THE UNION BUDGET -An Analysis 2009-10

ANALYSIS OF IMPORTANT AMENDMENTS PROPOSED IN THE FINANCE (NO. 2) BILL, 2009

DIRECT TAXES

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DIRECT TAXES

- All amendments proposed in The Finance (No. 2) Bill, 2009 would be effective from Assessment Year 2010-11 unless specifically mentioned otherwise.
- In this booklet all proposals of The Finance (No. 2) Bill, 2009 are referred to as if the amendments have been actually made.

1. TAX RATES

Threshold limit: There is a nominal increase in the threshold limit of basic exemption for individuals, HUFs, AOPs and BOIs as under:

Assessee	New Threshold	Existing Threshold
Resident Woman below 65 years of age	Rs.1,90,000	Rs. 1,80,000
Resident Individual of 65 years and above	Rs. 2,40,000	Rs. 2,25,000
Other Individuals, HUFs, AOPs, and BOIs	Rs. 1,60,000	Rs. 1,50,000

The slab rates have otherwise remained unaltered. The tax rates for all other assessees have also remained unaltered.

Surcharge: Surcharge is now applicable only to Domestic Companies and Foreign Companies. Surcharge as was applicable in case of individuals, HUFs, etc. having total income exceeding Rs. 10 lakhs and firms having total income exceeding Rs. 1 crore has now been withdrawn.

Education cess and secondary and higher education cess (additional surcharge) shall continue as before in all cases.

Tax Deducted at Source: Surcharge will be applicable in determining tax to be deducted at source only from payments to Foreign Companies. Though Domestic Companies are liable to surcharge, the same is not to be considered in computing tax to be deducted at source from payments to them.

The two cess will be considered in computing tax to be deducted at source only in respect of payments to a) Foreign Companies, b) Non-Residents and c) Salary payment. In all other cases, cess will not be considered (though applicable in computing tax on total income) in determining tax to be deducted at source.

2. DEFINITION OF THE TERM “MANUFACTURE” – SECTION 2(29BA)

A new Section 2(29BA) defines the term ‘manufacture’ to mean a change in a non-living physical object/article/thing resulting in its transformation into a new and distinct object/article/thing having a different name, character and use, or bringing into existence of a new and distinct object/article/thing with a different chemical composition or integral structure. This definition is retrospectively applicable from 1st April, 2009.

3. AMENDMENT TO DEFINITION OF "CHARITABLE PURPOSE" – SECTION 2(15)

The Finance Act, 2008 had amended the definition of "charitable purpose" in Section 2(15), by adding a proviso that advancement of any other object of general public utility would not be a charitable purpose, if it involved the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for a cess, fee or any other consideration. This amendment had the impact of denying exemption to trusts engaged in activities covered by the proviso. The definition of charitable purpose included 4 limbs, viz. relief of the poor, education, medical relief and the advancement of any other object of general public utility, and the proviso applied only to the fourth limb, viz. advancement of any other object of general public utility.

Two more limbs are now being added with retrospective effect from Assessment Year 2009-10 to the definition of "charitable purpose" – "preservation of environment (including watersheds, forest and wildlife) and preservation of monuments or places or objects of artistic or historic interest", thus taking such activities outside the term "advancement of any other object of general public utility". Effectively, charitable trusts engaged in these two objects would also now not be covered by the proviso to Section 2(15), and would not suffer from the possibility of loss of exemption, even if they carried on such activities in the nature of trade, commerce or business or of rendering any service in relation to any trade, commerce or business.

4. APPROVAL OF CHARITABLE TRUSTS UNDER SECTION 80G

Since many trusts may have lost their exemption under Section 11 by virtue of the amendment to the definition of "charitable purpose" under Section 2(15), in order that donors do not lose the benefit of the deduction, in the first year of loss of exemption, such trusts as were eligible under Section 80G for the financial year 2007-08 are deemed to have continued to be eligible under Section 80G for the financial year 2008-09.

With effect from 1st October, 2009, the requirement of periodic renewal of approval under Section 80G is being done away with. The explanatory memorandum clarifies that, all trusts

whose Section 80G approval expires on or after 1st October, 2009 will not have to apply for approval again, and their approval will continue to be valid in perpetuity unless withdrawn. Those trusts whose Section 80G approval expires prior to 1st October, 2009 will have to apply once for renewal of their approval.

5. EXTENSION OF DUE DATE FOR FILING APPLICATION FOR APPROVAL – SECTION 10(23C)

Trusts, funds or institutions seeking approval or notification for obtaining exemption under clauses (iv), (v), (vi) or (via) of Section 10(23C) were required to make such application for grant of exemption or continuance thereof during the previous year before the commencement of the assessment year, i.e. within the financial year for which exemption was being sought. The time limit for such application has been amended to 30th September of the relevant assessment year, with effect from 1st April 2009, i.e. within 6 months of the end of the financial year for which exemption is sought. Accordingly, for the financial year 2008-09, the time limit is 30th September, 2009.

6. TAXATION OF ANONYMOUS DONATIONS – SECTION 115BBC

Anonymous donations received by certain types of charitable trusts / institutions have been taxable at a flat rate of 30% since assessment year 2007-08. Now such donations, only to the extent of the higher of 5% of the total income of such trust and Rs. 1,00,000, would not be treated as anonymous donations.

7. ELECTORAL TRUSTS – SECTIONS 2(22AAA), 2(24)(iia), 13B, 80GGB & 80GGC

The concept of “electoral trusts” is now being recognised for tax purposes. An electoral trust has to be approved by the CBDT in accordance with the scheme to be notified by the Central Government. Donations received by an electoral trust would be treated as its income, but would be exempt from tax if the electoral trust distributes 95% of the donations received by it during the year to registered political parties, along with surplus brought forward from the earlier year, and if it functions in accordance with the rules framed by the Central Government. Donations to such electoral trusts would qualify for 100%

deduction under Sections 80GGB (in case of a corporate donor) and 80GGC (in case of other donors), in the same manner as donations to political parties.

8. VOLUNTARY RETIREMENT BENEFITS – SECTIONS 10(10C) & 89

An employee receiving any amount on his voluntary retirement or termination of service or voluntary separation in accordance with the specified scheme, will either be entitled to exemption up to Rs. 5,00,000 under Section 10(10C) or relief under Section 89 of spreading the taxability of such income over several years, but not both. This amendment is introduced to negate the judicial view that these two sections are distinct in their scope and hence the assessee can claim the benefit under Section 89 in respect of the amount in excess of the amount exempt under Section 10(10C).

9. EXTENSION OF SUNSET CLAUSE FOR SECTIONS 10A & 10B

The eligibility for tax exemption to units in free trade zones, software technology parks, etc. under Section 10A and to Export Oriented Units under Section 10B is extended for one more year and accordingly, these provisions granting exemption will be operative up to assessment year 2011-12.

10. CALCULATION OF PROFITS IN CASE OF SEZ UNITS – SECTION 10AA

Presently the exemption for a SEZ unit is computed as under:

$$\text{Exempted Profit} = \frac{\text{Profit of the business of the unit x export turnover of the unit}}{\text{Total turnover of the business of the assessee}}$$

Since deduction is claimed in respect of the profit of the undertaking, the denominator should have rightly been the turnover of the undertaking and not the total turnover of the business of the assessee. The present formula was unfair to assessees having multiple units both in the SEZ and the domestic tariff area. In order to remove this anomaly, sub-section 7 is amended to clarify that the above deduction will now be computed with reference to the total turnover of the undertaking and not with reference to the total turnover of the business of the assessee.

11. PERQUISITES – SECTION 17(2)

In view of the abolition of Fringe Benefit Tax, the value of any fringe benefit or amenity as may be prescribed is liable to tax as perquisite. ESOPs and contribution to superannuation fund are now specifically taxable as perquisites.

ESOP: The value of any specified security or sweat equity shares allotted or transferred directly or indirectly, by the employer, or former employer, free of cost or at a concessional rate shall be treated as a perquisite. The perquisite value will be calculated by considering the fair market value (to be determined as per prescribed method) of the specified security or sweat equity on the date on which the stock option is exercised by the assessee as reduced by the amount actually paid by, or recovered from the assessee. For this purpose, the terms specified securities" and "sweat equity" have been defined in the section.

Superannuation Fund: Contribution to an approved superannuation fund in excess of Rs. 1 lakh by the employer in respect of the assessee shall be taxable as perquisite. This amounts to double taxation as pension/annuity is again taxable at the time of receipt.

It seems that for perquisites in respect of other fringe benefits, rules will be amended.

12. WEIGHTED DEDUCTION ON IN-HOUSE RESEARCH AND DEVELOPMENT FACILITY – SECTION 35(2AB)

Weighted deduction of 150% of expenditure on scientific research on in-house approved research and development facility, was hitherto available only to certain specified businesses. This will now be available to all businesses engaged in manufacture or production of articles or things, except those specified in the Eleventh Schedule.

13. INVESTMENT LINKED TAX INCENTIVE FOR SPECIFIED BUSINESS – SECTIONS 35AD, 28(vii), 50B, 56, 43(i) & 73A

Capital expenditure, not being expenditure on acquisition of land, goodwill or financial instrument, incurred by an assessee for the purposes of 'specified business' shall be allowable as deduction in computing income chargeable under the head "profits and gains of business or profession". The term "financial instrument" is not

defined and is capable of different interpretations. 'Specified business' is defined to mean one or more of the following business:

- Setting up and operating cold chain facility;
- Setting up and operating warehouse facility for storage of agricultural produce; and
- Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being integral part of such network (cross-country pipeline network).

The cross-country pipeline network relating to natural gas commencing operations on or after 1st April, 2007 shall be eligible for deduction, whereas other specific businesses commencing operations on or after 1st April, 2009 shall be so eligible. Capital expenditure incurred on or after 1st April, 2007 in respect of the cross-country pipeline network relating to natural gas, shall also be eligible as a deduction in assessment year 2010-11 provided the assessee has not claimed any other deduction in respect of such expenditure in any earlier year. Cross country pipeline network relating to natural gas set up on or after 1st April, 2007 was hitherto entitled to a tax holiday under Section 80-IA(4)(vi) for a period of ten years. This tax holiday provision has now been deleted with effect from Assessment Year 2010-11.

The assessee shall not be eligible for any deduction in respect of the specified business under the provisions of Chapter VIA under the heading "C – Deductions in respect of certain incomes". However, cold chain facilities set up before April 1, 2004 which were eligible for tax holiday under Section 80-IB(11) would continue to claim the tax holiday for the residual period under the said section as they are not eligible for deduction under section 35AD.

For claiming the deduction under Section 35AD, the specified business should not have been formed by splitting up or reconstruction of any business already in existence or by transfer of secondhand plant and machinery. Secondhand plant and machinery up to 20% of the total value of plant and machinery is permissible. Imported plant and machinery previously used abroad shall not be regarded as secondhand provided no depreciation has been allowed or is allowable under the Act, for any period prior to its import. For the business of cross-country pipeline network to qualify for deduction, it should be owned by an Indian company or

by a consortium of Indian companies or by an Indian statutory corporation / board / authority. Also, it should be approved by the Petroleum & Natural Gas Regulatory Board and notified by the Government. Besides, at least one-third of the total pipeline capacity should be available for use on common carrier basis by non related third parties. The CBDT may prescribe further conditions to be satisfied for claim of deduction in respect of "cross-country pipeline network".

The assessee eligible for deduction under Section 35AD shall not be eligible to claim any other deduction in respect of the capital expenditure for which it has claimed deduction under Section 35AD. For example, it cannot claim deduction under Section 35 in respect of such capital expenditure. Depreciation under Section 32 in respect of such capital expenditure will also not be allowed as actual cost of such asset is deemed to be NIL under newly inserted *Explanation 13* to Section 43(1).

Assessee claiming deduction under Section 35AD is required to furnish along with the return of income audit report in the prescribed manner. If the assets on which deduction under Section 35AD is claimed are acquired from a closely connected party and the price does not correspond to the market price, the Assessing Officer may disregard the excess for the purposes of granting deduction under this Section. Similarly, if the assets are so transferred from a non-eligible business to the specified business, then also the base for allowing the deduction will be the market price of such assets.

Any other assessee who acquires the capital asset, on which deduction under Section 35AD is allowed or allowable in any of the specified modes, [as provided in Explanation 13 to 43(i)], then the actual cost to such assessee will be deemed to be 'nil'.

Losses of 'specified business' referred to in Section 35AD shall be allowed to be set off only against the profits, if any, of any 'specified business' and the unabsorbed loss can be carried forward for set off only against profits of 'specified business' in the future. Such carry forward is allowed for indefinite period.

A consequential amendment is also made to provide that in case of slump sale, where the cost of acquisition of capital asset has been allowed as deduction u/s 35AD, no further deduction will be allowed in respect thereof for the purpose of determining capital gains.

Other related provisions have also made to Section 28(vii) and Section 56.

14. DEDUCTION IN RESPECT OF REMUNERATION TO WORKING PARTNERS – SECTION 40(b)(v)

A partnership firm is entitled to deduction in respect of remuneration paid to any working partner which is authorised by and is in accordance with, the terms of the partnership deed. The amount of deduction is to be computed as per the monetary limits prescribed in Section 40(b)(v). Presently, the limits prescribed for professional firms and other firms are different.

The limits have been enhanced and are now common for professional and other firms as under:

Particulars	Amount of deduction
On the first Rs. 3,00,000 of the book-profit or in case of a loss	Rs. 1,50,000 or 90% of the book-profit, whichever is more
On the balance book-profit	60% of book-profit

The above limits are also applicable to Limited Liability Partnership.

15. INCREASE IN LIMIT FOR DISALLOWANCE IN RESPECT OF PAYMENTS MADE TO TRANSPORTERS – SECTION 40A(3)

The provisions of Section 40A(3) have been amended to increase the limit in respect of payments made to transporters otherwise than by an account payee cheque / bank draft from Rs. 20,000 to Rs. 35,000. Thus, such payments to transporters up to Rs. 35,000 will not attract disallowance under Section 40A(3). The said amendment is applicable from 1st October, 2009.

16. AMENDMENT TO THE DEFINITION OF WRITTEN DOWN VALUE – SECTION 43(6)

When an asset is used for the purpose of the business income of which is partly chargeable as 'business income' and partly exempt as agricultural income, the written down value of such asset is computed, as per the decision of the Supreme Court

in the case of *CIT vs. Doom Dooma India Ltd 310 ITR 392,* by reducing only that portion of depreciation as is attributable to the taxable business income. This legal position is established on the basis that in calculating the WDV of an asset, the actual cost is to be reduced only by depreciation 'actually allowed' and that in case of assets used in such composite business, depreciation 'actually allowed' is the portion relatable to taxable income and not the portion relatable to exempt agricultural income. The effect of this decision of the Supreme Court has been nullified by insertion of new *Explanation 7* to the definition of 'written down value' in Section 43(6) such that under this *Explanation* the WDV of the asset used for such composite business will be computed by deducting from the actual cost the entire depreciation allowable on such asset at the prescribed rates and not just the portion attributable to the taxable income.

17. LIMITED LIABILITY PARTNERSHIP (LLP) – SECTIONS 2(23), 140 & 167C

The Limited Liability Partnership Act, 2008 (LLP Act) has enabled carrying on business or profession through a new type of entity i.e. Limited Liability Partnership (LLP). The Income-tax Act did not have any special provision for taxation of LLP. Section 2(23) which defines the terms 'firm', 'partner' and 'partnership' has been amended, and an LLP defined under the LLP Act has been put on par with a partnership firm under the Indian Partnership Act, 1932 (General Partnership) for the purposes of income-tax. Consequently, provisions relating to interest and remuneration to partners will apply to an LLP, while provisions applicable to companies such as MAT, DDT, etc. will not apply to an LLP. Under the substituted Section 44AD, an LLP is not an eligible assessee under the scheme of presumptive taxation.

There is no specific provision for exemption from taxation on conversion of a company into an LLP. Similarly, there is also no specific provision for exemption from taxation when a General Partnership is converted into an LLP. However, for the latter case of conversion, the Explanatory Memorandum clarifies that since a General Partnership and an LLP are considered equivalent, conversion of a General Partnership into an LLP will be tax neutral if the rights and obligations of the partners remain the same and there is no transfer of assets or liabilities.

Under Section 140 return of income of an LLP is to be signed by a designated partner. However, if for any unavoidable reason designated partner cannot sign or where there is no designated partner, any partner may sign the return.

Under new Section 167C, each partner of an LLP is jointly and severally liable for tax due from an LLP if it cannot be recovered from the LLP unless he proves that the non recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP. The section is similar to Section 179 applicable to directors of a private company. It is materially different from Section 188A already existing and applicable to partners of a partnership firm.

18. BUSINESS PROFITS ON PRESUMPTIVE BASIS – SECTIONS 44AA, 44AB & 44AD

Scope of presumptive taxation under substituted Section 44AD is extended to cover all businesses having turnover or gross receipts of Rs. 40 lakh or less other than business of plying, hiring or leasing goods carriages (which continues to be covered by Section 44 AE).

The salient features are:

i) The presumptive taxation scheme applies to eligible resident assessees being an Individual, HUF or a Firm other than a limited liability partnership.

ii) The presumptive scheme shall not apply to eligible assessees claiming deduction under Section 10A – (undertaking in Free Trade Zone), 10AA – (Unit in Special Economic Zone), 10B – (100% Export Oriented Undertaking) and 10BA – (Export of handmade articles or things) and deductions in respect of income covered under Part C of Chapter VI-A such as Sections 80-IA, 80-IB, etc.

iii) Presumptive income shall be 8% of the total turnover or gross receipts or the income claimed to have been earned from such business, whichever is higher.

iv) Eligible assessee will not be required to pay advance tax on presumptive income from such business, and therefore tax is payable only on self assessment.

v) Eligible partnership firm can claim deduction of salary and interest to partners within the ceiling prescribed under Section 40(b) of the Act.

vi) Eligible assessee is not required to maintain books of account as required under Section 44AA.

vii) Eligible assessee is required to maintain books of account and also get them audited if he declares income below 8% of gross turnover/ receipts and if his total income exceeds the basic exemption limit. There is a lack of clarity on actual application of this condition.

This amendment will apply from Assessment Year 2011-12.

19. PROFIT AND GAINS OF RETAIL BUSINESS – SECTION 44AF

Presently, retail traders can declare presumptive income at 5% of total turnover under Section 44AF. This section is inoperative w.e.f. Assessment Year 2011-12.

However, from Assessment Year 2011-12, retail traders would be governed by the provisions of Section 44AD, which requires presumptive income to be determined at 8% of gross turnover/ receipts.

20. PRESUMPTIVE INCOME OF TRUCK OWNERS – SECTION 44AE

The existing provision *inter alia* provides for presumptive income of Rs. 3,500 per month per vehicle for owners of heavy goods vehicle and Rs. 3,150 per month per vehicle for the owner of light goods vehicle provided the owner owns not more than 10 goods carriages at any time during the previous year.

The rate of presumptive income is now revised from Rs. 3,500 to Rs. 5,000 per month or part thereof per heavy goods vehicle and from Rs. 3,150 to Rs. 4,500 per month or part thereof per light goods vehicle. This amendment will apply from Assessment Year 2011-12.

Author's Note : It is not clear why the amendment relating to presumptive business profit referred to in paragraphs 18 to 20 above are made effective from Assessment Year 2011-12.

21. POWER TO ISSUE ZERO COUPON BONDS – SECTIONS 2(48), 36(1)(iiia) & 194A

The definition of 'zero coupon bonds' in Section 2(48) has been enlarged to enable scheduled banks to issue zero coupon bonds. Consequential amendments have been made in Section 36(1)(iiia) and Section 194A. These amendments are retrospectively applicable from 1st April, 2009.

22. COST OF ACQUISITION WITH REFERENCE TO CERTAIN MODES OF ACQUISITION – SECTION 49(2AA)

At the time of allotment/ transfer of sweat equity shares or securities under ESOP, the fair market value as reduced by the amount recovered is considered to be the perquisite value in the hands of the employee. The said fair market value will be considered as cost of acquisition.

23. STAMP DUTY VALUATION FOR DETERMINING CAPITAL GAINS – SECTION 50C

Presently, for the purpose of computing capital gains on transfer of land or building or both, the amount adopted or assessed as per stamp duty valuation is considered as full value of consideration. The said provision is now extended to transfers which may not require to be registered. In such cases also, for the purpose of computing capital gains, the amount assessable as per stamp duty valuation is considered as full value of consideration. This is effective from 1st October, 2009.

24. EXPANDING THE SCOPE OF TAXATION OF GIFTS TO INCLUDE GIFTS IN KIND – SECTION 56(2)(vii)

Presently, sum of money received by an individual or HUF aggregating Rs. 50,000 or more from non relatives, etc. is taxable as income under Section 56(2)(vi) with certain exceptions. Gifts received in kind were not taxable. These provisions would now apply to gifts received till 30th September, 2009. New clause (vii) has been introduced to tax gifts received in cash as well as in kind, in excess of Rs. 50,000 on or after 1st October, 2009. Even assets received for inadequate consideration exceeding Rs. 50,000 are subject to this provision.

For the above purposes, immovable property in the form of land or building or both is covered, while in case of non monetary movable properties, only specified assets are covered. These are shares, securities, jewellery, archaeological collections, drawings, paintings, sculptures, or any work of art. Gift in the form of sum of money continues to be covered.

In case of immovable property received without consideration, having stamp duty value exceeding Rs. 50,000, the stamp duty value is to be taxed. If it is acquired for inadequate consideration with the difference exceeding Rs. 50,000 compared to the stamp duty valuation, such difference is to be treated as income. In such cases, the assessee can claim that the stamp duty value is higher and accordingly, ask the assessing officer to refer the issue of valuation to the Valuation Officer. For such purpose, recourse would be taken to provisions of Section 50C.

In case of movable property, the income will be computed with reference to the fair market value (instead of stamp duty valuation) as determined by prescribed method.

Exceptions provided in Section 56(2)(vi) continue under the new clause (vii).

25. INTEREST ON COMPENSATION/ENHANCED COMPENSATION – SECTIONS 56(2), 57(iv) & 145A

Sections 56(2) and 145A have been amended to provide that interest on compensation / enhanced compensation shall, irrespective of the method of accounting followed by the assessee, be deemed to be income in the year in which it is received under the head "Income from Other Sources". To mitigate undue hardship to the assessees, a deduction of 50% of such interest income is allowed under Section 57(iv).

26. NEW PENSION SCHEME (NPS) – SECTIONS 10(44), 115-O, 197A AND STT

NPS Trust has been set up on 27th February, 2008 to manage the assets and funds under the NPS for its beneficiaries. The savings under this Scheme will be taxed on EET basis (Exempt Exempt Taxed), i.e. deductible at the time of investment, no tax incidence during the income accumulation, and taxable at the time of withdrawal.

a. Section 10(44) provides that any income received by any person on behalf of the NPS Trust established on 27th February, 2008, shall be exempt from tax.

b. Section 197A is amended to provide for exemption from TDS for any payment made to such specified trust. Consequently, no tax will be deducted on payment of any income to such trust. This amendment is with retrospective effect from 1st April, 2009

c. No DDT under Section 115-O is payable on the amount of dividend distributed to NPS Trust. However there is no provision for passing on such saving in DDT by the company to NPS Trust. This amendment is with retrospective effect from 1st April, 2009

d. Transactions of purchase and sale of equity and derivatives entered into by NPS are exempted from payment of STT.

27. CONTRIBUTION TO NPS – SECTION 80CCD

Section 80CCD provides for deduction for contribution to certain notified pension schemes by salaried assessees. The amendment to sub-section (1) extends the benefit of deduction to all individuals, whether employed or otherwise. This will be effective from 1st April, 2009. However, the limit of 10% of salary on contribution to the scheme continues in this sub-section. It is inconsistent when the deduction is extended to individuals who are not employed earning salary income.

Amount received on closure of account or on opting out of the pension scheme or pension received from annuity purchased is chargeable to tax. Sub-section (5) has been introduced to provide that the amount received shall not be considered as received and will not be chargeable to tax if it is utilised for purchase of annuity plan in the same year. This is to avoid unintended double taxation.

28. DEDUCTIONS IN COMPUTING TOTAL INCOME – SECTION 80A

Two sub-sections have been inserted in Section 80A with retrospective effect from 1st April, 2003 purportedly to prevent abuse of tax incentives.

Sub-section (4) provides that if an assessee has claimed and has been allowed deduction of any amount of profit under Sections 10A or 10AA or 10B or 10BA or under Chapter VIA, the assessee shall not be allowed deduction under any other section of the Act in respect of, and to the extent of, such profits and the total deduction shall not exceed the profits. The section as worded lakhs clarity.

Sub-section (5) provides that if the assessee does not claim deduction under Sections 10A or 10AA or 10B or 10BA or under Chapter VIA in the return of income, he shall not be allowed deduction under those sections.

Sub-section (6) inserted with effect from 1st April, 2009 provides that in case of an undertaking, unit, business or enterprise (for sake of brevity, unit), the profits of which are eligible for deduction under Sections 10A or 10AA or 10B or 10BA or under Chapter VIA, where the unit transfers any goods or services to other business of the assessee or the unit acquires goods or services from other business of the assessee, then the deduction will be computed by taking the market value of the goods or services transferred or acquired by the unit from the other business of the assessee. Market value has been defined to be the price at which the unit would have transferred in the open market or acquired from the open market, the goods and services, subject to statutory or regulatory restrictions, if any.

29. EXPENDITURE FOR DEPENDANT WITH DISABILITY – SECTION 80DD

Section 80DD presently provides for deduction of Rs. 50,000 for expenditure incurred for maintenance, medical treatment etc. of a dependant having disability as defined in the section. The deduction is Rs. 75,000 where the disability is severe. This limit of Rs. 75,000 is increased to Rs. 1,00,000 and the other limit remains unchanged.

30. INTEREST ON EDUCATION LOAN – SECTION 80E

Section 80E provides for deduction of interest on loan taken for pursuing higher education. Presently, higher education is defined to include professional courses like medicine, engineering or post graduate courses in applied or pure sciences. The section

has been amended to include any course pursued after passing Senior Secondary Examination or recognised equivalent examination.

31. DEFERRING OF CERTAIN TIME LIMIT – SECTION 80-IA

Section 80-IA provides for deduction in respect of profits of undertakings in certain infrastructure activities. It covered undertakings set up for generation and/or transmission or distribution of power or renovation and modernisation of transmission network or distribution lines. In all these cases, the date before which the undertaking will have to start operations to be eligible for deduction has been extended to 31st March, 2011.

Further, Explanation below sub-section (13) is substituted retrospectively with effect from 1st April, 2000 to clarify that the section shall not apply to business in the nature of works contract awarded by any person including the Central and State Governments executed by the undertaking or enterprise. This nullifies the effect of the decisions in the cases of (i) *Patel Engineering vs. DCIT 94 ITD 411 (Mum),* (ii) *On Metals Infrastructures Ltd. vs. CIT 2009 TIOL 186 ITAT Jaipur.*

32. DEDUCTION FOR BUSINESS OF HOUSING PROJECTS – SECTION 80-IB(10)

Sub-section (10) of Section 80-IB provides for deduction for profits derived from developing and building housing projects. The section has been amended by inserting additional condition for entitlement to deduction. The newly inserted condition requires that where the buyer of the residential unit is not an individual, not more than one unit in the project shall be allotted to such buyer; and where the buyer is an individual, no unit in the project shall be allotted to the spouse, minor children or HUF of which the individual is karta or to any person representing such individual, spouse, minor children or HUF. Fortunately, this is applicable from Assessment Year 2010-11.

An Explanation has been inserted with retrospective effect from 1st April, 2001 to clarify that deduction shall not be available to person executing the project as a works contract.

33. AMENDMENT TO SCHEDULE XIII

Deduction under Section 80-IC is available for manufacture of articles or things (other than those specified in Schedule XIII) in the States of Himachal Pradesh and Uttaranchal. Serial number 19 of Part B of the Schedule XIII has been substituted so as to bring it at par with the changes made in this respect in the Industrial Policy.

34. DTAA WITH SPECIFIED NON-SOVEREIGN TERRITORIES – SECTION 90 OF THE INCOME-TAX ACT AND SECTION 44A OF THE WEALTH TAX ACT

Presently as per the provisions of Section 90 of the Income-tax Act and Section 44A of the Wealth-tax Act, 1957, the Government can enter into double tax avoidance agreements or tax information exchange agreements with Government of any country. These sections have been amended to enable the Government to enter into such agreements with any territory outside India, thereby extending the scope to non-sovereign territories. This amendment is with effect from 1st October, 2009.

35. COMPUTATION OF ARM'S LENGTH PRICE (ALP) UNDER TRANSFER PRICING PROVISIONS – SECTION 92C

Under the present provisions, while determining the ALP by applying the Most Appropriate Method (MAM) if more than one price is determined, then, the ALP shall be taken to be the arithmetical mean of such prices or alternatively, at the option of the assessee, a price which may be within the range of 5% of such arithmetical mean. In this context, the CBDT has clarified that the Assessing Officer (AO) shall not make any adjustment to the ALP determined by the assessee, if such price is up to 5% less or up to 5% more than the price determined by the AO. In such cases, the price declared by the assessee may be accepted [Circular No. 12 dated 23-8-2001].

For example, say the assessee has paid Rs. 100 to a non-resident associated enterprise. If the arithmetical mean of the ALPs is Rs. 100, then the price up to Rs. 105 is considered as ALP. If the assessee pays up to Rs. 105, no adjustment can be made to his income. If the assessee conducts his transaction at

Rs. 125, the income can be adjusted. However this had given rise to disputes.

According to the department, if the price variation is more than 5% margin, the adjustment in the income could be made up to Rs. 25 (125 – 100). In view of the assessee, in such cases, the adjustment to the income could be made only up to Rs. 20 (125 – 105).

It is now provided that if more than one ALP is determined, then ALP shall be the arithmetical mean of such prices. If the actual price is within 5% range of the arithmetical mean, no adjustment to income can be made. If the actual price is beyond such 5% range, adjustment can be made to the full extent. Effectively, the department's view has been given statutory recognition.

This provision comes into effect from 1st October, 2009.

36. SAFE HARBOUR RULES FOR TRANSFER PRICING – SECTION 92CA

Transfer pricing exercise is a very subjective exercise. There could be a *bona fide* reason for a difference between ALP and actual price. To reduce the adjustments leading to avoidable disputes, it is now provided that the computation of ALP will be subject to safe harbour rules. Safe harbour rules mean the circumstances under which the prices at which associated enterprises enter into international transactions will be considered as acceptable. CBDT will come out with the rules.

37. ALTERNATE DISPUTE RESOLUTION MECHANISM – SECTION 144C

The traditional dispute resolution process for tax disputes is found very time consuming and complex by the foreign companies and also by other assessees, particularly with regard to international transactions with associated enterprises. In order to provide remedy to the problem, an alternate dispute resolution mechanism has been provided. This mechanism is available to an eligible assessee, being a person in whose case any variation in the income or loss returned, which is prejudicial to the interest of the assessee, is sought to be made as a result of the order

passed by the transfer pricing officer under Section 92CA(3), and any foreign company. A detailed procedure has been provided for this purpose in the new sections.

This provision comes into effect from 1st October, 2009 and accordingly applies to assessment orders proposed to be passed on or after that date.

38. ABOLITION OF FRINGE BENEFIT TAX (FBT) – SECTION 115WM

FBT shall not apply in respect of Assessment Year 2010-11 and for any subsequent assessment years. There is nothing provided to allow adjustment or refund of the amount paid as advance FBT by corporate assessees for Assessment Year 2010-11.

39. PROVISION FOR DIMINUTION IN THE VALUE OF ASSETS – SECTIONS 115JA & 115JB

The Supreme Court in the case of *CIT vs HCL Comnet System & Services Ltd* (305 ITR 409) has held that provision for doubtful debts is made to cover up the probable diminution in the value of an asset and cannot be said to be provision for a liability. Accordingly, clause (c) of the Explanation to Section 115JB is not attracted and the provision for doubtful debts cannot to be added back while computing book profit.

It is now provided that while computing the 'Book Profit' for the purpose of Section 115JB, the net profit shall be increased by the provision for diminution in the value of any asset debited to the Profit and Loss Account. The said amendment is retrospectively applicable from 1st April, 2001. This nullifies the effect of the above judgment retrospectively.

Similar amendment has also been made in the earlier operative Section 115JA of the Act which is also retrospectively applicable from 1st April, 1998.

40. RATE OF MINIMUM ALTERNATE TAX (MAT) – SECTION 115JB

Presently, as per the provisions of Section 115JB, MAT is charged at the rate of 10% of the book profit in case the tax

payable on the total income computed under the normal provisions is lower. The rate of MAT has now been increased from 10% to 15%. Accordingly, the effective rate of MAT has increased from 11.33% to 16.995% in cases where surcharge is applicable.

41. CARRY FORWARD OF MAT CREDIT – SECTION 115JAA

As per the provisions of Section 115JAA, tax credit is allowed to be carried forward for seven assessment years immediately succeeding the assessment year in which tax is paid under Section 115JB and is allowed to be set off in the assessment year in which tax is payable under the normal provisions of the Act. It is now provided that the MAT credit shall be carried forward for ten assessment years immediately succeeding the assessment year in which tax is paid under Section 115JB. Similarly, MAT credit of earlier years will also be entitled to be carried forward for such extended period.

42. SCHEME FOR CENTRALISED PROCESSING OF RETURNS – SECTION 143

Due to delay in the computerization, the time limit for centralized processing of returns is deferred by one more year. Accordingly, the Central Government can notify that the provisions relating to centralized processing of returns shall apply with such exceptions, modifications, and adaptations as may be specified up to 31st March, 2010.

43. PROCEEDINGS FOR REASSESSMENT – SECTION 147

Certain Courts have held that reassessment proceedings shall be restricted to only such issues as have been specifically recorded by the AO before issuing the notice for re-opening of the assessment. An explanation is inserted with retrospective effect from 1st April, 1989 to provide that the AO can assess or re-assess income in respect of any issue which has escaped assessment even if the same comes to his notice subsequently in the course of the reassessment proceedings and the same was not recorded by him earlier at the time of issuing the notice for re-opening the assessment.

44. TDS FROM INTEREST OTHER THAN INTEREST ON SECURITIES – SECTION 194A

The exemption from TDS on zero coupon bonds has been extended to such bonds issued by scheduled banks on or after 1st June, 2005. This amendment is applicable from Assessment Year 2009-10.

45. TDS FROM PAYMENTS TO CONTRACTORS – SECTION 194C

Section 194C is substituted with effect from 1st October, 2009. The distinction between contractors and sub-contractors has been removed. The rates of TDS are revised to 1% in cases of payments to individuals or HUFs and to 2% in other cases. There is no separate rate for advertisement contracts.

Tax is not required to be deducted at source if:

1. The amount paid / credited or likely to be paid / credited is Rs. 20,000 or less and aggregate amount during the financial year is likely to be Rs. 50,000 or less.
2. Payment is made by an individual or HUF, exclusively for personal purposes.
3. Amount is paid / credited to the contractor engaged in the business of plying, hiring or leasing goods carriages, who furnishes his PAN to the payer. If the PAN is not furnished by such contractor, the normal rate of 2% / 1% would apply till 31st March, 2010. Thereafter, the rate of 20% under Section 206AA would apply.

The payer shall furnish to the Income Tax authority particulars of payments made to transport contractors without tax deduction as above in prescribed form within the prescribed time.

The definition of “work” has also been extended to cover manufacture or supply of a product according to the requirement or specification of the customer by using material supplied by the customer. In such cases tax shall be deducted at the prescribed rate on the whole of the invoice value unless the value of the material is separately mentioned in the invoice, in which case TDS would be deducted on the value excluding the value of material.

Payment made for manufacturing or supplying a product according to the requirements of the customer, where material is purchased from a third person, is not covered by the amended definition.

46. TDS FROM RENT – SECTION 194-I

With effect from 1st October, 2009, tax shall be deducted at source from rent at following rates:

1. 2%, where rent is for the use of machinery or plant or equipment as against the earlier rate of 10%.
2. 10%, where rent is for the use of land or building or land appurtenant to building or furniture or fittings as against the earlier rates of 20% / 15%.

Now there are no separate rates for payments made to companies and to others.

47. TDS / TCS STATEMENTS – SECTIONS 200, 201, 203A, 206A, 206C & 272A

In line with the new scheme of E-TDS/E-TCS filing and computerisation of the TDS / TCS information, CBDT would specify the manner, time period, the prescribed authority, the frequency of filing, the mode of filing such statements, etc. in lieu of the present system of filing quarterly statements under Section 200. Consequential amendments have been made in Sections 201, 203A, 206A, 206C and 272A. These amendments are effective from 1st October, 2009.

48. NEW SCHEME OF PROCESSING TDS STATEMENTS – SECTION 200A

A new Section 200A has been inserted which authorises the CBDT to formulate a scheme for central computerised processing of TDS statements filed under Section 200. The TDS amount returned in these statements would be verified for arithmetical errors and any incorrect claim apparent from the information in the statement viz. inconsistency in the items reported in the statement as well as incorrect rates for the items mentioned will be adjusted and TDS amount would be computed. Interest under Section 201(1A) will be computed on such TDS and thereafter the

demand payable / refund due will be determined after giving credit for TDS paid. Intimation of additional demand / refund due shall be sent to assessee not later than one year from the end of the financial year in which the statement is filed.

49. TIME LIMITS PRESCRIBED FOR ORDERS FOR DEFAULT UNDER TDS PROVISIONS – SECTION 201

Currently, there is no time limit provided for passing an order under Section 201(1) deeming an assessee to be in default. However, in the absence of such provision, the Special Bench of the ITAT, Mumbai in the case of Mahindra & Mahindra Ltd. 313 ITR (AT) 263 had given guidelines for such time limits based on the principle that if no time limit is provided, reasonable time limit should apply. Now, a new sub-Section (3) is inserted in Section 201 to lay down the time limit for passing of an order deeming an assessee to be in default for failure to deduct whole or part of tax from resident as under:

- When the statement specified under Section 200 has been filed, two years from the end of financial year in which the statement is filed,
- In other cases, four years from the end of financial year in which payment made/credit given.

To clear all the pending matters of the past period (1st April, 2007 or earlier), there is a provision to pass such orders in these cases by 31st March, 2011. These time limits however do not cover the following cases:

- When tax is deducted but not paid to the Government treasury,
- When employer fails to pay the tax wholly or partly under Section 192(1A),
- Where the deductee is a non-resident.

50. HIGHER RATE OF TDS FOR NOT FURNISHING OF PAN – SECTION 206AA

A new Section 206AA has been inserted to provide that every deductee has to furnish his PAN to the deductor. In case of failure to do so tax will be deducted at the applicable rate or the rate of tax in force or 20%, whichever is the highest.

Also, the declarations under Section 197A in Form 15G / 15H for non deduction of tax will not be valid unless the deductee quotes his PAN therein. Further no certificate under Section 197 for lower / nil deduction of tax will be granted without PAN of the applicant mentioned in the application. In case an invalid PAN is provided by the deductee or the quoted PAN is not of the deductee, the higher rate of tax would apply. It has also been provided that PAN will be quoted in all the correspondence, bills, vouchers exchanged between deductor and deductee. This amendment will take effect from 1st April, 2010.

51. INCREASE IN THRESHOLD LIMIT FOR ADVANCE TAX – SECTION 208

Presently, an assessee is liable to pay advance tax in case his tax liability (net of TDS / TCS) during the year exceeds Rs. 5,000. This limit has been enhanced to Rs. 10,000.

52. CONCEALMENT OF INCOME – EXPLANATION 5A TO SECTION 271(1)

In the course of search initiated on or after 1st June, 2007, if the assessee is found to be the owner of

i) any money, bullion, jewellery or other valuable article or thing acquired out of income of any previous year ended before the date of search or

ii) any income based on any entry in any books or other documents or transactions which represents income of any previous year ended before the date of search;

he shall be deemed to have concealed particulars of income or furnished inaccurate particulars of income if:

i) return of income submitted before the date of search does not reflect this income or

ii) return of income has not been submitted where the due date of filing has expired.

The amended provision will now cover the cases where return of income submitted prior to search which does not include such income.

This amendment is claimed to be clarificatory in nature and is made effective retrospectively from 1st June, 2007 and applies to search initiated on or after 1st June, 2007.

53. PROVISIONAL ATTACHMENT OF ASSETS – SECTION 281B

The Assessing Officer is presently empowered to make provisional attachment to protect the interest of the revenue. This provisional attachment is valid for a period of six months from the date of the order and its validity can be extended up to a maximum period of two years with the permission of the Chief Commissioner.

Now, it is provided that the period for which stay on assessment or reassessment proceeding is granted by the High Court or the Supreme Court be excluded while calculating the maximum period available for provisional attachment.

This amendment is effective retrospectively from 1st April, 1988.

54. SERVICE OF NOTICE, ETC. – SECTION 282

Presently, a notice or summon or requisition under the Act may be served either by post or in a manner by which summons are issued by a court.

Now, service of a notice or summon or requisition or any other communication or order can also be made by courier services or in the form of electronic record or by any other means as may be prescribed by the CBDT.

It is also provided that the CBDT may make rules providing for the addresses, including the address for electronic mail, to which such communication may be delivered. This amendment is effective from 1st October, 2009.

55. ALLOTMENT OF DOCUMENT IDENTIFICATION NUMBER – SECTION 282B

Every Income Tax authority shall allot a computer generated Document Identification Number (DIN) in respect of every notice, order, letter or any correspondence issued by him to any other Income Tax authority or to assessees or to any other person and such number shall be quoted thereon. If such notice, order etc. does not bear a DIN, such notice, order etc. shall be treated as invalid and shall be deemed never to have been issued.

It is further provided that every document, letter or any correspondence received by an Income Tax authority or on behalf

of such authority, shall be accepted only after allotting and quoting computer generated Document Identification Number (DIN). If such document etc., does not bear DIN, the same shall be treated as invalid and shall be deemed never to have been received. This is effective from 1st October, 2010.

56. POWER OF WITHDRAWAL OF APPROVAL – SECTION 293C

The Income Tax authority who has power to grant any approval to any assessee under any provision of this Act, may withdraw such approval at any time. This is irrespective of the fact that such provision to withdraw such approval has not been specifically provided in the relevant provisions. Before such withdrawal, reasonable opportunity of being heard shall be given to the assessee and reasons for such withdrawal should also be recorded. This is effective from 1st October, 2009.

57. RECOGNISED PROVIDENT FUNDS – SCHEDULE IV

Finance Act, 2006 had provided that in order to continue to enjoy recognition by certain provident funds and for the assessees to get deduction in respect of contribution to such funds, the provident funds must comply with certain conditions by 31st March, 2007, which was subsequently extended up to 31st March, 2009. This deadline has been further extended to 31st December, 2010.

58. INCREASE IN THE THRESHOLD LIMIT FOR WEALTH TAX – SECTION 3

Presently wealth tax is payable on specified assets in excess of Rs. 15,00,000 at the rate of 1%. The limit of Rs. 15,00,000 set in 1992 has been revised to Rs. 30,00,000.

INDIRECT TAXES

SERVICE TAX

The amendments proposed in the Finance (No. 2) Bill, 2009 of Chapter V of the Finance Act, 1994, (The Act), Notifications issued and the following Rules framed thereunder are discussed below:

- CENVAT Credit Rules, 2004,
- Taxation of Services (Provided from Outside India and Received in India) Rules, 2006, and
- Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

The amendments come into effect from the date of enactment; meaning the date on which the President of India gives assent to the Finance Bill unless specifically mentioned otherwise. Introduction of new services and changes in existing services come into effect from the date to be notified by the Government.

1. RATE OF TAX

Applicable rate of service tax remains unchanged at 10% (as reduced from 12% to 10% with effect from 24-2-2009) and that of education cess and secondary and higher education cess remain unchanged at 2% and 1% respectively. Thus effective rate is unchanged at 10.3%.

2. INTRODUCTION OF NEW SERVICES

i) Cosmetic or plastic surgery [Section 65(105) (zzzzk)]

Beauty treatment service provided by salons, beauty parlours and beauticians are taxable since 16-8-2002. Cosmetic or plastic surgery undertaken to maintain or enhance physical appearance or beauty is covered under this service.

However, any reconstructive surgery undertaken to restore one's appearance, anatomy or bodily functions affected due to birth defects, developmental abnormalities, degenerative diseases, injury and trauma is outside the scope of this service.

ii) Transport of coastal goods and goods transported through inland waters [Section 65(105)(zzzzl)]

Hitherto transport of goods by road, partially by rail and air was covered. With the introduction of this entry, transportation of goods other than the imported goods by inland waterways is brought under the net of service tax.

Movement of goods by sea internationally is outside the purview of service tax.

The Government is expected to provide suitable abatement and exemption to specific goods by issuing notifications.

iii) Legal consultancy [Section 65(105)(zzzzm)]

Any advice, consultancy or assistance provided in any branch of law if provided by a business entity to another business entity is covered under this service.

Business entity is defined to include association of persons, body of individuals, company or firm but does not include an individual. Thus, service provided by an individual to any person or by a business entity to any individual is outside the scope of this service. Further, any service of appearance before any court, tribunal or authority is also outside the scope of this service.

3. CHANGES IN EXISTING SERVICES

i) Business Auxiliary Service [Section 65(19)]

Production or processing of goods for and on behalf of the client is liable to service tax under this service. However, production or processing of goods amounting to "manufacture" within the meaning of Section 2(f) of Central Excise Act, 1944 was excluded from the Business Auxiliary Service.

Now the exclusion will apply only if the production or processing activity results in "manufacture of excisable goods" within the meaning of Central Excise Act, 1944.

To illustrate for instance, job workers manufacturing alcohol for the brand owners were claiming exemption from service tax considering the activity as "manufacture", though not liable to Central Excise duty. Such activity will now be covered as Business Auxiliary Service.

ii) Stock Broker's Service [Section 65(101)]

The present definition of "stock broker" includes sub-broker also. The definition is amended to exclude the sub-broker. Consequently, sub-broker will be outside the purview of service tax.

Specific exemption notification would be issued at appropriate time to exempt sub-broker as commission agent under the Business Auxiliary Service.

iii) Information Technology Software Service [Section 65(105)(zzzze)]

The sub-clauses (v) and (vi) of this definition are amended to replace the word "acquiring" by the word "providing" with effect from **16-5-2008**. Thus, what was meant to be taxable was "providing of right to use" and not "acquiring of right to use" and therefore the amendment is done retrospectively from the date of introduction of the service i.e. **16-5-2008**.

iv) Transportation of Goods by Rail [Section 65(105)(zzzp)]

Presently service of transportation of goods in containers by rail provided by private operators is taxable under this service. The definition is amended to cover goods transported by rail by any person including Government railways. This category now covers transportation of goods by rail in containers or in any manner.

4. EXEMPTIONS

i) Club or Association Service

Services provided by Federation of Indian Export Organizations (FIEO) and twenty one specified Export Promotion Councils, sponsored by the Department of Commerce or Ministry of Textiles, to their members are exempted till 31st March, 2010.

[Refer Notification No.16/2009-ST dated 7th July, 2009].

ii) Banking and Financial Service

Inter bank transactions of sale or purchase of foreign currency among scheduled banks are exempted.

[Refer Notification No.19/2009-ST dated 7th July, 2009].

iii) Tour Operator's Service

Private bus operators operating buses for passengers on inter state or intra-state routes in a vehicle under a contract carriage permit are fully exempted from service tax. This exemption however, does not cover transportation provided in relation to tourism, conducted tours, charter or hire service.

[Refer Notification No. 20/2009-ST dated 7th July, 2009].

5. CHANGES IN THE REFUND SCHEME FOR EXPORTERS OF GOODS

Notification No. 41/2007-ST dated 6th October, 2007 as amended by several Notifications provided for refund mechanism for service tax paid on taxable services received and used by an exporter of goods. The revised scheme of refund consisting of two parts is as follows:

i) When an exporter of goods is liable to pay service tax as a receiver of taxable service under reverse charge mechanism, the following two services are exempted:

- Transport of goods by road; and
- Commission paid to foreign agents. The exemption is restricted to 1% of the FOB value of the goods exported.

An exporter registered with an Export Promotion Council, having an import/export code number and registered with the service tax authorities for his liability under reverse charge is eligible for this exemption whereby he would avoid first paying service tax and then claim refund thereof.

[Refer Notification No.18/2009-ST dated 7th July, 2009].

ii) In supersession of Notification No. 41/2007-ST a revised scheme is introduced having the following additional features:

- The time limit for filing the claim increased from 6 months to 1 year from the date of each export consignment.
- Simple formats in Forms A1 and A2 prescribed for refund claims for manufacturer-exporters and merchant-exporters respectively.
- "Terminal handling charges" added to the list of qualifying services.

- Self certification to form basis of granting claims where the claim is up to 0.25%, of the total FOB value. In case of claim in excess of 0.25% certificate from auditor is required.
- Dilution of some of the conditions of the previous scheme.

[Refer Notification No. 17/2009-ST dated 7th July, 2009].

6. AMENDMENTS IN THE ACT

i) Revisionary Power of Commissioner of Central Excise: [Section 84]

The revisionary power of the Commissioner of Central Excise is done away with. The amendment is made to bring the provision in line with the Central Excise provision. If the Commissioner of Central Excise is not satisfied with an order passed by an adjudicating authority on account of its lack of legality or propriety, he shall pass an order within three months from the date of communication of the order of the adjudicating authority directing any subordinate to apply to Commissioner (Appeals) for determination of such points arising out of the order. Such application shall be made within one month of the date of communication of the order passed by the Commissioner. The said application shall be heard by Commissioner (Appeals) as if such application was an appeal. All cases decided before the enactment of the Finance (No. 2) Bill, 2009 would continue to be governed by the existing provisions.

ii) Power to make Rules

Section 94 is amended to empower the Central Government to make rules relating to:

(a) relevant date for determination of rate of service tax; and

(b) place of provision of taxable services.

7. BENEFIT OF NOTIFICATION 1/2009 GRANTED RETROSPECTIVELY TO GTA SERVICE

The Goods Transport Agency is granted exemption from services of Business Auxillary Service, Business Support Service,

Cargo handling, C&F Agents, Manpower Recruitment, Packaging, Storage & Warehousing and Supply of tangible goods for use under Notification 1/2009-ST dated 5-1-2009. This benefit will now be available retrospectively i.e. w.e.f. 1-1-2005.

Service tax paid on the said services is eligible for refund, if applied within six months from the date of the enactment of the Finance (No. 2) Bill, 2009. Further, provisions of Section 11B of Central Excise Act, 1944 is applicable to such refunds.

8. AMENDMENT IN THE RULES

The Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 is amended whereby the gross amount charged for works contract is required to include;

- value of all goods used in or in relation to the execution of works contract whether received free of cost or for consideration under any other contract; and
- value of all services required for execution of works contract.

Further, the gross amount charged would exclude VAT or Sales Tax paid on transfer of property in goods involved and cost of machinery and tools used in execution of works contract except hire charges for such machinery and tools.

The composition scheme for payment of service tax is permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

The above provisions are not applicable to ongoing works contracts, including contracts where any part or full payment except by way of credit or debit to any account has been made on or before 7th July, 2009.

[Refer Notification No. 23/2009-ST, dated 7th July, 2009.]

9. CENVAT CREDIT RULES, 2004

i) Explanation 2 to Rule 2(k) which defines "input" provided that, input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. An amendment has been made in the said Explanation 2, to specifically provide that input shall not include cement, angles, channels, centrally twisted deform bar (CTD) or thermo mechanically treated bar (TMT) and

other items used for construction of factory shed, building or laying foundation or making of structures for support of capital goods.

ii) Rule 3(5B) has been amended to include service providers along with manufacturers whereby, when the value of input or capital goods before being put to use is written off or provision is made to fully write it off, then the amount equivalent to CENVAT credit taken on such input or capital goods is payable by the service provider. However, if such input or capital goods is subsequently used in providing taxable service, such service provider would be entitled to take the CENVAT credit.

iii) Consequent upon reduction in the rate of Excise Duty and Service tax, Rule 6(3)(i) is amended to provide that where a manufacturer or service provider does not maintain separate accounts and also does not opt for proportionate credit mechanism, a manufacturer shall pay an amount of 5% instead of 10% of the value of exempted goods and a service provider shall pay an amount of 6% instead of 8% of the value of exempted services.

10. OTHER CHANGES

i) Extension of territorial jurisdiction

Notification No. 1/2002-ST dated 1st March, 2002 is amended to extend service tax to installations, structures and vessels in the Continental Shelf of India (CSI) and the Exclusive Economic Zone (EEZ) of India. As such, services provided to and from CSI and EEZ of India are liable to service tax. Consequential amendment is also made in the Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules).

[Refer Notifications No. 21/2009-ST and No.22/2009-ST, both dated 7th July, 2009].

CENTRAL EXCISE

1. CHANGES IN CENTRAL EXCISE ACT, 1944

i) Compounding of offences:

The Government may prescribe procedure and manner in which compounding may be made. However the benefit of compounding under the Act is not allowed second time to any person to whom compounding benefit was given once for offence for goods of value exceeding rupees 1 crore. No compounding will also be available to any person convicted by court under this Act on or after 30th December 2005 or an accused under Narcotic Drugs and Psychotropic Substances Act, 1985.

ii) Special Audit:

Sections 14A and 14AA of Central Excise Act are amended to empower the Chief Commissioner of Central Excise to nominate a Chartered Accountant to undertake Special Audit.

iii) Advance Ruling Authority:

By amending Section 28F of the Customs Act, the Advance Ruling Authority appointed under Income-tax Act would deal with Advance Rulings for Customs, Excise and Service Tax including current pending applications.

iv) Condonation of delay by High Courts:

An express provision is made by amending the law retrospectively to empower the High Courts to condone the delay in filing appeals, applications and memorandum of cross objections beyond the prescribed time limit where the Court is satisfied that there is sufficient cause for delay.

The amendments listed at (i) to (iii) are effective from the date of enactment of the Finance Bill.

2. CHANGES IN CENTRAL EXCISE RULES

The Rules have been amended to provide that seized records not relied upon in the Show Cause Notice be returned to the assessee or any person within 30 days of the issue of Show Cause Notice or within 30 days from the date of expiry of the period for issue of Show Cause Notice. Commissioner of Central

Excise is empowered to order retention after giving reasons in writing with intimation for such retention.

(The amendment is effective from 7th July, 2009)

2. CHANGES IN CENVAT CREDIT RULES: (Refer to para 9 under service tax)

3. EXCISE TARIFF

i) Chapter note 1 in Chapter 8 for edible fruit and nuts, peel of citrus fruit or melons now specifically excludes 'Betel nut product' known as 'supari' which is classified under Chapter 21. Rate of duty under Chapter 8 is Nil whereas effective rate of duty under Chapter 21 is 8 per cent.

ii) A Chapter note is inserted in Chapter 21 to provide that in relation to product 'Betel nut product known as supari' the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents, or any such ingredients, other than lime, katha (catechu) or tobacco to betel nut in any form shall amount to 'manufacture'.

(The amendments are effective from 7th July 2009)

4. OTHER CHANGES

i) Manufacturers of printed laminated rolls bearing brand name of other person are now entitled to SSI exemption, subject to complying with the other conditions of the SSI Notification.

ii) Packaged/ Canned software is now partially exempted to the extent of that portion of the value which represents consideration for transfer of right to use such software.

iii) The following goods are now fully exempted from payment of excise duty –

a) Goods falling under Chapter 68 manufactured at the site of construction for use in construction at the site

b) Articles of jewellery on which brand name or trade name is indelible, affixed or embossed (branded jewellery)

c) EVA compound manufactured on job work basis to be used for further manufacture of exempted footwear

d) Recorded smart card and tags.

Please refer to BCAS website for changes in the rate structure of different excisable products in the form of a comparative chart.

CUSTOMS

(All amendments are effective from 7th July, 2009 unless specifically mentioned otherwise)

TAX RATES EFFECTIVE FROM 7TH JULY, 2009.

1. PEAK CUSTOMS DUTY RATE

No change in peak custom duty rate of 10%.

2. INCREASE IN CUSTOMS DUTY

Duty on selected commodities like precious metals, set top boxes, concrete batching plant etc. is increased. For details refer BCAS website.

3. REDUCTION IN CUSTOMS DUTY

On important goods such as life saving drugs / vaccines and their bulk drugs, permanent magnets used in wind operated electricity generators, bio diesel, unworked corals, cotton waste and wool waste, LCD panels for LCD TVs etc. duty rate is reduced. For details refer BCAS website.

4. CHANGES IN THE ACT

i) Refund of customs duty on re-export of defective goods:

The Government to notify procedure for refund of custom duty on re-export of defective goods.

ii) Advance Ruling Authority:

By amending Section 28F of the Customs Act, the Advance Ruling Authority appointed under Income-tax Act would deal with Advance Rulings for Customs, Excise and Service Tax including current pending applications.

iii) Compounding of offences:

The scope of compounding has been restricted. Second time compounding benefit will not be allowed where compounding benefit was given once for import violation of goods exceeding rupees 1 crore. Also no compounding would be

available for offences like drugs smuggling, import of prohibited goods etc.

iv) Customs valuation based on Tariff Value under Central Excise law:

Tariff value notified under Central Excise law shall be considered for payment of customs duty on import of such goods.

v) Condonation of delay by High Courts:

An express provision has been made by amending the law retrospectively to empower the High Courts to condone the delay in filing appeals, applications and memorandum of cross objections beyond the prescribed time limit where the Court is satisfied that there is sufficient cause for delay.

(The amendments (i) to (iv) are effective from the date of enactment of the Finance Bill).

GOODS AND SERVICES TAX

The Finance Minister in his budget speech stated that Goods and Services Tax will be implemented as promised from 1st April 2010. The basic structure and the broad contour of the GST Model is that of a dual GST comprising of a Central and State GST. The Centre and the States will each legislate, levy and administer the Central GST and the State GST respectively.

PS: This Finance Bill is introduced in Lok Sabha on 6th July : Founding Day of BCAS.

ABOUT BCAS

Bombay Chartered Accountants' Society (BCAS) was established as a voluntary organization on 6th July 1949 and presently has over 8,000 members from all over the country. It caters to the needs of its members in particular and the tax paying public in general. It ensures that its members keep pace with the changing times. It also provides courses for self-development for its members and CA students

Every year the Society publishes a Diary and Referencer along with a CD, which has proved to be an invaluable guide to all professionals and others in the industry. BCAS also publishes its monthly journal titled 'BCA Journal', has a subscription of more than 12,000. It is subscribed by not only its members but also by various corporates and the Tax Department.

BCAS makes representations to various authorities on different laws as well as on procedural issues, with a view to making them just and friendly to the general public. The representations include pre and post budget memoranda to the Ministry of Finance, Government of India, Ministry of Company Affairs, etc.

BCAS runs educational programme of Internal Audit Studies in association with Wellingkar Institute of Management Development and Research, a 2 month course on Double Taxation Avoidance Agreements, a 2 month intensive study course on Accounting Standards along with Indian Merchants Chamber, a 3 month course called Professional Accountant course to train graduates and semi-qualified professionals to improve their job prospects along with H.R. College of Commerce & Economics and a 3 month course for Independent Directors in collaboration with S.P. Jain Institute of Management Research. It has also conducted the Independent Directors Course for the Ministry of Defence to train their senior officers on this subject. BCAS has conducted 8 batches of the 6 month formal Education Program of Business Consultancy Studies in collaboration with Jamnalal Bajaj Institute of Management Studies, culminating with a certificate from the University of Mumbai. BCAS has also conducted a 3 month course on Arbitration, Conciliation and Mediation. Other similar long duration courses which would sharpen the skills of members. The BCAS recently launched 2 e-learning modules one on service tax and other on Tax Deductions at Source.

Apart from a large number of seminars, workshops, lecture meetings, BCAS runs clinics for solving problems of non-profit making organizations, for guiding people on Right to Information Act and also for solving difficulties of young Chartered Accountants arising in conduct of audit. BCAS besides holding revision classes for CA students in association with the Regional Council of the Institute of Chartered Accountants of India, also holds regular training sessions for them to develop their skills on professional and other subjects.

The website of BCAS viz. www.bcasonline.org, apart from giving the latest news, circulars and notifications relevant for professionals, also contains a "Knowledge Portal", which serves as an excellent source of information for its members and others.

Our Vision

BCAS shall be principle-centred and learning-oriented organisation to promote quality service and excellence in the profession of Chartered Accountancy and shall be proactive to change.

BCAS shall harness talent of and disseminate knowledge to members, build skills and networks amongst them and encourage them to adhere to highest ethical standards and professional integrity.

BCAS shall provide to students an environment conducive to the pursuit of knowledge and encourage them to achieve their potential to become complete Chartered Accountants. BCAS shall also conduct citizens' education programmes.

BCAS shall be a catalyst for bringing out better and more effective Government policies & laws and for clean & efficient administration and governance.

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