Cells receive complaints against the non-issue of refunds etc."

9.53 Referring to a suggestion that a complaint cell independent of Income-tax authorities ,at the level of Commissioner's charge set up under the control of Ministry of Home Affairs. The witness stated that "we cannot agree to the placing of the cell under the Home Ministry. We receive the

complaints about not giving of appeal effect, rectification of assessment etc. of Income-tax which is levied under a central Act. The transfer of files from one Commissioner to another is also involved. Adjustment of pre-paid taxes is there. As soon as we get the grievance we call for a report of the Commissioner and after the grievance is redressed we again write to the tax-payer, saying that his grievance has been redressed. Here I would like to say that after the setting up of this cell in 1979, up the 31st March, 1982 we had settled 1355 grievances out of 1604 received. The remaining 249 were received during the last two months of the year. The setting up of the Grievances Cell has been well received by the tax-payers. As soon as the grievances are redressed they write to us thanking us and welcoming the steps that have been taken. Now, insofar as placing of this Grievance Cell under the Ministry of Home Affairs or any outside agency is concerned Income-tax is a highly technical subject and if we were to place this under the Home Ministry, it may not be proper or possible, because they do not have the complete or direct knowledge of the tax laws. That is one reason why we do not want this to be put in the hands of any outside agency".

9.54 The Committee asked whether they would still object of Grievance Cell under the Home was manned by staff from the Income-tax Department, the witness stated that "to administer the direct taxes, the Board of Direct Taxes is directly concerned and it is responsible for all direct taxes. This is also one of the tasks or duties assigned to them. If an outside agency were to look, that would not be a healthy administration".

9.55 The Committee asked whether the Commissioner of Income-tax should not hear complaints orally and in confidence without lower authorities coming to know about it and attend to them at their level.

9.56 Chairman, CBDT, stated that "our experience is that many people directly approach the Commissioners—either by themselves or through their legal representatives, chartered accountants, advocates etc. And the Commissioners do take a personal note of their grievance and try to remove them. Every month I get a d.o. letter from each Commissioner. They have to tell me how the grievance cell in their charge have been functioning. This is taken care of".

Misplacement of Papers

9.57 It was brought to the Committee's notice that many a time the files of the assessees were not readily traceble; papers filed at the counters did not reach the intended destination within a reasonable time. Often challans filed at the counters did not come to the concerned files at all, leading to unnecessary correspondence and harassment.

9.58 Even tax returns filed with the Department were often not available at the time of hearing. The assessees were then required to produce duplicate returns.

9.59 Explaining the position in this regard the representatives of the Ministry of Finance stated during evidence that "cases of misplacement of files and other papers have sometimes come to our notice. To reduce possibilities in this regard, ITOs and supervisory officers have been asked to make periodical inspections of the tables of their staff, so that action on papers remaining unattended to, or not kept in appropriate folders, can be taken. Since 1979-80 after the Ministry have examined this matter at greater length and decided that the first quarter of every year should be set apart

for house-keeping jobs. In this period, all the papers, challans and returns are supposed to be kept in the files, and arrear papers have to be attended to. Our own experience has been that such cases have been reported more during the period prior to 1979-80 than later. Even after this period, some have approached the grievance cell. Enquiries have revealed that many such cases were there because cases had been transferred from one ITO to another. Perhaps the assessee was not aware of the change. The Ministry is looking into it".

9.60 Replying to a question whether it was proper to ask for a duplicate return at the time of hearing, the witness admitted that "it will not be proper to ask an assessee for a duplicate return at the time of hearing, if he produces the receipt for having filed the original". He further informed the Committee that "sometimes, Income-tax officers may have to do so, but this has to be restricted to situations like where despite best efforts, the original is not traceable".

9.61 The representative of the Ministry also informed the Committee that "in regard to the receipt and docketing of a new system for receipt of returns at the counters, their transmission to the Income-tax Officers and their subsequent processing and placement on the relevant files is in vogue since 1976. This system envisages the involvement of the Commissioners and Inspecting Assistant Commissioner by monitoring. According to the witnes "we have a couple of years ago, even changed the form of the enclosure to the income-tax and wealth-tax returns. It has been our experience that with many of the returns which the assessee sends, dividend warrant etc. are not sometimes found. We have not indicated in a memo enclosed as to what are the enclosures needed. We have now got the challan in quadruplicate".

9.62 The witness added that "there is no way to bring about an ideal state of affairs. Our goal should always be to reach the ideal, whereby every assessee pays tax without tears, and is not called upon to present documents more than once. We have an Organisation and Methods Directorate, which continuously goes on reviewing them".

9.63 The witness further stated that "once a return has been filed, the Department should not ask for a duplicate return. But there may be exceptional cases where we ask for a duplicate return. The Department is constantly improving the procedure".

9.64 The witness assured the Committee, that "whatever observations are made by the Committee, we will note them with a view to improving and streamlining the procedure. We will immediately look into the matter and suggest some solution with a view to improving the procedure and setting the things right".

Consolidation of Tax Provisions and Returns

9.65 It was suggested to the Committee that as done in Canada, relevant provisions in regard to all Direct Taxes should be consolidated together with the forms of tax returns and published in the form of a booklet. This will facilitate the task of assessees know the legal provisions and to file returns.

9.66 Giving the thinking of the Ministry on the aforesaid suggestion, the representative of the Ministry stated during evidence that "we have in our return from instructions sufficient enough to enable an assessee to under-

stand the low and fill up the return. Our Direcotrate have brought out a tax-payers information series. It is quite popular".

9.67 The witness agreed to consider publishing in the form of a priced booklet, the returns and the relevant provisions of Direct Taxes laws for the benefit of assessees.

9.68 From the information placed before the Committee in regard to operation of Wealth Tax, Gift Tax, and Estate Duty it is seen that there is acute shortage of supporting staff in the Income-tax Department. A Study of the manpower requirements at the clerical level for assessment work was made by Directorate of Organisation and Management Services (DOMS) of the Income-tax Department and after test checking the results of the study with the Staff Inspection Unit of the Ministry of Finance, it was agreed that the Clerical staff will have to be augmented by about 5,000 persons against the existing clerical strength of 21,494 including supervisors and head clerks. After a further examination of the matter in the light of latest statistics and after some adjustments of the surplus hands in the Department the net number of clerical posts that would require to be created was worked out at 3474 which was stated to be the absolute minimum needed to arrest further growth of arrears in the Department, However, taking into account the need for economy in expenditure, it was proposed that the augmentation of clerical strength be restricted to 50 % of the assessed requirements as the first phase of augmentation. The proposal to have 1737 more posts in the ministerial cadres in the first phase is now reportedly being processed for clearance from the Department of Expenditure and Department of Personnel and Administrative Reforms for obtaining Government's approval for creation of the posts.

9.69 Over and above the additional staff referred to above, the rough estimate recently made of the requirements of the newly set up survey organisation of the Department shows that this organisation would require 1040 clerical staff. This matter is also being critically examined.

9.70 The Directorate of Organisation and Management Services has made a number of other studies and based on its recommendations proposals have been framed for augmenting staff strength at various other levels also, namely inspectors (921), stenographers (445), Daftries (150), notice servers (3028), sweepers (535), Farrash (228) and Chowkidars (1256).

9.71 Besides, the Staff Inspecting Unit of the Ministry of Finance has also undertaken work measurement studies for headquarters offices of the Commissioners and Inspecting Assistant Commissioners.

9.72 The Committee take note of the shortages in the various categories of supporting staff in the Income-Tax Department and the steps being taken to make up the shortage. Income-tax Department is a revenue earning Department of the Government. Needless to say that if assessment work is not attended to promptly, it is the Government itself which will suffer more than anybody else. The shortage of supporting staff was brought to the notice of the Committee last year also when they had observed that "shortage of officers and staff should not be held out as a justification for huge arrears or inefficiency of the Department as the Department are expected to keep the staff strength abreast of the expanding workload [para 5.11, 9th Report (1980-81)." The Committee had recommended that the Department should "take conclusive measures early to provide adequate manpower at all levels to keep pace with the work".

9.73 The Committee are unable to appreciate why so long a time has been taken to sanction adequate supporting staff for the Department when in contrast the posts of Commissioners of Income-tax have along been increased. It appears that the staff problem is not being attended to by the authorities concerned with as much seriousness and urgency as is necessary. The Committee urge that the proposals for additional staff should be finalised without delay and adequate supporting staff of all categories should be provided in all formations of the Income-tax Department as early as possible in the interest of revenue. (S. No. 81)

9.74 The Committee take particular note of the shortage in the category of stenographers in the field formations. Without stenographers the Income-tax Officers and other officers in the field are rendered absolutely ineffective. In the Committee's opinion the present procedure of recruiting stenographers at all-India level or at zonal level may not provide a satisfactory solution to the problem of shortage of stenographers in field formations. They feel that Commissioners of Income-tax should be allowed to make direct recruitment of stenographers locally through recognised channels and for this purpose, if necessary, guidelines may be laid down in counsultation with the Staff Services Commission. (S. No. 82)

9.75 The Committee note that due to scarcity of residential accommodation of various places, particularly at Goa and Mangalore, not only Income-tax staff is put to great inconvenience but even the working of the Income-tax offices in the field is suffering. In Goa there are only 22 quarters available for a staff of 98 who are not locals. At Mangalore there are 52 Income-tax staff from outside but there is no Government accommodation available. At Bangalore for a staff numbering 476, not belonging to that place, there are only 75 Government quarters. Government, it is stated, is fully alive to the problem of residential accommodation for the Income-tax Officers and is taking certain steps to construct residential accommodation at various places with a view to solving the problem.

9.76 Even after a small number of houses that are proposed to be constructed for income-tax staff become available after sometime the position is not likely to show much of an improvement. Residential accommodation is a basic need of the Income-tax staff particularly those who are posted at a station from outside.

The committee would, therefore, urge that the accommodation needs of the staff at various stations in the country should be critically examined and proposals for construction of adequate number of quarters to cope with the needs over a period of time chalked out and implemented with a sense of urgency.

(S. No. 83)

9.77 Pending construction of residential accommodation, the Committee would advise that the Department should itself hire private accommodation and allot it to the employees of the Income-tax Department at reasonable rent. There should be no delay in resorting to this measure to tide over the acute shortage of residential accommodation. (S. No. 84)

9.78 The Committee have gone into the transfer policy laid down for the Income-tax officers. Under the transfer policy ITOs, Group B, are liable for transfer after a stay of 5-6 years at a particular station. ITOs (Group A, promotees and direct recruits) are liable for transfer to another charge of Commissioner after five years' regular service/six years' service respectively. ITOs both of Group A and B are not to be allowed to stay at the same Ward/Circle for more than three years. Under the transfer policy the posting of officers to the same State to which they belong or to stations where they were born or possess belonging is not barred.

9.79 The Chairman, Central Board of Direct Taxes, however, admitted in evidence that sometimes it has not been possible to transfer officers out of a place because of certain problems which the officers have to face like that of accommodation.

9.80 The Committee consider it highly improper that an officer should be allowed to stay in the same place for a period longer than that prescribed in the transfer policy. It is unfortunate that at many places, according to the reports reaching the Committee, officers have stayed at the same place for over 10 years which is clear disregard of the Government own transfer policy. This being a revenue earning Department, disregard of this policy could lead to corruption, vested interests and collusion of the officers with the local assessees and this would be detrimental to the national interest. The Committee strongly feel that, when once a transfer policy has been formulated, it should be implemented in letter and spirit and the officers should be rotated from one place to another strictly in accordance with the policy. At the end of the prescribed period the transfer should be from one city to another, if not, from one state to another. Any pressure brought by any officer at any level to interfere with the transfer policy should be taken serious note of and resisted. The Central Board should monitor the implementation of the transfer policy and ensure compliance. (S. No. 85)

9.81 According to the reports reaching the Committee the complaint procedure in the field formations of Income-tax Department is not working to the satisfaction of the assessees. Complaints, it is stated, are either not attended to at all or are not attended to promptly. Assessees are also afraid of making complaint for fear of repraisals.

9.82 The Committee note that grievence Cell has been set up in the Board's office under the direct supervision of the Chairman and similar cells have been set up in the charges of Commissioners of Income-tax. The Committee would like that complaints received in these cells should be acknowledged, attended to promptly, and followed up without any fear or favour. Unless this is done the Income-tax Department will not be able to win the confidence of the assessees. The Central Board would do well to monitor the receipt and disposal of complaints at the level of Commissioners of Income-tax.

9.83 The Committee would like to reiterate their recommendation made in para 5.64 of their 9th Report (1980-81) on Income-tax Department that the Commissioners of Income-tax should meet the assessees and representative bodies individually or in groups without having junior officers in attendance who may be directly involved with the assessment work and against whom the

assessees may be having complaints. Unless such exclusive meetings are held in confidence it is difficult to expect the assessees to open out and bring their complaints to the notice of the Commissioners frankly. Although the recommendation in the 9th Report was made for Income-tax assessment it is equally relevant for other direct taxes viz. Wealth Tax, Gift Tax & Estate Duty. (S. No. 86)

9.84 The question of missing documents in the Income-tax Department was examined by the Committee last year and they had made a number of recommendations in paras 5.79 to 5.84 of their 9th Report (1980-81) on Income-tax Department. The Committee would like those recommendations to be followed up seriously and implemented. (S. No. 87)

9.85 The Committee were distressed to learn from assessees under Wealth Tax, Gift Tax and Estate Duty at various places that even tax returns filed with the Department have been found missing in many cases at the time of hearing. This is too serious a matter to be taken lightly as the Department appears to have done during evidence. The Committee would urge the Department to enquire into each such complaint at an appropriate level with a view to fixing responsibility and learning lessons for the future. (S. No. 88)

9.86 The Committee would also emphasise that supervisory officers should periodically inspect the records to check whether papers have been filed properly and kept safely and take remedial measures to plug the loopholes, wherever found. (S. No. 89)

9.87 The Committee feel that a booklet containing return forms, relevant provisions from Direct Taxes laws showing the exemptions and concessions available under the laws and easily comprehensible notes explaining how to fill in the returns would be of immense benefit to the assessees. The Department should consider bringing it out as a priced publication on a regular basis. (S. No. 90)

NEW DELHI,
April 15, 1982
Chaitra 25, 1904 (*Saka*)

S. B. P. PATTABHI RAMA RAO,
Chairman,
Estimates Committee.

APPENDIX

SUMMARY OF RECOMMENDATIONS/OBSERVATIONS

Sl. No.	Page No.	Recommendation/Observation
1	2	3
		Returns
1.	2·31	There is a general feeling that Wealth-tax and Estate Duty returns are unnecessarily cumbersome and lengthy though the Ministry claimed that the returns were fairly simple and did not require any simplification. The Committee are glad to note that in the course of evidence before the Committee, Chairman, Central Board of Direct Taxes, frankly admitted that these returns were very complicated and lengthy. They take note of the assurance given by the Chairman, Central Board, that these returns would be simplified. The Committee expect this exercise to be completed without delay and simplified returns for Wealth Tax, Gift Tax and Estate Duty introduced from the assessment year 1983-84.
		Affidavit required under Estate Duty Act
2.	2·32	The Ministry has also accepted the view voiced before the Committee by non-official organisations that the affidavit on the Estate Duty return required to be sworn before a magistrate or Oath Commissioner is not necessary and can be substituted by a simple verification as done in the Income-tax return. The Ministry has also agreed that to avoid unnecessary correspondence between the Department and the assessee, a column can be provided in the return to indicate specifically whether extension of time for submission of return had been obtained by the assessee in any particular case and if so when and till what time. The Committee expect that these improvements as agreed to by the Ministry would be incorporated in the simplified returns to be introduced from the next assessment year.
		Consolidated Returns of Direct Taxes
3.	2·33	A case for prescribing a consolidated return for Income-tax, Wealth-tax and Gift-tax was made out before the Committee by non-official organisations. The filing of a consolidated return, it was suggested, should be optional so that assessees can choose to file either separate returns or a consolidated return as may be convenient to them. Since Income-tax, Wealth-tax and Gift-tax assessments in respect of an assessee are done by the same Income-tax Officer and since every case of Wealth-tax is not required to be referred to the valuation cell, Chairman, CBDT, after a little bit of hesitation initially, agreed that the question of introducing a consolidated return can be considered afresh. The Committee feel that consolidation of returns will not only facilitate assessment of all the three taxes, viz., Income-tax, Gift-tax and Wealth-tax, at one go but would also make it easier for an Income-tax Officer to correlate Wealth and income of an assessee and have a complete picture before taking a final view on the tax liability of the assessee. They, therefore, recommend that the Ministry should examine the question of introduction of a consolidated return for Income-tax, Wealth-tax and Gift-tax with an open mind and if necessary, try it on an experimental basis before placing it on a permanent basis.

1	2	3
		Revised Return under Estate Duty Act
4.	2·34	There is at present no provision to file a revised return under Estate Duty Act in case the original return is found to be defective later on, as is the case under other Direct Taxes laws. The Ministry has no objection to having such a provision in the Estate Duty Act also. This may be done at the earliest opportunity.
		Acknowledgement of Returns
5.	2·35	The Committee are unhappy to learn that formal acknowledgements of returns are not issued by the Department in all cases. Sometimes at the time of submission of returns small unstamped chits showing receipt of returns are issued and these are required to be presented at the Income-tax office later for getting formal acknowledgements. The Ministry has conceded that such a practice might have been observed at some places on the last day for submission of returns due to excessive rush of work. This explanation is not acceptable to the Committee. The Committee would like the Ministry to ensure that formal acknowledgements in prescribed forms are issued in all cases without fail at the time of submission of returns by assessees.
6.	2·36	It normally takes an assessee about 15 days to get receipted challan from the bank after payment of tax amount. It has been suggested to the Committee that if the tax as per self-assessment procedure is paid by an assessee by the due date for filing return, delay in filing the return due to the time taken by bank in giving receipted challan should be ignored. This is a reasonable suggestion. The Committee feel that the Ministry should effect necessary amendments in the rules to condone short delays in filing returns in such circumstances.
		Details of Tax Calculations
7.	3·51	The expectation of the assessees that the basis on which the tax demand is calculated should be clearly indicated in the demand notice, is quite reasonable. The Committee are glad to note that the Ministry has agreed to issue instructions to the officers to give details of tax calculations in the body of the assessment order or send these details to the assessees separately on a prescribed form so that they may be able to know how the tax has been worked out.
		Notice of hearing
8.	3·52	In pursuance of the Estimates Committee's recommendation made last year in the course of the examination of the subject of Income-tax Department (Para 2·58, 9th Report 1980-81), instructions are stated to have been issued by the Department that along with the notices of hearing the Income-tax Officers should send to the Assessees lists of points on which they would like the assessees to come prepared for discussion or to produce further information. The Committee regret to find that these instructions are not being properly followed by the Income-tax Officers in actual practice at all places. The Committee would like the Ministry to enforce its instructions in the field and ensure that no notice of hearing is issued without a list of points attached to it.

1	2	3
		Summary assessment under Wealth-tax
9.	3·53	The Committee have examined the suggestion for introduction of summary assessment system in the case of Wealth-tax and Estate Duty also as is being done in the case of Income tax in the light of the Ministry's reactions thereto. They agree with the Ministry that in the case of Wealth-tax and Estate Duty, summary assessment system would not be desirable.
		Application of Wealth-tax to the State of Jammu & Kashmir
10.	3·54	A number of writ petitions are pending in the High Court of Jammu & Kashmir challenging the validity of the application of Wealth-tax Act to the State. The Committee learn that in some cases the petitioners have also obtained stay orders. This has made the future of Wealth-tax Act in the State of Jammn & Kashmir uncertain and the assessees are unable to make up their minds to pay the tax or not. The Committee take note of the steps being taken by the Ministry in defending the case in the High Court and, if necessary, in the Supreme Court. The Committee wonder if the Ministry could move the High Court to take up the writ petition and give its decision on the matter at the earliest.
		Complex provisions under the Estate Duty Act
11.	3·55	The assessees find various provisions of the Estate Duty Act quite complex and feel that these should be simplified. The Ministry has also admitted that the Estate Duty Act, which was modelled on a 19th century Act of British Parliament, is very complex and too difficult even for an expert to understand it and some of its provisions are irrelevant to the socio-economic conditions in India. The Committee note that the Ministry had decided to bring forward a comprehensive bill to amend the Estate Duty Act but, before any action could be taken up in this regard, the entire matter was transferred to the Economic Administration Reforms Commission for its consideration. The Committee hope that the Economic Administration Reforms Commission would give its considered opinion in this matter at an early date and the Ministry will thereafter take conclusive action to simplify the Act and orient it to suit Indian conditions without delay.
		Court fee under Estate Duty Act
13.	3·57	In regard to court fee in Estate Duty cases also the Committee regret to observe that even though Section 50 of the Estate Duty Act casts a statutory obligation that the amount of Estate Duty payable should be reduced by an amount equal to the court fee paid, this is not being done in actual practice at many places. The Committee find that recently Madras High Court has given a decision removing any doubt in this respect. The Committee would like the Ministry to issue categoric instructions in this regard and watch their implementation.
		Estate Duty clearance Certificate for payment of Provident Fund dues
14.	3·58	The Employees Provident Fund Organisation requires Estate Duty clearance certificate for payment of provident fund dues to the heirs of the deceased subscribers. It has been brought to the Committee's notice that the Estate Duty authorities do not issue clearance certificates expeditiously with the result that the heirs of the deceased subscribers are unable to get their dues

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		from the organisation promptly. The Central Board of Direct Taxes has issued instructions that where the provident fund amount is less than Rs. 25,000/-, the trustees of the provident fund can allow payment of the provident fund of the employee without waiting for issue of a formal certificate by the Estate Duty authorities. But these instructions are not of mandatory nature and if the Provident Fund Organisation chooses not to Exercise its discretion in releasing payment to the heirs of the deceased subscribers, the heirs have no remedy against delay. The Chairman, Central Board of Direct Taxes, informed the Committee that recently a Committee constituted by the Ministry of Labour had recommended that the aforesaid procedure should be made mandatory but the Ministry of Finance was not aware whether the Labour Ministry had given effect to this recommendation or not. The Committee regret that due to lack of coordination between the two Ministries and in the absence of mandatory instructions, the heirs of deceased subscribers of provident fund are being put to inconvenience and harassed. The Committee would like conclusive action to be taken in the matter without delay so as to avoid any delay in payment of provident fund dues to the heirs of the deceased subscribers.
15.	3·59	The Committee would also urge the Ministry of Finance to look into the phenomenon of delay in issuance of clearance certificate by Estate Duty authorities with a view to looking effective measures to remedy the position. The Committee would like to be informed of the action taken in the matter.
		Discharge Certificate under Estate Duty Cases
16.	3·60	The Committee see no reason why after an assessment under the Estate Duty Act has been completed and the duty, if any found due, paid or no duty is found payable, a discharge certificate cannot be issued automatically without a fresh application being required to be made to the Estate Duty authorities. The Ministry has agreed to this view. The Committee expect the necessary instructions would be issued without delay and discharge certificate would hereafter be issued along with the assessment order without the requirement of any fresh application.
		Time limit for completing assessments under Estate Duty Act
17.	3·61	For disposal of Wealth-tax and Gift-tax assessments, a time limit of four years from the and of the relevant assessment year has been provided in the respective Acts. For Income-tax assessment, the time limit is two years. But there is no time limit for disposal of Estate Duty assessments. The Ministry has agreed that it is desirable to lay down a specific time limit for disposal of Estate Duty assessments also. The matter is stated to be awaiting consideration by the Economic Administration Reforms Commission. Choksi Committee had also suggested that a time limit of 4 years from the end of the relevant financial year should be laid down for completion of assessments under the Estate Duty Act. The Committee also feel that a time limit for completing assessments under the Estimate Duty Act is a must and should be incorporated in the Act.
		Time limit under Direct Taxes
19.	3.63	The Ministry agrees that it would be an ideal state of affairs to have the same time limit for assessments under the different Direct Taxes laws, as suggested by a number of non-official organisation. The Committee also feel that it will facilitate synchronisation of assessment work under all these Acts if a

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		uniform time limit for disposal of assessments is fixed. The Committee would suggest that the Ministry should give a serious thought to this matter.
		Refunds
21.	3·65 3·66	The system of refunds in the Income-tax Department continues to be the subject of wide-spread criticism. The Committee regret that even though after a detailed study of the problem they had made numerous recommendations for streamlining the refund system in their Report on the Income-tax Department (Paras 2·115—2·120, 9th Report—1980-81) they find that the Ministry has not been able to bring about much of an improvement in this field. The same old complaints have been made to the Committee this year also. To recapitulate, assessment orders which result in refund are served late; when they are served, they are not always accompanied by refund vouchers; when assessees approach to the Department for refund vouchers, the lower staff expects tips and if tips are not paid, harassment starts; refund vouchers, where issued, reach the assessees after the validity period is over necessitating revalidation; bank advice is not always issued simultaneously; and last but not the least, interest on refunds is not paid automatically. The Ministry has informed the Committee that it has issued instructions from time to time that refund must accompany the assessment order itself and that the refund, where due, must be issued within seven days of the completion of an assessment. If this is not done by any officer strict disciplinary action is required to be taken against the officer concerned. The supervisory officers the Ministry states, are supposed to look into these matters and take necessary action. The Committee would like the Ministry to pay serious heed to the assessees' dissatisfaction with the working of refund system and take conclusive measures to remedy the situation under intimation to the Committee.
		Pendency of Assessment under Wealth-Tax, Gift-Tax & Estate Duty
22.	3·67	The Committee find that pendency of assessment in the case of Wealth-tax, Gift-tax and Estate Duty has been increasing noticeably from year to year. The number of pending assessments at the end of March, 1981 were 499905 in the case of Wealth-tax, 38226 in the case of Gift-tax and 35862 in the case of Estate Duty. The Committee are informed that the rising pendency of assessments due to the fact that the workload has out-stepped the manpower available in the Department even though officers are disposing of work much more than the norms prescribed in this regard. The workload has increased among other reasons, due to intensive survey operations as result of which 20 thousand more assessments were added in 1979-80 over the previous year and 30 thousand more assessments were added in 1980-81 over 1979-80. The shortage of ministerial staff has also been very acute. The Committee regret to observe that the shortage on staff in Income-tax Department has been a persistent feature and in spite of the recommendations made by the Estimates Committee in their 9th Report on Income-tax Department, the shortage has not been made good so far. This is a wrong kind of economy. The Committee would reiterate that the staff needs of this Revenue earning Department at all levels should be assessed and shortages made good without delay to enable the Department to cope with rising workload.

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		Arrears of Tax
23.	3·68	The Committee are concerned to note the heavy arrears of tax dues which have remained unrecovered for many years despite numerous measures stated to have been taken by the Department seeing the magnitude of the arrears in the context of yearly collections the Committee find that as against the collection of Rs. 66·09 crores of wealth-tax in 1979-80, there was an un-recovered tax demand of Rs. 180·53 crores at the end of that year. Similarly in respect of Gift-tax as against a collection of Rs. 6·76 crores, in 1979-80 there was the arrears of Rs. 15·77 crores at the end of that year; and as against a collection of Rs. 13·93 crores under Estate Duty in 1979-80, the unrealised tax demand during that year was of the order of Rs. 17·23 crores. The Committee note that the approximately 64% of the Wealth-tax arrears, 73% of Gift-tax arrears and 70% of Estate Duty arrears are more than one year old. From this the Committee cannot but conclude that the measures taken to liquidate arrears have not been effective enough and therefore there is an imperative need to review these measures and to intensify them.
	4·84	The first step in the process of determining tax liability of an assessee under Wealth Tax, Gift Tax and Estate Duty Acts is the valuation of his/her properties. Provisions for valuation of properties have been made in the respective laws.
		Valuation of Properties by Approved valuers/Departmental valuers
24.	4·85 4·86	According to the extant procedure an assessee may obtain certificate of valuation of his asset from Government approved valuer and submit it for the consideration of the Assessing authority who may either accept it or in certain circumstances refer the matter to official valuer (valuation cell) for determining its value. The valuation certificate issued by the official valuer is binding on the Assessing Officer. Government has also laid down a statutory rule—rule 1 BB of Wealth-tax Rules—under which an assessee can himself work out the value of his residential property without going to the Government approved valuer. What has irked the assessees most is that certificates of private valuers who are appointed and approved by the Government after thorough consideration, are rejected by Wealth-tax Officers without assigning any reason. The Ministry has, however, stated that in most of the cases the approved valuers' certificates are accepted by the Department. The Ministry referred to a study made in respect of the year 1974-75 which showed that out of 1152 cases of valuation, in 1037 cases certificates of approved valuers were accepted by Assessing Officers. But the Committee have got a different picture from the memoranda received from non-official organisations and the discussion held during on-the-spot study visits paid to different parts of the country during the year 1981-82. The Committee feel that existence of the parallel institutions of valuers—one private valuers approved by Government and the other official valuers—is not a very happy state of affairs. If the Department has no faith in the certificates issued by private valuers approved by Government, the assessees too have similar grievance against official valuers who are working under the operational control of Department, even though the Ministry has tried to prove by statistics that upto 46% (in West Bengal charge) of the valuation cases where valuation was done through the valuation cell have stood fairly well before Appellate Tribunal. But this figure again relates to 1974-75. The Committee are of the opinion that if the system of valuers has to continue and it will have to be continued till alternatives are provided, Government may better set up one independent institution of valuers who should be qualified experts in the field but should not be under the operational control of Income-tax Department, and whose certificates should be binding on the Assessing Officers.

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25.	4·87	Pending institution of a system of independent valuers, as recommended above, the Committee suggest that where the Assessing Officer differs with the Government approved valuer, he should send for the approved valuer and cross examine him in regard to the certificate issued by the latter before taking a view in the matter.
26.	4·88	The Committee also suggest that the Assessing Officer should record reasons for not accepting the certificate of Government approved valuer and convey these reasons to the assessee. Before referring such a case to departmental valuer the Assessing Officer should take the prior approval of a higher authority. This would make the Assessing Officer more careful in dealing with the certificates issued by the Government approved valuers.
27.	4·89	The Committee are of the view that Government approved valuers, whose certificates have been found to be unrealiable in a large number of cases, should be removed from the panel of approved valuers.
		Fair Market Value
28.	4·90	Where in the opinion of the Assessing Officer the fair market value of an asset exceeds the value of the asset, as returned, by more than 33 1/3% of the value of the asset or by more than Rs. 50,000/- the Assessing Officer can make reference to valuation cell (official valuer) for determining its correct value. The Ministry has agreed to consider a suggestion that this provision may be amended so as to require that the reference to official valuer may be made only if the difference between the fair market value and the value shown in the return appears to be 33 1/3% of the value of the asset or more than rupees one lakh. This may be examined and the Committee apprised of the outcome.
29.	4·92	The Committee hope that the Assessing officers will also be advised to accept the values worked out by assessees in accordance with the formulate prescribed in the statutory rules without demur if these measures which are aimed at ending the assessees' dependence on valuers—private or official—have to fulfil the underlying objective.
		Different valuation of Properties under the different tax laws
30.	4·93	The Committee do not see any reason why a property should be valued differently under different Acts for the purpose of taxation though the Ministry has sought to justify on revenue consideration the different methods of valuation laid down under Wealth-tax, Gift-tax, and Estate Duty Laws. The reasoning given by the Ministry that unlike the Estate Duty and Gift-tax which are one time levies Wealth-tax is an annual levy and therefore calls for a more liberal approach does not sound rational. Different valuation methods lead to confusion, litigation, harassment and avoidable expense. The Committee strongly urge that the system of valuation of properties under all the Direct Taxes laws should be uniform and this uniformity should be brought about without avoidable delay.
		Rent of a Residential property
31.	4·94	The Committee take note of the clerification given by the Ministry that where the rent of a residential property is pagged at a certain level for many years and cannot be increased, the rent actually realised by the the owner of the property would be the basis for arriving at the value of the property under Rule 1 BB, Wealth Tax Rules for the purpose of wealth-Tax. This rule being a statutory rule is binding on the Wealth-tax Officer and the latter cannot disregard it, except in circumstances provided in the Rule itself and with the prior approval of the superior authority.

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		Valuation of a Self-occupied residential property
32.	4·95 4·96 4·97	The Committee also take note of the clerification given by the Ministry that in the case of self-occupied residential property, the maximum valuation of the house would be the value for the assessment year ending on 31 March, 1971; if it has been constructed later, its value will be the value for the year in which the house is constructed. In determining this value the rent capitalising method as outlined in Rule 1 BB of Wealth Tax Rules would be followed and for this purpose municipal valuation would be taken as the rent. The Chairman, Central Board of Direct Taxes, explained that if the value of such a self-occupied house is 'X' and the cost of its construction is 'Y' and 'X' is lower than 'Y', 'X' will be taken into account for Wealth-tax purposes. The Committee would like this clerification and clarification referred to in the preceding paragraph to be brought to the notice of all Assessing Officers so that they do not harass the owners of self-occupied houses in the matter of Wealth-tax assessments. The Finance Minister has already announced that value of a residential house for the purpose of Estate Duty would be taken as the same as that adopted for the purpose of Wealth-tax. This concessional value would avoid hardship to the heirs of the deceased owners of properties. The Committee hope that this concession would be available to the assessees with effect from the date of announcement. That in 46% of valuation cases the certificates given by official valuation cell had stood fairly well before Appellate Tribunal in 1974-75—an argument advanced by the Department to show the reliability of valuation done by the officials valuers—in fact goes against the official valuation cell. This figure amply shows that in majority of the cases the valuation certificates of official valuers had been rejected by the appellate bodies and this proves that assessees' distrust in the impartiality of official valuers is not unfounded. The Committee would like the Ministry to take cognizance of this fact and take remedial action.
		Unproductive Asset with a family
33.	4·98	The Committee find that an un-productive asset with a family, like a plot of land, is posing difficulties even to the Department in the matter of valuation. The Committee are of the view that an un-productive asset with a family which may have no market value and which may not yield any income should not count for Wealth-tax or Estate Duty purposes.
		Valuation of Properties in North-Eastern Region
34.	4·99	In the Committee's opinion, it is but fair that the circumstances prevailing in tribal areas of North-Eastern Region and other tribal areas where the properties may not be freely transferable except to the tribals are taken into account while valuing those properties for the purpose of taxation. The Committee would like that the Ministry should issue clear instructions to Assessing Officers particularly those dealing with tribal areas in this regard so that they do not even unwittingly harass the assessees in such areas.
		Valuation of unquoted shares
35.	4·100 4·102	Valuation of shares, particularly unquoted shares, has been the subject of great criticism in non-official circles. Rule 1D of the Wealth Tax Rules lays down the manner in which the value of unquoted equity shares of companies other than investment

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		companies and managing agency companies shall be determined. No specific rules have been framed under the Gift-tax Act or Estate Duty Act for valuation of unquoted shares. According to the Ministry, Wealth-tax, being an annual levy, calls for a liberal approach in the matter of valuation. That need not be the approach in the case of Gift-tax and Estate Duty which are one-time levies. If the method of valuation prescribed for the purpose of Wealth Tax is extended to Gift-Tax and Estate Duty, the assessable value so arrived at would be much less than the prevailing market value in a large number of cases. The Ministry therefore thinks that it would not be appropriate to have uniform rules for valuation of shares under these three Acts. The ideal approach should be to blend the revenue consideration with the need to make the rules of valuation simple, uniform and rational so that while Government gets its dues, the assessees may also not feel harassed. The Committee, therefore strongly urge the Ministry to review its approach and bring in uniformity in the matter of valuation of shares as also of other assets under the three Direct Tax Acts, namely Wealth-Tax, Gift-Tax and Estate Duty. **Rule 1D of Wealth Tax Act Rules.**
36.	4·103 4·105 4·106	Rule 1D of the Wealth Tax Act Rules relating to the valuation of unquoted equity shares of companies other than Investment companies and Managing Agency companies is based on the break-up value method which has not found favour with the Supreme Court. The Ministry has also admitted that the break-up value method has resulted in under-valuation in some cases and over-valuation in some others. A large number of non-official organisations who have submitted memoranda to the Committee do not consider break-up value method of valuation for unquoted shares fair or correct. Representations have also been made against the proposal to deem quoted shares as unquoted shares as proposed in the draft amendments notified by Government. The Committee have given considerable thought to this matter. In the Committee's opinion, the ideal methods of valuation of shares would be as under :— **Unquoted Shares** (1) Companies (other than Investment companies and Managing Agency companies)—yield basis or face value, whichever is higher; (2) Investment companies and Managing Agency companies—Average of the break-up value of the shares as per books and the yield basis, as at present. **Quoted Shares** (3) As per quotations in the recognised Stock Exchanges.
37.	4·107	In case Government chooses to fix different methods of valuation, it should also provide in the rules that in the event of any shareholder deciding to surrender his shares to Government because of too high value placed on them under the rules, Government will be obliged to accept the shares at the break-up value rate arrived at by the Central Board. **Exemption under Section 5(3)(b) of wealth Tax Act**
38.	5·96	Under Section 5(3)(b) of Wealth-tax Act assets other than shares exempted from Wealth tax under Section 5 do not qualify

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		for exemptions unless these assets are held by an assessee for a period of atleast six months ending with the relevant valuation date. This provision would apparently be harsh on the salaried people who might be retiring after September in any year as in that case the terminal payments such as Provident Fund, Gratuity, Commutation of Pension even if originally exempt, would not qualify for exemptions. The Ministry stated that in accordance with an 'explanation' added to the section, if an asset which is exempt is converted into another exempted asset within a prescribed period, then the period for which the first asset is kept counts towards exemption. This 'explanation' comes to the rescue of a salaried employee only if an asset earlier exempted is converted into an asset which continues to be under the exempted category. It is not clear whether commutation value of pension or cash equivalent of unavailed leave in the case of salaried persons enjoys this exemption or not. The Committee feel that assets like terminal payments received by a salaried person if exempted under the aforesaid section should continue to qualify for exemption even if they are held for less than six months and are not converted into any other exempted assets.
		Exemption in respect of Bank deposits
39.	5·97	Suggestions for raising exemption limit in respect of bank deposits etc. as laid down in Section 5(1A) of the Wealth-tax Act from Rs. 1·5 lakhs to Rs. 3 lakhs or so were made to the Committee. The Committee find that in the Finance Bill, 1982 a provision has been included to raise this limit from Rs. 1·5 lakhs to Rs. 1·65 lakhs. The Committee feel that savings covered under Section 5(1A) deserve a higher exemption limit. They hope that the exemption limit under this section would be reviewed and further raised to an appropriate level.
		Fixed deposits in debentures of companies
40.	5·98	Fixed deposits in and debentures of companies are not covered under this exemption at present. Government has recently permitted selected public sector companies to accept deposits from the public. In view of this latest development, the Committee feel that atleast such fixed deposits as are made with public sector companies should also qualify for exemption under Section 5 of the Wealth tax Act like similar deposits made in banks.
		Net-wealth
41.	5·99	When the net-wealth of an assessee exceeds the cut off point of Rs. 1·5 lakhs, his entire wealth becomes liable to wealth tax at specified rates. In other direct taxes namely, Income tax, Gift tax and Estate Duty, no tax is charged on amounts below the exemption limits. The Committee feel that under Wealth tax Act also, the portion of net wealth below the exemption limit should not bear any tax.
		Exemption in respect of Professional Tools and Personal Conveyance
42.	5·100	The Committee are glad to note that exemption limits in respect of professional tools and instruments and personal conveyance which were at too low a level of Rs. 20 thousand and Rs. 30 thousand, respectively, are proposed to be raised to Rs. 50 thousand and Rs. 75 thousand in the Finance Bill, 1982.

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		Social/Cultural Clubs :
43.	5·101	The position of social and cultural clubs which are non-profit making associations is somewhat ambiguous under the Wealth tax law. The Committee find that the Central Board of Direct Taxes has been given powers under Section 2(h)(iii) to declare any such institution as a "company" and when it is so done the institution is not subjected to Wealth-tax. To avail of relief, the institution has to make an application to the Board for declaring it as a company under the aforesaid section. The Committee feel that this provision is not widely known. The Ministry should consider how deserving non-profit making Social and Cultural clubs can be given the admissible relief in actual practice.
		Property changes hands with in the family
44.	5·102	Suggestions have been made to the Committee that when a property changes hands within the family the value for the purpose of the taxation should not be the market value as on the date of transfer but the value which are being assessed or could be assessed for Wealth-tax purposes in the hands of the original owner/transferor. In so far as this suggestion relates to gifts under the Gift tax Act, the Committee agree with the Ministry that there is no justification to adopt a value other than the fair market value for the purpose of assessing tax liability on it. But the Committee strongly feel that when a property passes on the death of a person to his/her heir who happens to be a member of the deceased's family, the value of the property for the purpose of Wealth-tax and Estate Duty should not be the fair market value but the value which was placed on the property when it was in the hands of the deceased. This is a relief which is needed badly to avoid hardship to members of the bereaved, family particularly widows and children, after the death of the head of the family.
46.	5·104 5·105	There is a widespread feeling against aggregation of gifts for the previous four years under Section 6A of the Gift tax Act for the purpose of determining the rate of tax. This procedure, it is stated, puts the donor to hardship and creates complications in assessment. The Committee find that this provision was introduced from the assessment year 1976-77 in pursuance of a recommendation of the Wanchoo Committee with a view to counteract tax avoidance in the case of gifts. While the Committee agree with the underlying objective, they wonder whether the aggregation of gifts given in the previous four years which might include even genuine gifts is the best method to prevent such avoidance. The Committee would suggest that this matter might be reviewed.
		Bonafide change in the constitution of a firm
47.	5·106	Need for issuing clarification to the effect that where there is a bonafide change in the constitution of a firm engaged in one of the learned professions, the admission of a new partner without payment of good-will may not be regarded as resulting in a gift. Another clarification suggested is that a bonafide change in the constitution of firm carying on any business on grounds of commercial expediency should not be regarded as a gift. The Ministry informed the Committee that it had given detailed instructions in this regard. There is probably some difficulty in interpreting the instructions. The Ministry agreed to examine the matter again and issue clarifications, if necessary.

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		The Committee would like to be informed of the action taken in the matter. They desire that the matter should be placed beyond any ambiguity.
		Reasonable amounts of Gifts to Educational Institutions
48.	5·107	Under the Gift Act "reasonable" amounts are allowed to be given in gifts to educational institutions etc. but the term "reasonable" has not been defined and it leaves too much discretion in the hands of Gift-tax Officer. The Committee do not see any logic in leaving this matter deliberately vague as is stated to have been done by the Ministry. The Committee recommend that the parameters of the term "reasonable" should be clearly laid down with reference to the income of the assessee.
		Market value exceeding value of consideration
49.	5·108	Under Section 4(1) of the Gift tax Act the amount by which the market value of the property at the date of the transfer exceeds the value of consideration is deemed to be a gift made by the donor and is assessable to Gift Tax. It has been represented to the Committee that at times the donor may not be able to get the full market value due to several constraints. The Committee learn that Supreme Court has recently given a decision that restrictions under which such transactions take place should be taken into account and the Ministry has agreed to do the needful. The Committee would like the Ministry to make the position clear beyond any shadow of doubt for the benefit of the assessees.
		Premium for Insurance Policies
51.	5·110 5·111	The question of taxability of the premia paid under a policy taken out in pursuance of Section 6 of the Married Women's Property Act has been raised before the Committee. The Committee are informed that the question of exemption of such premia from Gift Tax is under the consideration of the Economic Administration Reforms Commission set up by the Government in the light of the recommendations on the subject made by Choksi Committee. The Committee hope that a fair decision in the matter will be taken before long.
		Exemption under Estate Duty Act
52.	5·112	Net Wealth upto Rs. 1·5 lakhs is exempt from Wealth-tax. The exemption limit for the purpose of Estate Duty is also proposed to be raised to Rs. 1·5 lakhs. It was suggested to the Committee that now when exemption limits for Estate Duty as well Wealth tax are proposed to be made equal and the method of valuation of residential property is also proposed to be the same under the two laws, it will simplify matters if the estates of only those assessees who pay Wealth tax are subjected to Estate Duty after their death. The Ministry has voiced objection to this approach on the ground that the objectives of the two laws are different and they should remain applicable separately in their respective spheres. The Committee feel that it will not only simplify matters greatly but also facilitate easy identification of dutiable estates and smooth collection of duty if non-wealth tax assessees are exempted from estate duty in respect of the estates left by them at their death. The Committee would like the Government to examine the practical utility of this simple approach dispassionately.

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		Insurance Policies for Payment of Estate Duty
53.	5·113	Though the Ministry is not prepared to accept the suggestion that where a person takes up an insurance policy for payment of Estate Duty or makes advance payment of Estate Duty before his death, some rebate need be allowed on the tax liability of this estate after his death under the Estate Duty Act, the Committee feel that it will be fair if some consideration for advance payment is shown in such cases.
		Exemption in respect of Unmarried Daughters and Dependent Children
56.	5·117	There is great weight in the suggestions made to the Committee to raise exemption limit under the Estate Duty Act for amount earmarked for the marriage of unmarried daughters of the deceased and also to allow deductions from dutiable estate for the marriage of grand-daughters, nieces and grand-nieces who are totally dependent on the estate and for bringing up and maintaining dependent children and disabled dependents of the deceased. The Committee are glad to note the sympathetic and appreciative response of the Ministry to these suggestions. In view of the family and social obligations which have come to acquire a customary force in the Indian society, the Committee feel that it will be in the fitness of things if reasonable deductions are allowed in computing dutiable estate of the deceased for amounts intended for marriage and maintenance of dependent children as also of disabled dependents. The Committee hope that something concrete will be done in this regard before long.
		Funeral Expenses allowed under Estate Duty
57.	5·118	There is a case to allow a higher level of deduction from dutiable estate towards expenditure for performing funeral rites and other related ceremonies. The present limit of Rs. 1000 is far too low.
		Estate Duty on Gifts made before Death
58.	5·119 5·120	At present gifts made by a person for charitable purposes within a certain period before his death are also subject to Estate Duty after his death. The Committee do not think it is fair to subject such gifts to double taxation. The Committee feel that a sympathetic view should be taken in respect of gifts given for charitable purposes and these should be exempted from Estate Duty.
		Capital Gains Tax and Estate Duty
59.	5·121	Under Section 50(b) of Estate Duty Act, 1953, a part of tax on capital gains is allowed as deduction according to a certain formula laid down therein. There is force in the suggestion that if a property has to be sold by an heir of the deceased in order to pay Estate Duty thereon, either the Estate Duty should be deducted from the capital gains or the capital gains tax should not be levied in such a case. The Committee recommend that the present provision in the Estate Duty Act should be suitably liberalised.
		Pendency of Appeals
60.	6·32 6·33 6·34	The Committee find that there has been a tremendous increase in the pendency of appeals under the Wealth-tax, Gift-tax and Estate Duty laws during the last 5 years. It has been brought to the Committee's notice that in many cases it takes about two years for an appeal to be heard by the Appellate authorities.

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		The Ministry has pleaded shortage of Assistant Appellate Commissioners and Appellate Commissioners for the heavy arrears of appeals. According to the Ministry the ideal state of affairs would be for an Assistant Appellate Commissioner or Appellate Commissioner not to have more than 4 months workload pending at any point of time. The Committee had recommended in their 9th Report (1980-81) On Income-tax Department (para 3·26) that the administrative set-ups and appeal procedures should be so reorganised that each one of the appellate authorities should be able to reduce the pendency to six months work load at the earliest. The Committee cannot overemphasise the need for providing adequate strength of Appellate officers as well as supporting staff to bring down the pendency of appeals to four months workload which is the ideal norm according to the Ministry or, at the most to six months workload as suggested by the Committee last year. The Committee would like to be informed of the steps taken in this regard within six months.
		Written arguments at appeal stage
62.	6·36	The suggestion that at the appeal stage the assessee and the Department should submit written arguments and the Appellate Officer may, unless personally is considered necessary, decide the case on the basis of written submissions, is a welcome suggestion and if implemented is sure to accelerate disposal of appeals. The Ministry is also of the view that the suggestion can be adopted though in a modified form. The Committee would like the Ministry to give this suggestion a concrete shape.
63.	6·37	The Ministry has informed the Committee that Assistant Appellate Commissioners are required to visit various places in their charge and hear appeals relating to those places at the respective stations. The Committee suggest that this system of hearing appeals at various places should be extended to Appellate Commissioners and Appellate Tribunals also.
		Fresh grounds of Appeal
64.	6·38	While the Income-tax rules allow fresh grounds of appeals and additional evidence at the appeal stage in certain special circumstances, this is not the case under the Wealth-Tax or Gift-Tax Rules. The Committee would like the Ministry to examine as to why the right to produce additional evidence or fresh grounds of appeal should not be given under the Wealth Tax and Gift Tax Rules in *bona fide* cases.
		Relinquishment of office by Appellate authority
65.	6·39	Though there are instructions already in force that an Appellate Officer who has heard an appeal should not relinquish office on transfer till he has passed orders on appeals already heard by him, these instructions, it has been brought to Committee's notice, are not being followed at all places. The Committee note that instructions to this effect were issued in September 1981 in pursuance of one of their recommendations made in the course of examination of the subject of Income-tax Department. They would like the Ministry to enforce strict compliance with these instructions in all charges and, as assured by Secretary (Finance), take stringent action against officers who do not follow these instructions.
		Earmarking a day in week to hear wealth-tax appeals
66.	6·41	The Committee also expect that the suggestion to earmark atleast one day in a week to hear Wealth-tax appeals, which has

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		been welcomed by the Ministry, would also be implemented and thereby the cause of grievance of assessees whose Wealth-tax appeals remain unattended for long will be removed.
		Appeal against final orders in case of Estate Duty :
68.	6·43	The Ministry has admitted that there are certain orders issued under the Estate Duty Act against which no appeal lies to the Appellate Controller under the Act. The Ministry has accepted the suggestion that right of appeal should be provided against all final orders issued under the Act. The Committee hope that the necessary provision in this regard will be made in the law as early as possible.
		Searches and delays :
70.	7·33	The Committee had dealt with the question of searches and delays in their 9th Report (1980-81) on the Income-tax Department and had observed that "such unconscionable delay in completing investigations, launching prosecutions and bringing the defaulters to book defeats the very purpose of searches and seizures and lowers the Department's prestige in public eye" (para 4·73). The Committee cannot do better than reiterate their recommendation made in that report that the Ministry should take serious view of the Income-tax Department's incapacity to complete investigations in search cases expeditiously and take concrete action to bring the Prosecution Wing of the Department up to a reasonable level of efficiency. The Committee would like the Department to draw up a time bound programme to liquidate the pending cases and ensure that in future investigations in search cases are completed within a specified time failing which the matter should be examined by the board for remedial action.
72.	7·35 7·36	The Committee find that the names of of the parties whose premises are searched for unaccounted incomes and assets are not published by the Department though their names normally get widely known in the localities/cities in which their premises are located. A suggestion was made to the committee that when the matter is finally decided and the person concerned is ultimately found guilty or not guilty, his name should be published so that the people of the locality/city know the truth, as established, and the persons who are not found guilty can rid themselves of the stigma which is inherent in a search of this kind. The Ministry may examine this suggestion. The Committee have been informed that there is considerable delay in paying rewards to the informants who give information to Income tax Department about tax evasion. Even payments which are required to be made quickly are not made quickly. The Ministry has stated that according to the prescribed procedure, a part of the reward—called interim reward—is given without delay but the final instalment has to wait till the case has passed through all the stages. The Committee would like the Central Board to study this phenomenon in detail in respect of each charge to determine whether rewards have been paid promptly according to the prescribed procedures and to take remedial measures to avoid delays.
73.	7·37	The Committee feel that Income-tax Officers and staff who make successful raids and unearth unaccounted assets and whose efforts ultimately yield dividends should also not go unrewarded. The Committee note that the Central Board is considering a scheme in this regard. They would like that the scheme should be concretised expeditiously and implemented.

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		Tax Evasion :
75.	7·39	The Committee have gone into the question of tax evasion in detail in Chapter IV of their Ninth Report (1980-81) on the Income-Tax Department and have made specific recommendations to deal with this evil. They would like the Ministry to take these recommendations seriously and pursue them quickly with a view to detecting and checking tax evasion.
		Interest on outstanding tax :
76.	7·40	It has been brought to the Committee's notice that the interest charged on outstanding tax dues is much lower than the bank rate of interest. Payment of tax dues is being deliberately delayed by tax defaulters to take advantage of the low rate of interest. The Ministry has informed the Committee that the rate of interest is 12% for delay in payment in the case of income tax. Wealth-tax and Gift-tax but in respect of Estate Duty the rate of interest is 4%. Secretary, Department of Revenue assured the Committee that they would examine the matter. The Committee would like to be apprised of the outcome of this examination.
		Taxation Policy—Expenditure Oriented :
77.	8·22	A view has been expressed that at present Wealth tax and Estate Duty laws are more expenditure oriented then savings oriented. If a person spends all his income and saves no money, he can create no asset and has thus to pay no wealth tax, but if he saves money after paying taxes and invests his savings on creating assets, he is again caught in the wealth tax and Estate Duty nets. The Ministry has explained that under the wealth tax Act deductions are allowed on savings in various forms. For example, investments in Unit Trust, bank deposits, etc. quality for deduction from the total wealth of an assessee. Savings are no doubt shown consideration under the Wealth-Tax Act, but this consideration is shown only upto a certain limit. Savings beyond that limit attract Wealth-tax. The feeling that the Wealth tax and Estate Duty laws are not savings and investment oriented cannot therefore be said to be entirely unfounded. In the Committee's opinion there is need for a dispassionate and bold review of the approach to taxation under the Direct Taxes laws so as to completely exempt as far as possible savings and investments in socially desirable assets from taxation and subject luxurious and unproductive expenditure to stiffer doses of taxation.
		Exemption of non-residential Indians from Wealth-tax :
79.	8·24	The Committee note that remittances made by non-resident Indians in various forms qualify for certain concessions under the Direct Taxes laws. A suggestion has been made to the Committee that deposits and assets acquired out of the remittances made by non-resident Indians should be exempt from Wealth-Tax. The Ministry has stated that there are already some exemptions available under the taxation laws for investments in certain assets but whether these exemption should be further enlarged can be considered. The Committee would like the Ministry to give this matter a serious thought with the object of encouraging Indians settled abroad to remit higher amounts to India for the purpose of investment in socially approved schemes and assets.
		Conflict between Central and State Laws :
80.	8·25	It has been brought to the Committee's notice that certain legislations enacted in certain States come in conflict with Direct Taxes laws resulting in considerable litigation in regard to valuation of immovable property. The Kerala Joint Hindu Family

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		System (Abolition) Act, 1976 and Kerala Private Forests (vesting and assignment) Act, 1971 are two examples of such State laws which are reported to have created complications. The Ministry are aware of the implications of these State Acts vis-a-vis Direct Taxes laws and is looking into the matter with a view to finding solutions to the problem. The Committee hope that the Ministry would arrive at the solutions expeditiously.
		Shortage of Staff :
81.	9·70 9·71 9·73	The Directorate of Organisation and Management Services has made a number of other studies and based on its recommendations proposals have been framed for augmenting staff strength at various other levels also, namely inspectors (921), stenographers (445), Daftries (150), notice servers (3028), sweepers (535), Farrash (228) and Chowkidars (1256). Besides, the Staff Inspecting Unit of the Ministry of Finance has also undertaken work measurement studies for headquarters offices of the Commissioners and Inspecting Assistant Commissioners. The Committee are unable to appreciate why so long a time has been taken to sanction adequate supporting staff for the Department when in contrast the posts of Commissioners of Income-Tax have along been increased. It appears that the staff problem is not being attended to by the authorities concerned with as much seriousness and urgency as is necessary. The Committee urge that the proposals for additional staff should be finalised without delay and adequate supporting staff of all categories should be provided in all formations of the Income-tax Department as early as possible in interest of revenue.
		Scarcity and Residential accommodation :
	9·75	The Committee note that due to scarcity of residential accommodation at various places. particularly at Goa and Mangalore, not only Income-tax staff is put to great inconvenience but even the working of the Income-tax offices in the field is suffering. In Goa there are only 22 quarters available for a staff of 98 who are not locals. The Committee would, therefore, urge that the accommodation needs of the staff at various stations in the country should be critically examined and proposals for construction of adequate number of quarters to cope with the needs over a period of time chalked out and implemented with a sense of urgency.
		Transfer Policy :
85.	9·78 9·80	The Committee have gone into the transfer policy laid down for the Income-tax officers. Under the transfer policy ITOs, Group-B, are liable for transfer after a stay of 5-6 years at a particular station. ITOs (Group A, promotees and direct recruits) are liable for transfer to another charge of Commissioner after five years' regular service/six years service respectively. ITOs both of Group A and B are not to be allowed to stay at the same Ward/Circle for more than three years. Under the transfer policy the posting of officers to the same State to which they belong or to stations where they were born or possess belonging is not barred. The Committee consider it highly improper that an officer should be allowed to stay in the same place for a period longer than that prescribed in the transfer policy. It is unfortunate that at many places, according to the reports reaching the Committee, officers have stayed at the same place for over 10 years.

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		which is clear disregard of the Government own transfer policy. This being a revenue carning Department. disregard of this policy could lead to corruption, vested interests and collusion of the officers with the local assessees and this would be detrimental to the national interest. The Committee strongly feel that, when once a transfer policy has been formulated, it should be implemented in letter and spirit and the officers should be rotated from one place to another strictly in accordance with the policy. At the end of the prescribed period the transfers should be from one city to another, if not from one state to another. Any pressure brought by any officer at any level to interfere with the transfer policy should be taken serious note of and resisted. The Central Board should monitor the implementation of the transfer policy and ensure compliance.
		Complaints :
86.	9·83	The Committee would like to reiterate their recommendation made in para 5·64 of their 9th Report (1980-81) on Income-tax Department that the Commissioners of Income-tax should meet the assessees and representative bodies individually or in groups without having junior officers in attendance who may be directly involved with the assessment work and against whom the assessees may be having complaints. Unless such exclusive meetings are held in confidence it is difficult to expect the assessees to open out and bring their complaints to the notice of the Commissioners frankly. Although the recommendation in the 9th Report was made for Income tax assessment it is equally relevant for other direct taxes viz. Wealth Tax, Gift Tax & Estate Duty.
		Misplacement of Papers :
87.	9·84	The question of missing documents in the Income-tax Department was examined by the Committee last year and they had made a number of recommendations in paras 5·79 to 5·84 of their 9th Report (1980-81) on Income-tax Department. The Committee would like those recommendations to be followed up seriously and implemented.
88.	9·85	The Committee were distressed to learn from assessees under Wealth Tax, Gift Tax and Estate Duty at various places that even tax returns filed with the Department have been found missing in many cases at the time of hearing. This is too serious a matter to be taken lightly as the Department appears to have done during evidence. The Committee would urge the Department to enquire into each such complaint at an appropriate level with a view to fixing responsibility and learning lessons for the future.
		Inspection of Records :
89.	9·86	The Committee would also emphasise that supervisory officers should periodically inspect the records to check whether papers have been filed properly and kept safely and take remedial measures to plug the loopholes wherever found.
		Consolidation of Tax Provision and Returns :
90.	9·87	The Committee feel that a booklet containing return forms, relelvant provisions from Direct Taxes laws showing the exemptions and concessions available under the laws and easily comprehensible notes explaining how to fill in the returns would be of immense benefit to the assessees. The Department should consider bringing it out as a priced publication on a regular basis.

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