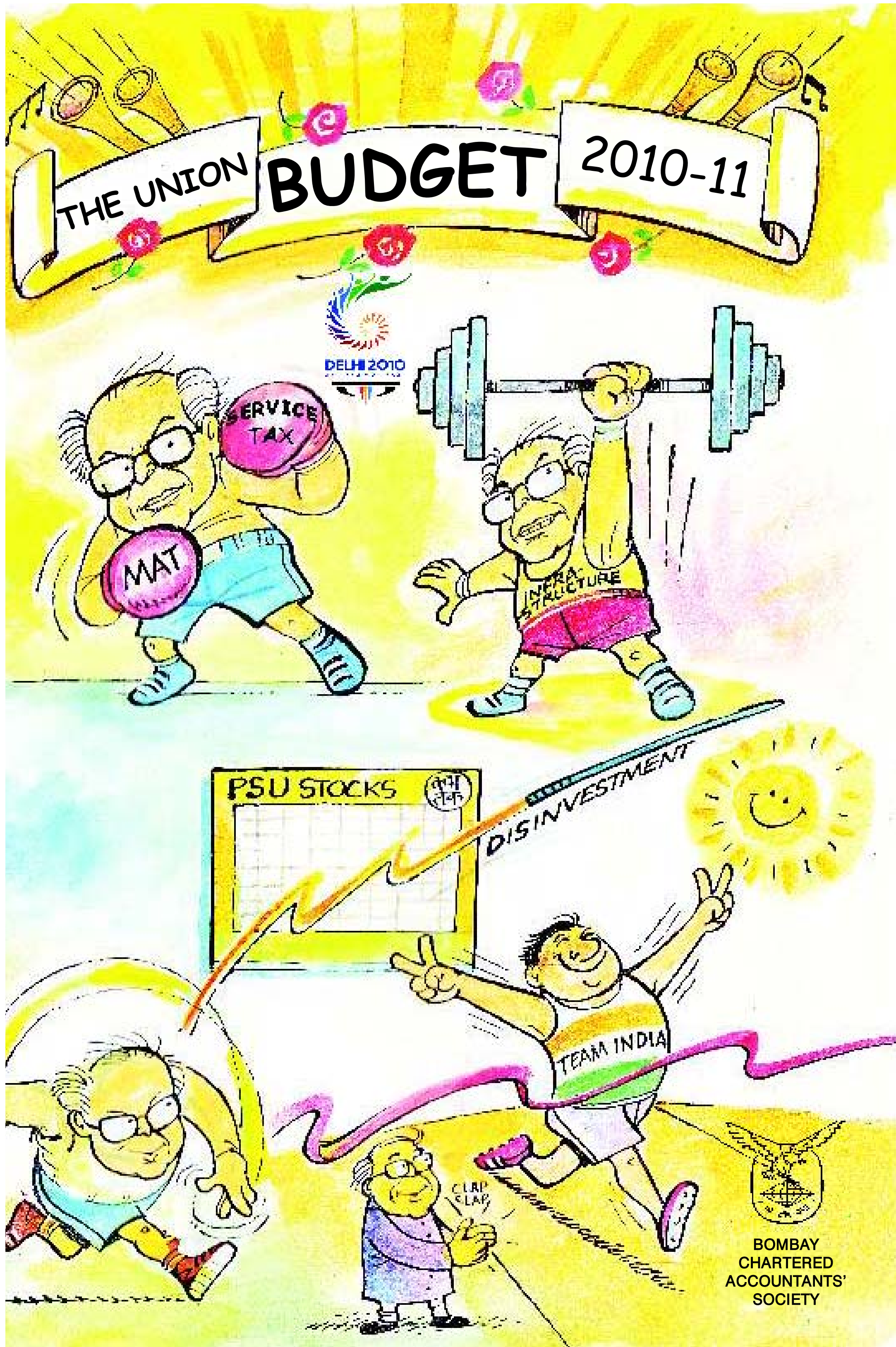
THE UNION
BUDGET
2010-11
DELHI 2010
SERVICE TAX
MAT
INFRA-STRUCTURE
PSU STOCKS
DISINVESTMENT
TEAM INDIA
CLAP CLAP
BOMBAY
CHARTERED
ACCOUNTANTS'
SOCIETY

With Best Compliments From

ABOUT THE COVER

Common (man) Wealth

The XIX Commonwealth Games are to be held in Delhi in Oct 2010. It is a very important and proud event for India.

The budget making exercise is no less than any tournament. The FM indulges in many a 'games' and the opposition shows its 'sportsmanship'. And the people are 'played' with.

The budgeting exercise is not just tabling of the statement of accounts. In the words of the FM, "*a budget speech gives an insight into the vision of the government and spells out the direction for all.*"

In the not so very distant past such exercises were for the industrialists, barons and the elite and how it affected their coffers. But increasingly these opportunities are looked forward to showcase what is laid out and how it affects common (mans') wealth and how does it affect his wealth.

The taxation structure is now mature and well settled. With the new Direct Tax Code we will get into a new era. Hence there is very little to look forward to in this budget by the tax professionals. Unless some bold and innovative FM goes there one day and levies new taxes like '3rd child and onwards tax', 'personality tax' etc. (for those interested in knowing more about these schemes may get in touch with the undersigned)

Can we look forward to a day when all politicians take a pledge to say that "everything I do, I will do for the common wealth of the nation." And then the citizen's would say *'Aal izz well'*

Cover Concept : Narayan Varma and Naushad Panjwani

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The Union Budget
– An Analysis 2010-11

ANALYSIS OF IMPORTANT AMENDMENTS PROPOSED IN THE FINANCE BILL, 2010

DIRECT TAXES

Arvind Dalal	Narayan Varma	Pinakin Desai
Rajan Vora	Kishor Karia	Rajesh S. Shah
Shariq Contractor	Gautam Nayak	Sanjeev Pandit
Rajesh Kothari	Yogesh Thar	Chetan Shah
Kirit Kamdar	Saroj Maniar	Anil Doshi
Naresh Ajwani	Nina Kapasi	Pinky Shah
Sonalee Godbole		

INDIRECT TAXES

Pranay Marfatia	Govind Goyal	Hasmukh Kamdar
Puloma Dalal	Bakul Mody	Raman Jokhakar
Toral Mathuria	Rajkamal Shah	Bharat Shemlani
Naresh Sheth	Suhas Paranjpe	

EXCERPTS FROM SPEECH OF
Pranab Mukherjee, Minister of Finance

25. I am happy to inform the Hon'ble Members that the process for building a simple tax system with minimum exemptions and low rates designed to promote voluntary compliance, is now nearing completion. On the Direct Tax Code the wide-ranging discussions with stakeholders have been concluded. I am confident that the government will be in a position to implement the Direct Tax Code from April 1, 2011.

26. On Goods and Services Tax, we have been focusing on generating a wide consensus on its design. In November, 2009 the Empowered Committee of the State Finance Ministers placed the first discussion paper on GST in the public domain. The thirteenth Finance Commission has also made a number of significant recommendations relating to GST, which will contribute to the ongoing discussions. We are actively engaged with the Empowered Committee to finalise the structure of GST as well as the modalities of its expeditious implementation. It will be my earnest endeavour to introduce GST with the DTC in April, 2011 building a simple tax system with minimum exemptions and low rates.

DIRECT TAXES

- All amendments proposed in The Finance Bill, 2010 would be effective from Assessment Year 2011-12 unless specifically mentioned otherwise.
- In this booklet all proposals of The Finance Bill, 2010 are referred to as if the amendments have been actually made.

1. TAX RATES

Rates for Individuals, HUFs, AOPs and BOIs

The threshold limit of basic exemption has not been raised. However, there is substantial scaling up of the slabs of income for determining rate of tax in case of the above categories of assessees. The new slabs are as under:

Total Income Slab	TAX RATES		
	Resident senior citizens	Resident women below 65 years of age	Others
Up to Rs.1,60,000	NIL	NIL	NIL
Rs. 1,60,001 to 1,90,000	NIL	NIL	10%
Rs. 1,90,001 to 2,40,000	NIL	10%	10%
Rs. 2,40,001 to 5,00,000	10%	10%	10%
Rs. 5,00,001 to 8,00,000	20%	20%	20%
Above Rs. 8,00,000	30%	30%	30%

This results in tax saving for the above categories of assessees (including women and senior citizens) at various level of total income as under:

Taxable Income Rs.	Tax (including Cess) for						Saving for all in Rs.
	Resident senior citizens		Resident women below 65 years		Others		
	A.Y. 2010-11	A.Y. 2011-12	A.Y. 2010-11	A.Y. 2011-12	A.Y. 2010-11	A.Y. 2011-12	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
300000	6180	6180	11330	11330	14420	14420	0
400000	26780	16480	31930	21630	35020	24720	10300
500000	47380	26780	52530	31930	55620	35020	20600
600000	78280	47380	83430	52530	86520	55620	30900
700000	109180	67980	114330	73130	117420	76220	41200
800000	140080	88580	145230	93730	148320	96820	51500
900000	170980	119480	176130	124630	179220	127720	51500
1000000	201880	150380	207030	155530	210120	158620	51500

- **The above table shows there is no tax benefit to above assessees having income up to Rs. 3,00,000/-.**
- For all other categories of assessees there is no change in the tax rates.
- Surcharge continues to be applicable only to domestic companies and foreign companies where the total income exceeds Rs 1 crore. However for such domestic companies the surcharge is reduced from 10% to 7.5%, but for foreign companies it remains unaltered at 2.5%.
- Consequent to the above reduction in surcharge, the effective rate of tax will get reduced on dividend distributed by domestic companies (under Section 115-O) and mutual funds (under Section 115R).
- Additional surcharge called "Education Cess" and "Secondary and Higher Education Cess" for all categories of assessees remains unaltered.

TAX DEDUCTED AT SOURCE: Surcharge will continue to be applicable in determining tax to be deducted at source only from payments to foreign companies. Though domestic companies (having total income above Rs. 1 crore) 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 continue to be considered in computing tax to be deducted at source only in respect of payments to a) foreign companies, b) non-residents and c) salaried employees. 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. MINIMUM ALTERNATE TAX (MAT) – SECTION 115JB

The rate of MAT is increased from 15% to 18%. The MAT rate is effectively now 19.9305%, as against the earlier rate of 16.995% (for companies with book profit exceeding Rs. 1 crore). Carry forward and set off of MAT credit for ten years continue as before.

3. CHARITABLE PURPOSE – SECTION 2(15)

The definition of "charitable purpose" was amended with effect from A.Y. 2009-10, by insertion of a proviso to Section 2(15) to provide 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, irrespective of its use.

A retrospective amendment is now made with effect from A.Y. 2009-10, to the effect that if the aggregate value of the receipts from such activities is not more than Rs. 10,00,000 during the year, such purpose would still be a charitable purpose. The effect of this

amendment would therefore be that in a particular year, an object of the trust may be regarded as a charitable purpose, but in a subsequent year or an earlier year, it may not be so regarded depending upon the amount of receipts from such activity.

4. CANCELLATION OF REGISTRATION OF A CHARITABLE TRUST – SECTION 12AA(3)

Section 12AA(3) provides for cancellation of registration of a charitable trust, where the Commissioner is satisfied that the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust. The Tribunal, in the case of *Bharati Vidyapeeth vs. ITO 119 TTJ (Pune) 261*, had held that this provision does not empower a Commissioner to cancel registration granted under Section 12A before the insertion of Section 12AA. The ratio of this decision is being reversed, by extending the right to cancel registration even to trusts registered under Section 12A. This provision comes in to effect from 1st June 2010.

5. INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – INTEREST, ROYALTY AND FEES FOR TECHNICAL SERVICES PAID TO A NON-RESIDENT: SECTIONS 9(1)(v), (vi) & (vii)

For the purpose of applying deeming fiction contained in Section 9(1)(vii) for taxability of fees for technical services in India, the Supreme Court in the case of *Ishikawajima-Harima Heavy Industries* (288 ITR 408) held that the services should be rendered as well as used in India. The ratio of this decision was found against the legislative intent and hence, retrospective amendment was carried out by the Finance Act, 2007, in the context of payment of interest, royalties and fees for technical services to non-residents governed by Sections 9(1)(v), (vi) & (vii).

Subsequent to the above amendment, the Karnataka High Court in the case of *Jindal Thermal Power Company*, *(225 CTR 220)* held that the amended provision, in its present form, did not do away with the requirement of rendering of services in India [as laid down by Supreme Court in the case of Ishikawajima-Harima Heavy Industries (288 ITR 408)] for any income to be deemed to accrue or arise under section 9.

Now, it is provided with retrospective effect from 1st April, 1976 that the deeming fiction, contained in this provision, will apply whether or not the non-resident has a residence or place of business or business connection in India; and **whether or not the non-resident renders services in India.**

6. SEZ UNITS – SECTION 10AA

Section 10AA(7) was amended by the Finance (No. 2) Act, 2009 to provide that the exemption for a SEZ unit (undertaking) would be computed with reference to the export turnover of the undertaking and

not with reference to the total turnover of the assessee. Consequently, the formula for calculating the deduction was rightly amended as under:

$$\text{Exempted Profit} = \frac{\text{Profit of the business of the undertaking x Export turnover of the undertaking}}{\text{Total turnover of the undertaking}}$$

Since the deduction is claimed in respect of the profit of the undertaking, the old formula was unfair to assessees having multiple units both in the SEZ and the domestic tariff area. As such, the amendment made last year to sub-Section 7 clarified that the above deduction will 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. It is now provided that the amendment carried out last year will be effective retrospectively from the A.Y. 2006-07.

7. CONVERSION OF A PRIVATE COMPANY OR AN UNLISTED PUBLIC COMPANY INTO A LIMITED LIABILITY PARTNERSHIP – SECTIONS 32(1), 35DDA(4A), 43, 47, 47A, 49, 72A and 115JAA

Under Limited Liability Partnership Act, 2008 (LLP Act) a private company or an unlisted public company may be converted into a limited liability partnership (LLP). Amendments have been made for dealing with such conversion.

7.1 Capital Gain – Sections 47, 47A & 49

Clause (xiiib) has been inserted in Section 47 providing that conversion of a private company or an unlisted public company in to an LLP in accordance with Sections 56 and 57 of the LLP Act will not be regarded as a transfer, if the following conditions are fulfilled:

(a) All the assets and liabilities of the company become the assets and liabilities of the LLP.

(b) All the shareholders of the company become the partners of the LLP and their profit sharing ratio and the capital contribution in the LLP are in the same proportion as their shareholding in the company on the date of conversion.

(c) Shareholders of the company do not receive any consideration or benefit, directly or indirectly, other than share in the profit and capital contribution in the LLP.

(d) For a period of at least five years from the date of conversion, the erstwhile shareholders of the company in aggregate are entitled to at least 50% of the profits of the LLP.

(e) The total sales, turnover or gross receipts in the business of the company in any of the three years preceding the year of conversion do not exceed Rs. 60 lakh.

(f) For a period of three years from the date of conversion, the accumulated profits of the company on the date of conversion are not paid to any partner of the LLP, whether directly or indirectly.

Consequential amendment is made in Section 49, to provide that cost of acquisition of the capital assets acquired by the LLP in the process of conversion shall be deemed to be the cost for which the converted company had acquired the assets.

Further, sub-Section (4) has been inserted in Section 47A providing that if any of the conditions in (a) to (f) above are not complied with, then the profits arising from transfer of capital assets or intangible assets on conversion of the company to the LLP not charged under Section 45 shall be taxed in the hands of the LLP in the year in which the conditions are violated.

7.2 Business Income – Sections 32(1), 35DDA(4A) & 43

The fifth proviso to Section 32(1) has been amended to provide that the aggregate depreciation allowable to the converted company and the LLP shall not exceed the depreciation allowable, had the conversion not taken place. Such depreciation shall be apportioned between the two entities in the ratio of the number of days for which the assets were used by them.

The provisions of Section 35DDA have been amended to provide that the balance deduction in respect of expenditure incurred on voluntary retirement scheme allowable to the converted company will be allowable to the LLP from the previous year in which the conversion takes place.

Explanation 2C has been introduced in Section 43(6) to provide that the actual cost of the block of assets, in the hands of the LLP, shall be the written down value of the said block of assets in the hands of the converted company as on the date of conversion. Further, Explanation 13 to Section 43(1) has been amended to provide that the actual cost of any capital asset in the hands of the LLP will be taken as nil, in case deduction for the entire cost of the said asset has been allowed under Section 35AD in the hands of the converted company.

7.3 Carry Forward and Setoff of Losses – Section 72A

Section 72A provides for carry forward and set off of the accumulated losses and unabsorbed depreciation of predecessor assessees in the hands of the successor assessees in certain cases of succession. The cases of succession presently covered by the provisions of Section 72A are conversion of a firm or a proprietary concern into a company and amalgamations and demergers of companies. This section is amended so as to include within its scope also the conversion of a private company or of an unlisted public company into an LLP.

7.4 MAT Credit – Section 115JAA

Section 115JAA has been amended to provide that the MAT credit of the converted company will not be permitted to be carried forward by the LLP, irrespective of whether the exemption under Section 47(xiiib) has been availed of or not.

8. WEIGHTED DEDUCTION FOR EXPENDITURE ON SCIENTIFIC RESEARCH – SECTION 35(1)(ii), 35(2AA) & 35(2AB)

Weighted deduction of 125% allowable under Section 35(1)(ii) in respect of sums paid to a specified scientific research association, or to a university, college, or other institution, which is notified and approved, to be used for scientific research, has been increased to 175% of the sums paid.

Similarly, payments to a National Laboratory, university or Indian Institute of Technology in respect of approved programmes of scientific research will also be eligible for weighted deduction of 175% of the sums paid under Section 35(2AA) as against 125% available presently.

Weighted deduction of 150% under Section 35(2AB) allowable to companies engaged in the business of biotechnology or in any business of manufacturing articles or things, not being items mentioned in the Eleventh Schedule, in respect of scientific research expenditure (excluding cost of land or building) on an approved in-house research and development facility has now been increased to 200%.

9. APPROVED RESEARCH ASSOCIATIONS – SECTIONS 35(1)(iii), 10(21) & 80GGA

Weighted deduction of 125% in respect of contribution for research in social science or statistical research under Section 35(1)(iii) which was hitherto available only in respect of sums paid to an approved university, college or institution, will now also be available in respect of sums paid to approved research associations carrying on research in social science or statistical research.

Presently, deduction under Section 80GGA is available to donations made to approved scientific research associations. The said section has been amended to extend the deduction in respect of donations to approved research associations which have as their objects undertaking of research in social science or statistical research.

Any income of a scientific research association approved under Section 35(1)(ii) is presently exempt from tax under Section 10(21). The exemption is now also extended to associations engaged in research in social science or statistical research covered under section 35(i)(iii).

10. RELAXATION IN PROVISIONS RELATING TO DISALLOWANCE OF EXPENDITURE WHERE TAX IS NOT DEDUCTED AT SOURCE – SECTION 40(a)(ia)

Presently, in respect of any interest, commission, rent, royalty etc., if an assessee does not deduct tax at source or after deducting does not pay the tax so deducted within the stipulated time limit, the relevant expenditure is disallowed under Section 40(a)(ia). The stipulated time

limit is March 31 of the previous year in cases where tax is deductible during the months of April to February in a given previous year and it is the due date of filing the return of income in cases where tax is deductible during the month of March.

The section is now amended to provide that the stipulated time limit for the relevant expenditure to be allowable shall be the due date of filing the return of income irrespective of the month in which the tax was deductible during the relevant previous year.

It is further provided that if tax is deducted and paid in any subsequent year or if it has been deducted in the previous year but is paid in any subsequent year after the due date of filing the return of income, then the deduction for the relevant expenditure shall be granted in such subsequent year of payment.

The above amendments are introduced with effect from A.Y. 2010-11.

11. DEDUCTION IN RESPECT OF CAPITAL EXPENDITURE OF CERTAIN NEW HOTELS – SECTIONS 35AD & 80A

Presently, deduction under Section 35AD is allowed in respect of capital expenditure incurred during the year wholly and exclusively for a specified business subject to fulfillment of certain conditions. The definition of 'specified business' in Section 35AD(8) has been enlarged to include within its purview the business of building and operating a new hotel of two-star or above category anywhere in India which starts functioning on or after 1st April, 2010.

It has further been provided that if deduction is claimed and allowed in respect of capital expenditure of specified business under Section 35AD for any assessment year then no deduction would be available under Chapter VI-A in any assessment year.

Simultaneously, Sub-section 7 has been inserted in Section 80A to provide that if deduction is granted under any of the provisions of Part C of Chapter VI-A dealing with 'Deductions in respect of certain incomes', in respect of business of building and operating a new hotel referred in Section 35AD(8), then the assessee shall not be granted deduction under Section 35AD in respect of such business.

12. INCREASE IN THRESHOLD LIMIT OF TURNOVER ETC. FOR THE PURPOSE OF TAX AUDIT – SECTION 44AB

The threshold limit of total sales/turnover/gross receipts for the purpose of audit of accounts under Section 44AB in the case of persons carrying on business has been increased from Rs. 40 lakh to Rs. 60 lakh. Similarly, the threshold limit of gross receipts in the case of persons carrying on profession has been increased from Rs. 10 lakh to Rs. 15 lakh. The earlier limits were originally fixed by the Finance Act, 1984 with effect from assessment year 1985-86 by the same Finance Minister.

13. INCREASE IN UPPER LIMIT OF TURNOVER FOR THE PURPOSE OF COMPUTING INCOME ON PRESUMPTIVE BASIS – SECTION 44AD

The upper limit of total turnover/gross receipts for the applicability of the provisions of Section 44AD deeming the business income to be 8% of the total turnover/gross receipts on presumptive basis has been increased from Rs. 40 lakh to Rs. 60 lakh.

14. PROFITS AND GAINS IN CONNECTION WITH BUSINESS OF EXPLORATION OF MINERAL OIL - SECTIONS 44BB & 44DA

Section 44BB which provides for a presumptive income at 10 per cent of the gross receipts of a non-resident engaged in providing services in connection with prospecting for, or extraction or production of mineral oil, without any requirement for it to maintain books of account, will no longer be applicable to fees for technical services received by a non-resident from an Indian concern to which the provisions of Section 44DA apply. The provisions of Section 44DA provide for a net basis of taxation if the royalty or fees for technical services is effectively connected to a permanent establishment of such non-resident in India.

15. TAXATION OF GIFTS – SECTION 56(2)(vii) & (viia)

Finance (No. 2) Act, 2009 inserted clause (vii) in Section 56(2) with effect from 1st October, 2009 under which any sum of money received without consideration or any specified property (including immovable property) received without consideration or for inadequate consideration by an individual or HUF is taxable as income. In case of immovable property the taxability was determined with reference to the stamp duty value of such property. Prior to 1st October, 2009, Section 56(2)(vi) was applicable only to any sum of money received without consideration.

It is now provided, that the clause (vii) would apply only where the immovable property is received without any consideration and will not apply to a transaction where the immovable property is received for inadequate consideration. The amendment is effective from 1st October 2009 and thus receipt of immovable property for inadequate consideration will not get covered within the ambit of the provision from inception. It effectively means that only gift of immovable property without any consideration will fall under the mischief of this provision.

Bullion is now added to the list of specified non monetary movable assets covered within the ambit of the above clause with effect from 1st June 2010.

Further, it is provided that only such property (whether movable or immovable) which is in the nature of capital assets would be covered by this clause. Hence, the clause will not apply to stock-in trade, raw

material, consumable stores or any other trading assets. This amendment restricting the application of the clause to only capital assets is also effective from inception of the clause, i.e. from 1st October 2009.

Presently, Section 56(2)(vii) is applicable only to individuals and HUFs. However, a new clause (viia) is inserted with effect from 1st June, 2010 to provide that a firm (which includes LLPs) or a company, not being a company in which the public are substantially interested (closely held company), would be liable to tax, if shares of a closely held company are received by such a firm or a closely held company without consideration or for inadequate consideration. The clause will not apply where such shares are received in certain specified transactions arising out of business reorganization, amalgamation and demerger that are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of Section 47.

Consequential amendments are made in Section 2(24) to include the value of such shares in the definition of income and in Section 49(4) to provide that the cost of acquisition of such shares will be the value which has been subjected to tax as above.

16. REFERENCE TO VALUATION OFFICER – SECTION 142A

The power to make reference to the Valuation Officer for making an estimate of the fair market value of any investment, bullion, property, other valuables referred to in Section 69, 69A or 69B is further extended for estimating fair market value of the property referred to in Section 56(2) of the Act.

This amendment is effective from 1st July, 2010.

17. DEDUCTION FOR INVESTMENT IN INFRASTRUCTURE BONDS – SECTION 80CCF

New Section 80CCF has been inserted to provide for deduction up to Rs. 20,000 for investment made in long-term infrastructure bonds to be notified by the Central Government.

This deduction is in addition to the deduction of Rs. 1 lakh under Section 80C etc.

18. CONTRIBUTION TO CENTRAL GOVERNMENT HEALTH SCHEME – SECTION 80D

Deduction under Section 80D in respect of premia for health insurance (Mediclaim) has been extended to contribution made by the assessee to the Central Government Health Scheme.

19. PERIOD OF COMPLETION FOR HOUSING PROJECTS - SECTION 80-IB(10)

Under Section 80-IB deduction is available in respect of profits derived from developing housing projects if the project is completed

within a period of 4 years from the end of the financial year in which the project was approved. In respect of projects approved after 31st March 2005, the period within which the project may be completed, is being extended to 5 years from the end of the financial year in which the project was approved.

Further, the built-up area for shops and other commercial establishments in the project can now be 3% of the aggregate built up area or 5,000 sq. ft, *whichever is higher*. Presently, the limit is 5% or 2,000 sq. ft, *whichever is lower*. The Explanatory Memorandum to the Finance Bill states that this benefit will be available to projects approved after 31st March, 2005 which are pending for completion in respect of the income relating to assessment 2010-11 and subsequent years.

These amendments are effective from A.Y. 2010-11.

20. INCREASE IN THRESHOLD LIMITS FOR TDS – SECTIONS 194B, 194BB, 194C, 194D, 194H, 194I & 194J

The threshold limits for deduction of tax at source are increased as under :

Section	Nature of Payment	Existing threshold limit of payment (Rupees)	New threshold limit of payment (Rupees)
194B	Winnings from lottery or crossword puzzle	5,000	10,000
194BB	Winnings from horse race	2,500	5,000
194C	Payment to contractors	20,000 (for a single transaction) 50,000 (for aggregate of transactions during financial Year)	30,000 (for a single transaction) 75,000 (for aggregate of transactions during financial year)
194D	Insurance commission	5,000	20,000
194H	Commission or Brokerage	2,500	5,000
194-I	Rent	1,20,000	1,80,000
194J	Fees for Professional or technical services	20,000	30,000

The above amendments will take effect from 1st July 2010.

21. INTEREST LIABILITY FOR FAILURE TO DEDUCT TAX OR FAILURE TO PAY AFTER DEDUCTION OF TAX – SECTION 201(1A)

Presently, any person who is liable to deduct tax fails to deduct whole or any part of tax or after deducting fails to pay tax to the Government is liable to pay simple interest at 1% for every month or part of a month under Section 201(1A).

Now, where any person fails to pay or delays the payment of the tax deducted at source, the rate at which he is liable to pay interest is increased to 1½% from 1% for every month or part of a month. Interest is payable from the date of deduction of tax to the date of payment to the Government.

In othere cases, the interest is payable at 1% for every month or part of a month from the date on which tax was deductible to the date of deduction of such tax.

This amendment is effective from 1st July, 2010

22. CERTIFICATE FOR TAX DEDUCTION/COLLECTION– SECTIONS 203 & 206C

With the computerisation in the income-tax department, it was proposed to dispense with the requirement to issue physical TDS/TCS certificates. Accordingly, deductor/ collector of tax was not required to furnish certificates for deduction of tax at source or collection of tax at source from 1st April, 2010 under the existing provisions.

The practice of furnishing TDS/TCS certificate by the deductor/ collector will now continue even after 1st April, 2010.

23. REFERENCE/APPEAL TO HIGH COURT – SECTIONS 256 & 260A

Various High Courts, including the full bench of the Allahabad High Court, in the case of *CIT vs. Mohd. Farooq 317 ITR 305*, and the Bombay High Court in *Grasim Ltd. 27 DTR 130*, had held that the High Court had no power to condone delay in filing of appeal before it under Section 260A. Sections 256 and 260A are amended with retrospective effect from 1st June 1981 and 1st October 1998 respectively, giving powers to the High Court to admit such belated reference/appeal, if it is satisfied that there was sufficient cause for the delay.

24. SETTLEMENT COMMISSION – SECTIONS 245A, 245C & 245D(4A)

As per the provisions of Section 245C, an assessee may make an application to the Settlement Commission to have its "case" settled. The term "case" is presently defined to includes certain proceedings pending before assessing officer but excludes proceedings for assessment and

reassessment resulting from search or as a result of requisition of books of account or other documents or assets. The definition of the term "case" is amended so as to include such cases of search or requisition of books etc.

Presently commencement of the search and requisition proceedings is deemed as the date of initiation of such proceedings. Amendmend is made in Section 245A to provide that a proceeding for assessment or reassessment for any of the relevant assessment years, shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which assessment is made.

Presently, an application for settlement of a case can be filed if the additional amount of income tax payable on the income disclosed in the application exceeds Rs. 3 lakh. Section 245C is amended so as to enhance this limit to Rs. 50 lakh in cases of search or requisition of books etc. and to Rs. 10 lakh in all other cases.

Presently, the time limit under Section 245D(4A) for passing an order of settlement of case by the Settlement Commission is 12 months from the end of the month in which the application is made. This time limit is extended to 18 months in case of applications made on or after 1st June, 2010.

Similar amendments have been made in the Wealth Tax Act.

These amendments will be applicable with effect from 1st June, 2010.

25. PENALTY FOR FAILURE TO GET ACCOUNTS AUDITED – SECTION 271B

Presently, any person, who fails to get accounts audited or to furnish audit report as required under Section 44AB, is liable to pay penalty of ½% of the total sales, turnover or gross receipts subject to a maximum penalty of Rs. 1,00,000.

Maximum penalty leviable is now enhanced to Rs. 1,50,000.

26. ALLOTMENT OF DOCUMENT IDENTIFICATION NUMBER – SECTION 282B

Every Income Tax authority was required to allot a computer generated Document Identification Number (DIN) in respect of every notice, order, letter or any correspondence issued by him/received by him to/from any other Income Tax authority or to/from assessees or to/from any other person, effective from 1st October, 2010.

The implementation of this provision is now postponed to 1st July, 2011.

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INDIRECT TAXES

SERVICE TAX

The amendments proposed in the Finance Bill, 2010 of Chapter V of the Finance Act, 1994 (Act), Notifications issued and the following Rules framed there under are discussed below:

- CENVAT Credit Rules, 2004,
- Export of Services Rules, 2005
- Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 and
- Service Tax (Determination of Value) Rules, 2006.

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. As per past practice, introduction of new services and changes in existing services come into effect from the date to be notified by the Government after the enactment.

1. RATE OF TAX

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) Promotion, marketing or organizing game of chance including lottery [Section 65(105) (zzzzn)]

Distributors, advertisers, promoters and sellers of lottery are covered under this category. Similarly, services provided for promotion or marketing, or in any manner assisting in organizing any game of chance by whatever name called, such as lotto or bingo conducted electronically or otherwise are covered under this category.

This service was hitherto covered under Business Auxiliary Service, by way of Explanation to Section 65 (19) (ii) in relation to promotion or marketing of services provided by a client. This explanation is now removed.

ii) Health Services [Section 65(105) (zzzzo)]

a) Health check-up or preventive care provided by hospitals, nursing homes or multi-speciality clinics to employees of a business entity including test of fitness levels (e.g. flight or marine crew) for which the payment is directly made by such business entity is covered under this category.

b) Any health check-up or treatment provided by hospitals, nursing homes or multi-specialty clinics under a Health Insurance Scheme of an insurance company for which the payment is made by the insurance company to the hospitals etc. directly is covered under this category. Therefore, cashless medical treatment is now covered. However, if the person makes the payment to hospitals etc. and then reimbursed by the insurance company the same is not covered. Any additional amount paid by the individual to the hospital is not covered.

Individuals not under Health Insurance Scheme or employer's health coverage are not covered.

iii) Maintenance of Medical Records of the employees [Section 65(105) (zzzzp)]

Maintenance of medical records of employees of a business entity for fees by a hospital or any other independent record keeper is covered under this category.

iv) Promotion of a brand of goods, service, event, endorsement of name [Section 65(105) (zzzzq)]

The following services are covered:

a) Service provided to any person by any other person, through a business entity or otherwise under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name including a trade name, logo or house mark of that business entity.

b) Appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event such as product launching event, award function etc.

The word, "brand" includes symbol, monogram, label, signature or invented words, which indicate connection with such goods, service or event of a business entity.

Promotion or marketing of sale of goods or services provided by a client is already covered under Business Auxiliary Service (BAS). Such activities continue to remain under BAS. This category covers mere promotion of a brand even if such promotion cannot be directly linked to promotion or marketing of

a product or service. Promotion of brand name/house mark by a celebrity without reference to any product or service but merely enhancing goodwill or adding value to that brand, is also covered under this category.

v) Permitting commercial use or exploitation of any event [Section 65(105)(zzzzr)]

Granting a right or permitting recording and broadcasting of an event including an event related to art, entertainment, business, sports or marriage for commercial exploitation to any person by any other person through a business entity or otherwise is covered under this category. Such event can be a music concert, films award night, celebrity wedding, beauty contest etc.

vi) Services provided by Electricity Exchanges [Section 65 (105) (zzzzs)]

Electricity Exchanges approved by Central Electricity Regulatory Commission under Electricity Act, 2003 recover charges in relation to trading, processing, clearing or settlement pertaining to sale or purchase of electricity. Such exchanges are now brought under the net of service tax.

vii) Services in relation to copyrights hitherto not covered under IPR [Section 65(105)(zzzzt)]

Presently Intellectual Property Right Service (IPR) excludes copyright. Copyright as defined in Section 13 of the Indian Copyright Act, 1957 includes:

a) Original literary, dramatic, musical and artistic work;

b) Cinematograph films; and

c) Sound recording

In case of original literar, dramatic, musical, lyrics, artistic works, compositions etc. covered under (a) above, the royalty received by the creator/performer holding such copyright is not liable to service tax.

However, consideration received for temporary transfer or use or enjoyment of rights stated in (b) and (c) above is covered under this category.

Recording of cinematographic film and accompanying sound track are generally property of the producer who can temporarily transfer it or permit its use or enjoyment by another person for a consideration. The royalty payments on both imported and indigenously produced films when a producer allows such use to another person, say a distributor, is now subjected to tax.

The tax liability however would depend on the nature and conditions of the contract.

viii) Special services provided by a builder or any other person to a buyer [Section 65(105)(zzzzu)]

When a builder of a residential complex or commercial complex or an authorized person of such builder receives consideration for a preferential location or internal/external development of such complex (e.g. developing/maintaining parks, power backup etc.) the same is covered under this category. However, consideration received in relation to parking space is not covered.

Services covered under Commercial or Industrial Construction, Residential Complex, Management, Maintenance or Repair, are not covered under this category. Development charges to the extent they are paid to the State Government or a local body is excluded from the value of services. Services provided by a Residential Welfare Association or a Co-operative Housing Society are not liable to tax under this category.

3. CHANGES IN EXISTING SERVICES

i) Commercial or Industrial Construction [Section 65(25b) read with Section 65(105)(zzq)] and Construction of Residential Complex [Section 65(30a) read with Section 65(zzzh)]

Scope of these categories is expanded to cover sale of flats / units under construction. Builders/developers are now liable to service tax if any payment towards sale consideration is received before the grant of completion certificate by the competent authorities for such flats/units. This amendment overrides the *Gauhati High Court's decision in the case of Magus Construction Private Limited vs. UOI [2008 11 STR 225]*.

Therefore, if a builder/developer receives the entire sale consideration for flats/units after issue of completion certificate, the same is not liable to service tax.

ii) Port Services [Section 65(105)(zn)], Other Port Services [Section 65(105)(zzl)] and Air Port Services [Section 65(105)(zzm)]

Presently the services provided by persons authorized by the port/airport authorities are liable to service tax under these categories. Disputes exist on classification of services performed within port/airport premises.

Services provided wholly within the port/airport premises are now classified under "Port Service", "Other Port Services" or "Air Ports Services" categories. Classification rules under Section 65A would not apply to such services.

Services provided by any person, whether authorized or not by port/airport authorities, are now liable to service tax under these categories. Specific authorization from port/airport authorities is not a pre-requisite for levy of service tax under these categories.

iii) Commercial Training or Coaching Centre [Sections 65(26), 65(27) read with Section 65(105)(zzc)]

An explanation is added to Section 65(105)(zzc) to clarify that commercial training or coaching centre includes any centre or institute imparting training or coaching for consideration. Training or coaching provided by such institutes is now liable to service tax even if such centre or institute is registered as trust, society or non-profit organization carrying on its activity with or without profit motive. This is a retrospective amendment effective from 1st July, 2003.

Vocational training institutes are exempted from service tax *vide Notification No.24/2004-ST dated 10-9-2004.* The definition of "vocational training institute" is substituted to provide that only industrial training institutes / centres affiliated to National Council of Vocational Training (NCVT) and offering courses in the designated trades covered under Schedule I of the Apprentices Act, 1961 will now be treated as vocational training institutes entitled to service tax exemption *[Refer Notification No. 3/2010-ST, dated 27-2-2010]*.

iv) Sponsorship Services [Section 65(99a) read with Section 65(105)(zzzn)]

Presently the sponsorship services excluding sports provided to a body corporate or a firm is liable to service tax. Now such services provided to any person including in respect of sports is liable to service tax.

v) Air Passenger Transport Services [Section 65(105)(zzzo)]

Presently aircraft operator providing service to passengers embarking in India for international journey in any class other than economy class is liable to service tax.

Now the aircraft operator providing services to passenger embarking in India for domestic or international air travel in any class is liable to service tax.

Taxes charged by Government (including that of a foreign country where passengers disembark) on air passenger will be excluded from the value of services. [*Notification No.15/2010-ST dated 27-2-2010].* Modalities of working out the tax amount including exemptions, abatement etc. would be prescribed in due course. Also refer to Serial No. 7 below.

vi) Auction of Property Services [Section 65(7a) read with Section 65(105)(zzzr)]

An explanation is added in Section 65(105)(zzzr) to clarify that service tax is not to be levied when the Government property, movable or immovable is auctioned. However, auction of private property by Government is liable to service tax.

vii) Renting of Immovable Property Services [Section 65(90a) read with Section 65(105)(zzzz)]

Presently this service is defined to mean services in relation to renting of immovable property. Delhi High Court in case of *Home Solutions Retail India Limited & Others vs. UOI [2009 (14) STR 433]* held that the service tax under this category is on 'services in relation to renting' and not on mere 'renting'.

Taxable service now covers renting of immovable property in addition to any service in relation to such renting for use in course of or furtherance of business or commerce. This is a retrospective amendment overriding the Delhi High Court judgment (supra) and is effective from 1st June, 2007.

The definition of immovable property is further expanded to include the vacant land given on lease or licence for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce. The lease rentals of such vacant land is now liable to service tax.

(Clause 76 of the Finance Bill, 2010 provides for validation of action taken in relation to levy, collection, recovery and refund of service tax on taxable service of "Renting of Immovable Property Service" for the period starting from 1-6-2007 till the date of enactment.)

viii) Management of Investment under ULIP Services [Section 65(105)(zzzzf)]

Presently the service tax is payable on total premium received less value of risk cover and amount segregated for investment.

Service tax is now payable on actual amount charged by the insurer for management of funds under ULIP or the maximum amount of fund management charges fixed by the Insurance Regulatory & Development Authority (IRDA) whichever is higher.

ix) Information Technology Software Services [Section 65(53a) read with Section 65(105)(zzzze)]

Presently the service tax is restricted to information technology software to be used in the course of or furtherance of business only. The scope is now expanded to cover services provided for personal use also.

Pre-packed, canned or packaged software for single use is now exempted from service tax subject to certain conditions. Refer to Serial No. 4 (i) below.

4. EXEMPTIONS

i) Packaged or canned software

Under Information Technology Software service, packaged or canned software intended for single use is exempted on the following conditions:

a) The document providing the right to use such software by whatever name called is packed along with the software.

b) The manufacturer – duplicator or the holder of the copyright to software has paid excise duty or customs duty (in case of Import) on the entire amount received from the buyer.

c) The Importer should not have taken benefit under *Notification No.31/2010-Customs dated 27-2-2010* or in case of domestic production, the manufacturer, duplicator or holder of copyright should not have taken benefit of *Notification No.17/2010-CE dated 27-02-2010.*

[Refer Notification Nos. 2/2010-ST and 17/2010-ST dated 27-2-2010 and effective from this date]

ii) Transportation of goods by road

Transportation of food grains or pulses by road is now exempt along with transportation of fruits, vegetables, eggs and milk by road by a goods transport agency under *Notification No. 33/2004-ST dated 3-12-2004.*

[Refer Notification No. 04/2010-ST dated 27-2-2010 and effective from this date]

iii) Technical testing & analysis and technical inspection & certification

Taxable service provided by a Central or State Seed Testing Laboratory and Central or State Seed Certification Agency notified under the Seeds Act, 1966 to any person in relation to technical testing and analysis and technical inspection and certification of seeds is exempted.

[Refer Notification No. 10/2010-ST dated 27-2-2010 and effective from this date]

iv) Transmission of electricity

Any taxable service provided by any person to other person for transmission of electricity is exempted.

[Refer Notification No. 11/2010-ST dated 27-2-2010 and effective from this date]

v) Erection, commissioning or installation service

Erection, commissioning or installation of mechanized food grain handling systems, equipment for setting up or substantial expansion of cold storage and machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry, aquatic, marine and meat products is exempted.

[Refer Notification No. 12/2010-ST dated 27-02-2010 and effective from this date]

vi) Indian News Agency

Taxable services provided in relation to online information and data base access or retrieval services and business auxiliary services provided by any Indian news agency are exempted subject to the conditions that such news agency is notified as a news agency set up in India solely for collection and distribution of news and which is specified under Section 10(22B) of the Income-tax Act, 1961 and that such news agency applies its income or accumulates it for collection and distribution of news and does not distribute its income in any manner to its members.

[Refer Notification No. 13/2010-ST dated 27-2-2010 and effective from this date].

5. WITHDRAWAL OR AMENDMENTS IN EXISTING EXEMPTIONS

i) General Insurance services [Section 65(49) read with Section 65(105)(d)]:

Notification No. 1/2000-ST dated 9-2-2000 grants exemption for services provided in respect of Group Personal Accident Scheme provided by Government of Rajasthan to its employees is now withdrawn [*Refer Notification No.5/2010-ST dated 27-2-2010 and effective from this date.]*

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

Notification No. 33/2009-ST dated 1-9-2009 granted exemption to Government railway. This exemption is now withdrawn and an exemption in respect of specified goods is granted to all service providers effective from 1-4-2010 [*Notification No.08/2010-ST dated 27-2-2010*.]

In other words, Government owned railway is also now liable to service tax effective from 1-4-2010 on transport of goods other than exempted goods. All service providers are entitled for abatement of 70% of value of taxable services rendered [*Notification No.9/2010-ST dated 27-2-2010 read with Notification No.01/2006-ST dated 1-3-2006].*

6. AMENDMENTS IN EXPORT RULES AND IMPORT RULES

Rules 3(1)(i) and (ii) of the Export Rules, 2005 (Export Rules) are amended to provide as follows:

i) Mandap Keeper's category is shifted from the list containing performance related services [Rule 3(1)(ii)] to the list containing immovable property related services [Rule 3(1)(i)].

ii) Categories of chartered accountant, cost accountant and company secretary are shifted from the list containing performance related services [Rule 3(1)(ii)] to the residual list to which criterion of location of recipient of service is applicable [Rule 3(1)(iii)].

Identically, Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 (Import Rules) are also amended to incorporate the above changes.

iii) The condition prescribed under Rule 2(a) of the Export Rules applicable to all the services viz. "such service is provided from India and used outside India" is deleted.

iv) Further, the common explanation appearing in both Export Rules and Import Rules is substituted to provide that installations, structures and vessels located in the Continental Shelf of India and the Exclusive Economic Zone of India are included in 'India', for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

[Refer Notification Nos. 06/2010-ST and 16/2010-ST both dated 27-2-2010 and also effective from this date].

7. AMENDMENT IN VALUATION RULES

Rule 6 of Service Tax (Determination of Value) Rules, 2006 (Valuation Rules) deals with specific inclusions and exclusions for the purpose of determining value of a taxable service. Sub-clause (2) of the said Rule lists the items to be specifically excluded from the value of taxable service. This Rule is amended to provide that the taxes levied by any Government on any passenger travelling by air would also be excluded while providing service of transportation of passengers by air. However, this is subject to the condition that such taxes are shown separately on the ticket or the invoice for such ticket issued to the passenger.

[Refer Notification No. 15/2010-ST dated 27-2-2010 and effective from this date].

8. CHANGE IN REFUND MECHANISM FOR ACCUMULATED CENVAT CREDIT TO EXPORTERS

Notification No. 5/2006-CE-(N.T.) dated 14-3-2006 is amended for faster and fair settlement of refund claims. Some changes are made retrospectively to clear pending cases.

(i) The retrospective amendments from 14-3-2006 are as follows:

a) The inputs or input services should be used in **or in relation to** the manufacturer of final products cleared for export under bond or letter of undertaking

b) Inputs or Input services should be used **for** providing output services exported without payment of service tax

The above changes are made to align the refund notification with CENVAT Credit Rules so that refund is granted for CENVAT credit refund claimed by exporters of all goods or services.

The illustration given under condition 5 in the said Notification is deleted to ensure that refund of CENVAT Credit availed in the period prior to the quarter/period for which the refund is claimed is also eligible for refund. The refund claim should be calculated only on the basis of the ratio of export turnover to the total turnover of the claimant. This is to ensure that refund of CENVAT is not linked to CENVAT taken in a particular period only.

(ii) Prospective Changes

The conditions A & B in the Annexure to the Notification (in Form A) are deleted and certain additional details are to be furnished in the prescribed table to be certified as under:

Claim less than Rs. 5 lakhs	Claim more than Rs. 5 lakhs
a person authorized by the Board of Directors (in the case of a limited company) or the proprietor / partner, as the case may be	by a Chartered Accountant who audits the annual accounts of the exporter for the purpose of Companies Act, 1956 or the Income-tax Act, 1961, as the case may be

9. AMENDMENT IN THE ACT

i) The term 'business entity' is defined to include an association of persons, body of individuals, a company or a firm but does not include an individual. [Section 65(19b) inserted]. The said definition earlier defined with reference to legal services, is now applicable to all taxable services wherever the term is referred to.

ii) An explanation is inserted in Section 73(3) to clarify that no penalty shall be imposed when the service tax and interest is paid before issuance of show cause notice by the department.

(However, this should be read with overriding provision of Section 73(4) which refers to non payment or short payment of tax on account of fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision of the law with an intent to evade payment of tax.)

10. CENVAT CREDIT RULES, 2004

i) Second Proviso to Rule 3(5) provided that in cases where Capital Goods on which CENVAT Credit has been taken are removed after use, the manufacturer or service provider shall pay an amount equal to CENVAT Credit less 2.5% for each quarter of a year or part there of from the date of taking the Credit.

An amendment has been made, specifying a higher rate of depreciation in case of removal of Computers & Computer peripherals, as under :

Each quarter in a year	Rate of deduction
First	10
Second	8
Third	5
Fourth & Fifth	1

For other capital goods, the rate of 2.5% continues.

ii) Rule 4(2)(a) provided that CENVAT Credit on Capital goods can be availed only to an extent of 50% in the year of receipt (balance 50% in any succeeding year) excepting in cases where capital goods are removed in the same financial year of receipt.

As a relaxation for SSI units, an amendment has been made effective from 1-4-2010 to provide that such units can avail 100% CENVAT Credit on Capital goods in the year of receipt. In this regard, it has been clarified that SSI unit shall be eligible if aggregate value of clearances of all excisable goods for home consumption in the preceding financial year computed in a prescribed manner does not exceed Rs. 400 lakh.

iii) Rule 4(5)(b) provided that CENVAT Credit shall be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer to a job worker for production of goods on his behalf and according to his specifications.

An amendment has been made to allow CENVAT Credit even in cases where jigs, fixtures, moulds and dies are sent by a

manufacturer to another manufacturer for the production of goods according to his specifications.

iv) A retrospective amendment has been made in Rule 6 with effect from 10-9-2004 to provide for reversal of credit or payment of equivalent amount attributable to inputs used in or in relation to excisable goods on which no Central Excise duty is payable. This amendment is effective from the date of enactment and applies only to such manufacturers where the disputes are pending as on the date of enactment.

v) Rule 6(6) has been amended to provide that provisions of sub Rules (1) to (4) [viz proportionate credit] shall not apply in cases where the excisable goods removed without payment of duty are supplied to mega power projects from which power supply has been tied up through tariff based competitive bidding or where the project is awarded to a developer through tariff based competitive bidding.

vi) Rule 15 (confiscation and penalty) has been substituted for creating parity in penal provisions in regard to wrong availment or utilization of CENVAT Credit in respect of inputs/Capital goods / input services by a manufacturer or a service provider.

vii) A retrospective amendment is made in Rule 6 with effect from 10-9-2004 if a dispute relating to adjustment of credit on inputs used in or in relation to exempted final products for the period from 10-9-2004 to 31-3-2008 is pending as on the date of the enactment. A manufacturer availing CENVAT Credit in respect of any inputs or input services and manufacturing final products which are dutiable as well as exempted may pay an amount equivalent to CENVAT Credit attributable to the inputs or input services used in or in relation to the manufacture of exempted goods before or after the clearance of such goods. However, the manufacturer shall pay interest at the rate of 24% p.a. from the due date till the date of payment.

11. OTHER CHANGES

Notification 1/2002 – ST dated 1-3-2002 is superseded by Notification 14/2010 – ST dated 27-2-2010 to provide that construction and operation of installations, structures and vessels for the purposes of prospective or extraction or production of mineral oils and natural gas and supply thereof in the Exclusive Economic Zone (EEZ) and the Continental Shelf of India and any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activities within the Continental Shelf and EEZ of India constructed for the purpose of prospecting or extraction or production of mineral oil and natural gas are covered by the service tax provisions of Chapter V Finance Act 1994.

CENTRAL EXCISE

1. CHANGES IN CENTRAL EXCISE ACT, 1944

i) An explanation is added to Section 11(2B) to provide that no penalty under the Act or the Rules shall be imposed in respect of payment of duty of excise if the person chargeable to duty on his own pays duty and interest thereon. This explanation being clarificatory applies to all pending cases as well.

ii) Provisions relating to Settlement of Disputes by Settlement Commission are amended as follows–

   a) an assessee can now make an application for disputed duty in respect of goods for which no proper records are maintained.

   b) The order is required to be passed within nine months from the last day of the month in which application is made, failing which the proceedings abate. The period can be extended by further 3 months.

   c) An assessee cannot make a second application on any matter if he has made any application in past and the same has been proceeded with and order has been passed for imposition of penalty or application has been abated.

iii) Section 37 of the Act is amended to provide that the Central Government to make rules to provide for withdrawal of facilities or imposition of restrictions (including restriction on utilization of CENVAT credit) on manufacturer or exporter or suspension of registration of dealer, for dealing with evasion of duty or misuse of CENVAT credit.

2. CHANGES IN THE CENTRAL EXCISE RULES

An eligible SSI unit hitherto was required to pay excise duty on a monthly basis after exceeding the maximum exempted clearances during a financial year. They can now pay the duty on quarterly basis by the 5th day of the month following the quarter and file quarterly returns by the 10th day of the month following the quarter.

[The amendment is effective from 1st April 2010]

3. CHANGES IN CENVAT CREDIT RULES, 2004

(Refer to Serial No. 10 under Service Tax)

4. EXCISE TARIFF

i. Standard rate of excise duty for non petroleum goods has been increased from 8% to 10%. The increased rate would apply to all such goods that hitherto attracted the general rate of 8% except in few cases where a fresh exemption or concession is given. The lower rate of 4% is being maintained.

ii. The rate of excise duty on Motor Spirit (petrol) and HDS (diesel) is increased by Re. 1 per litre.

iii. In respect of chewing tobacco and branded un manufactured tobacco packed in pouches with the aid of packing machines, the excise duty will be payable under Section 3A of the Act based on manufacturing capacity. {effective from 12th March 2010]

iv Chapter note is added to provide that in relation to products of heading 6802 and 6810, the process of cutting or sawing or sizing or polishing or any other process for converting of stone blocks into slabs or tiles shall amount to manufacture. Similarly in relation to products of heading 7608 the process of drawing or redrawing shall amount to manufacture.

[Effective from 27th February, 2010, unless stated otherwise]

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

5. OTHER CHANGES

i) Eligible SSI manufacturers of plastic bottles and plastic containers bearing brand name of other person are now entitled to SSI exemption.

ii) Invoices are now not required to be pre-authenticated.

iii) A Clean Energy Cess is imposed on coal, lignite and peat produced from India. [effective date to be notified]

iv) In respect of packaged or canned software exempted from payment of duty subject to compliance of conditions.

CUSTOMS

i) There is no change in the overall rate structure of basic customs duty. The peak rate of 10% and lower slab rates are maintained. However there are changes in respect of certain commodities/ goods.

ii) Goods imported in pre-packaged form and intended for retail sale are exempted from additional duty of customs of 4%. Exemption is only for the goods requiring declaration of retail sale price either under Standards of Weights and Measures Act or under any other law. Alternative scheme of exemption by way of refund if VAT is paid on goods is also continued.

iii) Following projects are notified under heading 98.01

   a) cold storage, cold room, or industrial projects for preservation, storage or processing of agricultural, horticultural, dairy, aquatic and marine produce and meat.

   b) project for installation of Mechanized Handling Systems and Pallet Racking systems in mandies or warehouses for food grains and sugar

   c) Mono Rail Projects for urban public transport

   d) Setting up of Digital Head

iv) Specified road construction machinery imported under exemption scheme is now allowed to be sold on payment of customs duty at depreciated value at the rate of duty applicable at the time of import.

v) The current limit of Rs. One lakh per annum for duty free import of samples is enhanced to Rs. Three lakh.

vi) Section 3 of the Customs Tariff Act is amended to provide that the value of the imported goods for the purpose of charging CVD in respect of goods chargeable to excise duty on the basis of maximum retail sale price under Medicinal and Toilet Preparations (Excise Duties) Act, 1955, shall be the retail sale price declared on such imported goods less the amount of abatement if any.

[Amendment at Sr. No. vi) is effective from the date of enactment and other amendments are effective from 27th February 2010]

CENTRAL SALES TAX

1. Section 6A dealing with branch/stock transfers, is amended to confer more powers of reassessment/revision to the assessing authority / higher authority respectively if new facts are discovered or it is found that the findings of the lower authorities were contrary to law.

   [This amendment appears to reverse the ratio of judgment of Hon'ble Supreme Court in case of Ashok Leyland Ltd.(134 STC 473)(SC). In this case, Supreme Court held that once the 'F' forms are allowed, they can be disallowed only if they were fraudulent. Now, even if the 'F' forms are genuine, the authorities will be entitled to reassess/revise if the order under Section 6A(2) was contrary to law.]

2. Chapter VA has been inserted in the CST Act, 1956, which provides for an appeal against the order passed u/s 6A(2) or (3), to the highest appellate authority of the State.

   [The amendment appears to cut down the first appellate stage. As per this amendment, the appeal against original order under Section 6A (2) & (3) will lie to highest appellate authority and from that order to CSTAA. The Section 18A in this chapter is a self contained code giving procedural provisions like time limit for filing grant of stay, deciding appeal etc.]

3. Section 20 of the CST Act, 1956 which relates to appeals to CSTAA is amended by substituting sub-Section (1). The amended sub-section now provides that the appeal against order of the highest appellate authority of the state determining issues relating to stock transfer or consignment of goods in so far as they involved dispute of inter state nature will lie to CSTAA.

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GOODS AND SERVICES TAX (GST)

The Finance Minister, in his budget speech expressed his earnest desire to introduce GST by April, 2011.

He further stated that to achieve the roll-out of GST by April 2011, the indirect tax administrations at the Centre and the States need to revamp their internal work processes based on the use of Information Technology. As a step in this direction, the project ACES - Automation of Central Excise & Service Tax, has already been rolled out throughout the country this year. A similar Mission Mode Project for computerisation of Commercial Taxes in States has also been approved. The project will lay the foundation for the launch of GST.

| |

BCAS at your service

A voluntary organisation established on 6th July 1949, BCAS has about 8,000 members from all over the country at present and is a principle-centred and learning-oriented organisation promoting quality service and excellence in the profession of Chartered Accountancy and is a catalyst for bringing out better and more effective Government policies & laws and for clean & efficient administration and governance.

The diverse activities of BCAS include:

BCA Journal: The Bombay Chartered Accountant Journal (BCAJ) is a publication with a track record of over 40 years and is considered as an outstanding publication by tax and accounting professionals in practice or in industry. It includes analytical articles and updates on the subjects such as Direct Tax, Indirect Tax, International Tax, Accounting and Auditing and Information Technology.

Publications: Every year BCAS publishes an Annual Diary and Referencer along with a CD which is an indispensable tool for professionals as well as those in the industry. We also publish books on varied topics of professional interest such as Tax Audit Manual, Audit Check-list, TDS, Fraud, Transfer Pricing and FEMA.

Representations: 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, and Central Board of Direct Taxes among others.

Educational Activities: BCAS also conducts various educational activities such as seminars, workshops, residential refresher courses, study circles, lecture meetings, distant learning programmes on Service tax and TDS.

Free Advisory Clinics: BCAS conducts following free clinics: Accounts & Audit Clinic, Charitable Trust Clinic and RTI Clinic to help the members & non-members in respective areas. Eminent experts provide free advice at these clinics on pre-fixed days.

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

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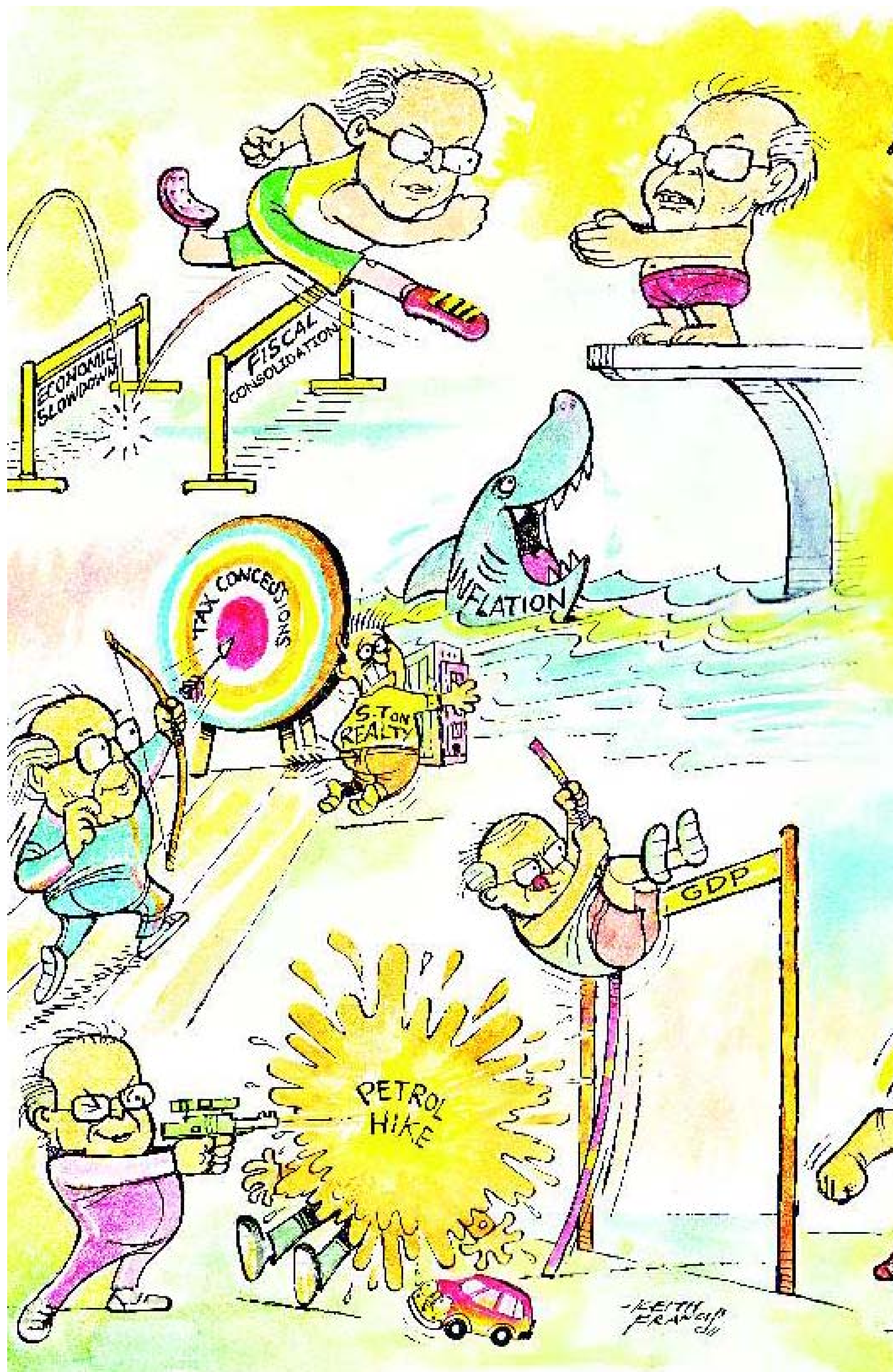

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