An Overview of
THE FINANCE BILL 2009

K C Mehta & Co.
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The budget this year is expected to show both, continuity as well as change.

The new Government, with a stable majority, has the authority to push the pedal on the reforms they had gradually initiated, despite several pitfalls, in the previous tenure.

Pace would be an important factor to consider in the coming years. One would see a process of unshackling and de-bottlenecking of the economy, so that it gathers greater steam and momentum. One will observe ways and means to encourage investment activities, increase indirect tax inflows and offer relaxations in direct tax structures. The Government will look at sustainable and inclusive growth, a model of development that would benefit all sections of Society. An aggressive policy of disinvestment could help build government coffers, so as to initiate upward movement in the stock markets and build positive market sentiment.

Considerations of the global economic slowdown cannot be wished away and initiatives to boost overall demand and buoyancy in the markets will be significant. Infrastructure and capital goods would be the sectors to watch. They will help address a vital area of concern - inflow of large investments. One could expect major steps to encourage and empower them.

Overall, this budget will set the tone and continuum for holistic development that would take the country into the league of big nations in the years to come.

The title page this year symbolizes the pace aspect. The dark background with the illuminous light shows the road map even in times of the economic slowdown. The speedo meter like form shows a direct context with the main theme i.e. continuity and change. The various arrows showing mobility are symbollic of the reforms and goals set by the government in the direction for growth.

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FINANCE (No. 2) BILL, 2009

Unless otherwise specifically mentioned, the amendments proposed are to be effective from A.Y. 2010-2011 and are therefore applicable with respect to income arising on or after 1st April 2009. Specific mention is made at the relevant places, when the effective date of a proposed amendment is other than 1st April 2009. Reference to the existing provisions means the provisions of the Act immediately prior to the amendments proposed in the Bill. Reference to Finance Bill, 2009 in this publication refers to Finance (No. 2) Bill, 2009.

Any reference to the sections, unless otherwise stated, is to the sections of the Income Tax Act, 1961.

A. RATES OF TAX

In respect of rates of tax, the following changes have been proposed in the Finance Bill, 2009:

- Increase in basic exemption limit by Rs. 10,000/- in case of Individuals, HUFs, AOPs and BOIs (other than Senior Citizens) and Rs. 15,000/- in case of resident Senior Citizens.
- Surcharge of 10% applicable to the Individuals, HUFs, AOPs, BOIs, Firms & Co-operative Societies has been abolished. There is no change in the applicability of the surcharge in case of Companies, including foreign companies.
- There is no change in tax rates of Firms, Domestic Companies, Companies other than Domestic Companies, Co-operative Societies.
- There is no change in rates of Educational Cess, Secondary & Higher Secondary Cess and its applicability.
- Banking Cash Transaction Tax has already been abolished in respect of transactions entered into after 1st April, 2009
- Commodities Transaction Tax is proposed to be abolished in respect of transactions in commodities entered into with effect from **1st April, 2009**.
- Fringe Benefit Tax is proposed to be abolished in respect of expenses incurred after **1st April, 2009.**
- Threshold limit of payment of wealth-tax under Wealth Tax Act, 1957 is increased from Rs. 15.00 lacs to Rs. 30 lacs.
- Rate of Minimum Alternate Tax in case of Companies is proposed to be increased from 10% (effective 11.33% with surcharge and cess) to 15% (effective 16.995% with surcharge and cess).
- Rate of Dividend Distribution Tax remains same. However, the dividend paid to the New Pension Trusts would be exempted from the Dividend Distribution Tax.

The proposed income tax rates (including surcharge, Education Cess and Secondary and Higher Secondary Cess) for the A.Y. 2010-11 have been given in **Table 1** for ready reference. These income tax rates are applicable on any income earned during the period from 1st April 2009 to 31st March 2010.

The rates of Dividend Distribution Tax, Securities Transaction Tax & Wealth Tax are given in **Table 2**.

The rates of TDS and TCS are contained in **Table 3**.

TABLE 1

Particulars	Threshold limit for Surcharge	Tax Rates	
		Without Surcharge	With Surcharge
Individual, HUF, AOP & BOI	**NIL**		
Upto Rs. 160000		**Nil**	**N.A.**
Rs. 160001 to Rs. 190000 *		**10.300%**	**N.A.**
Rs. 190001 to Rs. 240000 **		**10.300%**	**N.A.**
Rs. 240001 to Rs. 300000		**10.300%**	**N.A.**
Rs. 300001 to Rs. 500000		**20.600%**	**N.A.**
Rs. 500001 onwards		**30.900%**	**N.A.**
* "Nil" tax rate in case assessee is resident Senior Citizen or resident Women below age of 65 years			
** "Nil" tax rate in case assessee is resident Senior Citizen			
Partnership Firm	**NIL**	**30.900%**	**N.A.**
Domestic Company	**1,00,00,000**	**30.900%**	**33.990%**
Company other than Domestic Company	**1,00,00,000**	**41.200%**	**42.230%**
Local Authority	**NIL**	**30.900%**	**N.A.**
Co-operative Society	**NIL**		
Upto Rs. 10000		**10.300%**	**N.A.**
Rs. 10001 to Rs. 20000		**20.600%**	**N.A.**
Rs. 20001 onwards		**30.900%**	**N.A.**
Minimum Alternate Tax			
Domestic Company	**1,00,00,000**	**15.450%**	**16.995%**
Company other than Domestic Company	**1,00,00,000**	**15.450%**	**15.836%**
STCG on Listed Securities			
Individual, HUF,AOP & BOI	**NIL**	**15.450%**	**N.A.**
Partnership Firm	**NIL**	**15.450%**	**N.A.**
Domestic Companies	**1,00,00,000**	**15.450%**	**16.995%**
Company other than Domestic Company	**1,00,00,000**	**15.450%**	**15.836%**
STCG on assets other than listed securities			
Individual, HUF,AOP & BOI	**NIL**	**As per slab**	**As per Slab**
Partnership Firm	**NIL**	**30.900%**	**N.A.**
Domestic Companies	**1,00,00,000**	**30.900%**	**33.990%**
Company other than Domestic Company	**1,00,00,000**	**41.200%**	**42.230%**
LTCG on assets other than Listed Securities			
Individual, HUF,AOP & BOI	**NIL**	**20.600%**	**N.A.**
Partnership Firm	**NIL**	**20.600%**	**N.A.**
Domestic Companies	**1,00,00,000**	**20.600%**	**22.660%**
Company other than Domestic Company	**1,00,00,000**	**20.600%**	**21.115%**

TABLE 2

Particulars		Tax Rates
Dividend Distribution Tax		
By Domestic Company		**16.995%**
By Money Market Mutual Fund or Liquid Fund		**28.325%**
By Other Mutual Funds		
- For income distributed to Individual / HUF		**14.163%**
- For income distributed to others		**22.660%**
Securities Transaction Tax		
Delivery based purchased of an Equity Share in Company or a Unit of an Equity Oriented Fund		**0.125%**
Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund		**0.125%**
Non-Delivery based sale of an Equity Share in Company or a Unit of Equity Oriented Fund		**0.025%**
Derivatives (Future & Options)		**0.017%**
Sale of an option in securities where option is exercised		**0.125%**
Repurchase of Units of an Equity Oriented Fund		**0.250%**
Wealth Tax	**Threshold limit**	
For every individual, HUF and Company	30,00,000	1%

TABLE 3
TDS RATE FOR THE ASSESSMENT YEAR 2010-2011 (in %)
(TDS rates with effect from 1st April 2009)

Section	Nature of Payment	Threshold Limit (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
192	Salary	As per Slab	Normal Rate (Including Cess)	N.A.	N.A.	N.A.
193	Interest on Securities					
	(1) Interest on Debentures or Securities (Listed)	2,500*	10.00	10.00	10.00	20.00
	(2) Interest on 8% Savings (Taxable) Bonds, 2003	10,000	10.00	10.00	10.00	20.00
	(3) Any Other Interest on Securities (Unlisted)	0	20.00	20.00	20.00	20.00
194	Dividend other than dividend covered by Section 115-O **(* in case of resident individuals only)**	2,500*	20.00	20.00	20.00	20.00
194A	Interest other than Interest on Securities (cases other than below)	5,000	10.00	10.00	10.00	20.00
	Where the payer is					
	(1) Banking Company	10,000	10.00	10.00	10.00	20.00
	(2) Co-operative Society engaged in banking business	10,000	10.00	10.00	10.00	20.00
	(3) Post Office under a deposit scheme framed by Central Government	10,000	10.00	10.00	10.00	20.00
194B	Winning from Lotteries	5,000	30.00	30.00	30.00	30.00

Section	Nature of Payment	Threshold Limit (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
194BB	Winnings from Horse Races	2,500	30.00	30.00	30.00	30.00
194C	Payments to Contractors **(upto 30-09-2009)**					
	(1) In case of Advertising	20,000[1]	1.00	1.00	1.00	1.00
	(2) Other Contracts	20,000[1]	2.00	2.00	2.00	2.00
	(3) Sub-Contracts	20,000[1]	1.00	1.00	1.00	1.00
194C	Payments to Contractors **(w.e.f. 01-10-2009)**					
	(1) In case of Contract/ Sub-Contract/ Advertising	20,000[1]	1.00	2.00	2.00	2.00
	(2) Contractor/ Sub-Contractor in Transport Business	20,000[1]	NIL[2]	NIL[2]	NIL[2]	NIL[2]
194D	Insurance Commission	5,000	10.00	10.00	10.00	20.00
194E	Non-Resident sportsman/ sports association	0	10.00	10.00	10.00	NA
194EE	Deposits under NSS to Resident/Non-Resident	2,500	20.00	20.00	20.00	NA
194F	Repurchase of Units of Mutual Fund/UTI from Resident / Non-Resident	0	20.00	20.00	20.00	NA

[1] This limit is for individual transaction. However, if aggregate payment to a transporter during the year exceed Rs. 50,000, then tax will be required to be deducted, even where individual transaction is less than the threshold of Rs. 20,000

[2] The Nil rate will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 1% for individual and HUF transporter and 2% for other transporters upto 31-03-2010. (Transporter means persons engaged in plying, hiring and leasing of Goods Carriages)

Section	Nature of Payment	Threshold Limit (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
194G	Commission on Sale of lottery tickets to Resident / Non-Resident	1,000	10.00	10.00	10.00	10.00
194H	Commission or Brokerage to Resident	2,500	10.00	10.00	10.00	10.00
194I	Rent to Residents **(upto 30-09-2009)**					
	(a) Rent for Machinery/ plant/equipment	1,20,000	10.00	10.00	10.00	10.00
	(b) Rent for other than in (a)	1,20,000	15.00	20.00	20.00	20.00
194I	Rent to Residents **(w.e.f 01-10-2009)**					
	(a) Rent for Machinery/ plant/equipment	1,20,000	2.00	2.00	2.00	2.00
	(b) Rent for other than in (a)	1,20,000	10.00	10.00	10.00	10.00
194 J	Fees for professional / Technical Services to Resident	20,000	10.00	10.00	10.00	10.00
194LA	Compensation to Resident on acquisition of immovable property	1,00,000	10.00	10.00	10.00	10.00
196B	Income from units (including long term Capital Gain on transfer of such units) to an offshore fund	0	10.00	10.00	10.00	10.00
196C	Income from foreign currency bonds or GDR of Indian Company	0	10.00	10.00	10.00	10.00
196D	Income of FII from securities not being dividend, long term and short term capital gain	0	20.00	20.00	20.00	20.00

TCS RATE FOR THE ASSESSMENT YEAR 2010-2011 (in %)
(TCS rates with effect from 1st April 2009)

Section	Nature of Payment	Threshold Limit (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
206C	Scrap	0	1.00	1.00	1.00	1.00
206C	Tendu leaves	0	5.00	5.00	5.00	5.00
206C	Timber obtained by any mode and any other forest produce	0	2.00	2.00	2.00	2.00
206C	Alcoholic liquor for human consumption and Indian made foreign liquor	0	1.00	1.00	1.00	1.00
206C	Parking lot, toll plaza, mining and quarrying	0	2.00	2.00	2.00	2.00

Note: 1

In order to strengthen the PAN mechanism, it is proposed to make amendments in the Income Tax Act to provide that any person whose receipts are subject to deduction of tax at source i.e., the deductee, shall mandatorily furnish his PAN to the deductor, failing which the deductor shall deduct tax at source at higher of the following rates:

(i) the rate prescribed in the Act;
(ii) at the rate in force i.e., the rate mentioned in the Finance Act; or
(iii) at the rate of 20 percent

The above provisions will also apply in cases where the taxpayer files a declaration in form 15G or 15H (under section 197A) but does not provide his PAN. Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

Note: 2

In case of payment made to non-domestic company exceeding Rs. 1,00,00,000 the above mentioned rates shall be increased by surcharge at the rate of 2.5%.

In case of payment made to any non-resident person (including non-domestic company) the above mentioned rates shall be increased by education cess 2% and secondary and higher secondary education cess of 1%.

B. PERSONAL TAXATION

B.1 Payments under Voluntary Retirement Scheme

There are several decisions which held that an employee is entitled to take benefit of exemption available U/s. 10(10C) in respect of amount received under a voluntary retirement scheme and he is also entitled to the rebate available U/s. 89(1) of the Act in respect of amount received in excess of exempted sum U/s. 10 (10C).

Simultaneous amendments have been proposed in Section 10 (10C) and also in section 89 so as to make both the deduction mutually exclusive. The amendment provides that if the exemption is claimed U/s. 10(10C) for any year, then deduction shall not be available U/s. 89 in respect of VRS payments received. Similarly provision has been made in section 10(10C) to provide that if an assessee has claimed rebate u/s. 89 in respect of VRS payment, then exemption U/s. 10(10C) will not be admissible to such an assessee. It is also proposed that the denial of the benefit has been made applicable across the assessment years.

B.2 Taxation of ESOPs / Sweat Equity Shares

Section 17(2)(vi) is proposed to be amended to provide that the value of any benefit arising to an employee in the form of transferring or allotting any security at a price lower than the fair market value of such security shall be liable to be taxed as perquisite in the hands of the employee on the date of allotment / transfer of such security. It is also provided that the security shall mean and include the share allotted or transferred under an employee stock option plan or as sweat equity shares. In case, where the specified security is given free of cost then the entire fair market value of such security will be taxable. However, if such security is given at concessional rate, then the difference between the FMV and the price paid by the assessee is chargeable as perquisites.

It has been also provided that the fair market value of the security is to be determined as on the date on which the assessee exercises his option to purchase the shares, in the manner as may be prescribed.

Tax is payable on the date on which shares are allotted or transferred to the assessee.

Amendments have been proposed in section 49 by inserting sub-section (2AB) for considering the fair market value considered for determining the value of perquisites as the cost of acquisition for computing the capital gains.

B.3 Taxation of Gifts – Scope expanded to include Gifts in Kind

Under the existing provisions of section 56(iv) an individual or HUF recipient of the gift is chargeable to tax, if the aggregate of the gifts received in a year exceeded Rs. 50,000. However, the present scope of tax was restricted to gift of any "sum of money". With the usage of the term "sum of money" it was generally interpreted that it would include only gifts in cash and would not include the gift in kind. The proposed amendment seeks to introduce all kinds of gifts, including the transfers of movable and immovable properties without adequate consideration. Under the expanded provisions, the following tax consequence shall arise:

Transfer of Asset	Chargeable amount
Immovable property is received without consideration	Stamp duty value of the property
Immovable property is received at value which is less than stamp duty value	Difference between stamp duty valuation and consideration paid
Movable property is received without consideration	Fair market value of such property
Movable property is received for a consideration which is less than the fair market value	Difference between the fair market value of such property and consideration

For each of the chargeable category of gift, separate limit of Rs. 50,000 has been provided and unless individual items of gifts in kind exceed Rs. 50,000, the same will continue to remain outside the tax net.

If the stamp duty value of immovable property is disputed by the assessee the AO may refer the valuation of such property to a Valuation Officer. In such cases, the provisions of existing section 50C (treating stamp duty value as sale consideration) and sub-section (15) of section 155 (value adopted as per section 50C subsequently revised in an appeal or revision or reference) of the Income Tax Act shall, as far as may be, apply for determining the value of gift.

It is also proposed to provide that,—

(i) the value of movable property shall be the fair market value as on the date of receipt in accordance with the method prescribed; and

(ii) in the case of immovable property, the value of the property shall be the 'stamp duty value' of the property.

The exemption as contained in earlier provision shall continue to apply. Accordingly, assets received from relatives, at the time of marriage, under will or by way of inheritance, in contemplation of death of the donor, from local authority or from approved association or institution shall not be chargeable to gift.

Restrictive definition of property is being used and it means immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures and any work of art. The properties which are outside this description, would not be covered by the amended provisions.

This amendment will take effect from 1st October, 2009 and will accordingly apply for transactions undertaken on or after such date.

B.4 Interest on compensation / enhanced compensation

There have been different practices for taxing the interest on the compensation / enhanced compensation received by the Assessee. In some cases, the assessee offered the interest by spreading it over the period to which it pertained and in other cases, it was offered on cash basis. Amendment is proposed in Section 145A, providing that irrespective of the method of accounting adopted by the assessee, the interest on the compensation / enhanced compensation shall be taxable only in the year in which such interest is received by the assessee.

It is further provided that the interest on the compensation / enhanced compensation is taxable under the head income from other sources.

For reducing the rigour of charging the entire interest in one single year, a deduction of 50% of such interest is proposed to be given by insertion of clause (iv) in section 57.

B.5 Contribution to Pension Fund – scope expanded

Deduction U/s. 80CCD provides for deduction in respect of contribution to pension scheme of Central Government as does not exceed 10% of his salary. Presently the deduction is allowable only to individuals who were employed by the Central Government or by any other employer. The benefit of the said deduction was not available to self employed persons. It is now proposed to be extended to other individuals also. In view of such proposed amendment the deduction of the said provision is now available to any person being an individual if he makes contribution to pension scheme of Central Government.

B.6 Increase in limit for deduction for medical treatment of severely disabled dependent

Presently the deduction of Rs. 75,000 is available to assessee being an individual or Hindu Undivided Family in respect of maintenance including

medical treatment of a dependant who is a person with severe disability prescribed under the Act. The Finance Bill 2009 proposes to increase the said limit to Rs. 1,00,000. It may be noted that the deduction of Rs. 50,000 for similar expenses incurred for the persons with disability remains same.

B.7 Expansion of Scope of Deduction of interest on loan taken for higher education

Section 80E provides for deduction in respect of interest on loan taken for higher education from any financial institutions or an approved charitable institution for the purpose of pursuing full time studies for any graduate or post graduate course in engineering, medicine, management or for post-graduate course in applied science or pure science including mathematics and statistics. However, the deduction was admissible in case where the education pertained to vocational training. Amendment is proposed so as to extend its scope to cover all fields of studies including vocational studies pursued after passing the Senior Secondary Examination or is equivalent from any school, board or university.

B.8 Zero Coupon Bonds

Concept of Zero Coupon Bonds was introduced w.e.f. A.Y. 2006-07 and favourable tax treatment (in the form of no TDS, 10% tax rate for unindexed long term capital gains and pro-rata deduction to the issuer of the amount of discount given) was allowed only to infrastructure capital company / fund or public sector company. Now this benefit is sought to be made available also to scheduled banks to enable them to source their long term funds. The proposed amendment is to be effective from A.Y. 2010-11.

C. TRUSTS

C.1 Charitable Trusts / Institutions

By Finance Act, 2008, it was provided that the charitable trusts or institutions would not be eligible for exemption under the Income Tax Act, if they are engaged in the activity in the nature of trade, commerce or business or any activity of rendering any service for fee. However, the institutions engaged in providing relief of poor, education or medical relief were allowed to carry on activity of the nature of trade, commerce or business without losing the benefit under the Income Tax Act. Under the proposed amendment it is provided that the organizations involved in:

- preservations of environment
- Preservations of monuments or places or objects of artistic or historic interests

would not lose their tax free status, merely because they are engaged in the activity of trade, commerce or business.

C.2 Time limit for filing applications U/s. 10(23C)

Under the existing provision, any fund, trust, institution, university, other educational institution, hospital or medical institution, seeking exemption U/s. 10(23C) is required to seek approval of the Chief Commissioner. The application for such purpose is required to be made on or before end of the relevant financial year for which exemption is sought. It is now provided that the application for approval is to be made on or before 30th September, next following the expiry of the financial year for which the exemption is sought.

C.3 Provisions relating to the Electoral Trusts

Amendments have been proposed to recognize the concept of contribution to political parties by creation of independent electoral trusts. Electoral Trusts are proposed to be defined as a trust and approved in this behalf by the Central Government in accordance with the scheme framed.

Proposed insertion of Section 13 B, exempts income of such electoral trusts, if

(a) such electoral trust distributes to any registered political party 95 % of the donations received during the previous year, together with surplus brought forward from earlier years, and
(b) such electoral trust functions in accordance with the rules made by the Central Government

Consequential amendments are also proposed in Section 80 CCB and 80 CCD for giving deduction to the donors of such electoral trusts.

C.4 Tax relief on anonymous donations in certain cases

Presently anonymous donations received by charitable institution (except wholly religious institutions) are chargeable to tax at 30% by virtue of Section 115BBC. To avoid hardship in genuine cases, it is proposed to exempt from tax the anonymous donations, so long as the same do not exceed Rs. 1,00,000 or 5% of total income, whichever is higher.

The above amendment shall be effective from **1st April 2010 (i.e. A.Y. 2010-2011)**

C.5 Contribution to Electoral Trusts

Section 80GGB and Section 80GGC of the Act provide for deduction in respect of contribution given to political parties by companies and by any person respectively. There are cases where the corporate houses have set up electoral trusts for making political contributions and independent persons have been put in charge of such trusts for avoiding any quid pro quo expected from political contributions. To encourage such practices, provisions are introduced for setting up, approving, exempting income of the electoral trusts.

The Finance Bill 2009 proposes to amend the above sections so as to provide 100% deduction in respect of donations to electoral trusts.

C.6 Amendments to Section 80 G

The definition of Charitable Purpose was amended by the Finance Act, 2008, withdrawing the charitable status to several institutions carrying on activities in the nature of trade, commerce or business and which were primarily carrying out activities with the object of general public utilities. Consequently, these trust would also lose the approval U/s. 80 G granted to them, denying the tax deduction to the donors. To avoid any such unintended hardship, it has been provided that institutions which were approved U/s. 80 G (5) for the previous year 2007-08, shall be deemed to be registered for financial year 2008-09.

A further amendment is proposed to provide that like approval U/s. 12 A, approval U/s. 80 G(5) may also be given once and for all. Under the existing provisions, the CIT is not permitted to grant such approval beyond a period of 5 years.

D. BUSINESS INCOME

D.1 WDV of Assets partially used for producing exempt income

Section 32(1)(ii) provides that depreciation is to be allowed and computed at the prescribed percentage of written down value (W.D.V.) of any block of assets. Section 43(6)(b) provides that W.D.V. in the case of assets acquired before previous year shall be computed by taking the actual cost to the assessee less all depreciation "actually allowed" to him under the Income Tax Act.

The word "actually allowed" was interpreted by the Supreme Court in the case CIT Vs. Doom Dooma India Ltd 222 CTR 105. The Supreme Court held that where any income is partially agricultural and partially chargeable to tax under the head "Profit & Gains of Business", the depreciation deducted in arriving at the taxable income alone is to be taken into account for computing the W.D.V. for the subsequent year. The word "actually allowed" was therefore restricted by the Supreme Court and it was held that depreciation pertaining to agriculture should not be deducted for determining the WDV.

The Finance Bill 2009 proposes to nullify the aforesaid decision of Supreme Court by inserting the Explanation 7 to Section 43(6) of the Act. In Memorandum explaining Provisions of Finance Bill 2009, it is stated that the above interpretation made by Hon'ble Supreme Court is not in accordance with the legislative intent. It is therefore proposed to provide that in the case of "composite income", depreciation shall be computed as if the total composite income of the assessee is chargeable under the Income-tax Act and such depreciation shall be deemed to have been "actually allowed" to the assessee. Opening W.D.V. of the next assessment year is to be computed after reducing the entire depreciation so computed.

This amendment has been made effective from A.Y. 2010-11.

D.2 Weighted deduction for Research and Development – Scope extended

Under the existing provisions, the expenditure [capital (excluding land and building) as well as revenue) incurred on scientific research in a facility approved U/s. 35(2AB) is eligible for deduction @ 150 % of the expenditure incurred. This deduction is presently available only in specified industries. The scope of this section has been widened by including all businesses of manufacture or production of any article or thing. However, businesses manufacturing items listed in the negative list contained in Eleventh Schedule is excluded from this benefit.

D.3 Abolition of Commodity Transaction Tax and its deduction

By making separate provision, the commodity transaction tax has been abolished in respect of transactions in commodities entered into on or after 01.04.2009. Consequently the provision of section 36(1)(xvi) allowing deduction of such tax from the total income is also proposed to be withdrawn.

E. NON CORPORATE TAXATION

E.1 Increase in limit of allowability of remuneration

Section 40(b)(v) prescribes limit up to which remuneration paid to working partner is allowable as deduction to a partnership firm (which would now also include the limited liability partnership). Presently the allowable remuneration is computed based upon prescribed percentage of book profit limit as under:

Firm Carrying on profession specified U/s. 44AA		Other Firm	
Book Profit	**Maximum allowable deduction**	**Book Profit**	**Maximum allowable deduction**
Loss or book profit Up to Rs.1,00,000	Rs.50,000 or 90% of Book Profit whichever is higher	Loss or book profit Up to Rs.75,000	Rs.50,000 or 90% of Book Profit whichever is higher
Next Rs.1,00,000 of Book Profit	60% of book profit	Next Rs.75,000 of Book Profit	60% of book profit
On balance Book Profit	40% of book profit	On balance Book Profit	40% of book profit

The Finance Bill 2009 proposes to amend the above structure w.e.f. A.Y. 2010-11 and prescribes uniform basis for allowing remuneration in case of the firms carrying on business and firms carrying on profession. The amended provision is as under:

For All firms carrying on business or profession	
Book Profit	**Maximum allowable deduction**
Loss or book profit Up to Rs.3,00,000	Rs.1,50,000 or 90% of Book Profit whichever is higher
On balance Book Profit	60% of book profit

E.2 Cash payment exceeding specified limits

As per existing provision whole of the expenditure incurred in respect of which payment is made to a person in a day otherwise than by an account payee cheque or an account payee bank draft exceeding Rs. 20,000 is disallowable unless the payment falls within the exception provided in Rule 6DD of the Income Tax Rules.

The Finance Bill 2009 proposes to increase the aforesaid threshold limit to Rs.35,000 in respect of payment made for plying, hiring or leasing goods carriages to facilitate the problem faced by business community for making payment of freight expenditure in cash.

E.3 Changes in Presumptive Taxation of Business Income

Sections 44AD, 44AE and 44AF provide presumptive basis of taxation for the business of civil construction, retail trade and plying, hiring or leasing of goods carriage, respectively. The assessee engaged in such business is taxed on presumptive rates of taxation and is also exempted from the requirement of maintenance of books of accounts U/s.44AA of the Act and audit of books of accounts U/s.44AB of the Act. Such specified business and taxation method is as under:

Section	Eligible Class of Assessee	Eligible Classes of Business	Applicable Limit	Presumptive Tax
44AD	Any person	Civil Construction or supply of labour for civil construction	Gross Receipts of Rs. 40 lacs or less	8% of Total Turnover
44AF	Any person	Retail trade in any goods or merchandise	Turnover of Rs. 40 lacs or less	5% of Total Turnover
44AE	Any Person	Plying, hiring, or leasing of goods carriages	Up to 10 goods vehicles	Rs.3,500 p.m. per heavy goods vehicle Rs.3,150 p.m. per light goods vehicle

If any of the eligible assessee claims that his income is lower than the income computed as per aforesaid provisions, they are required to maintain books of accounts and are also required to get their accounts audited under section 44AB.

In order to give benefit to the large number of small business houses and to reduce their compliance and administrative cost, it is proposed to insert new Section 44AD by replacing present Section 44AD & 44AE of the Act. It is also proposed to enhance the presumptive amount chargeable to tax in respect of business of plying, hiring or leasing of goods carriage. The proposed amendments made under the new provision are summarized as under:

Section	Eligible Assessee	Eligible Business	Applicable Limit	Presumptive Tax
44AD	Individual, HUF, Partnership Firm (but not a limited liability partnership firm) who is **resident in India and** does not claim deduction U/s.10A, 10AA, 10B, 10BA, business deduction specified U/s.80HH to U/s.80RRB	Any business other than those specified U/s.44AE	Turnover or gross receipts is Rs. 40 lacs or less	8% of Turnover or gross receipts
44AE	Any Person	Plying, hiring, or leasing of goods carriages	Up to 10 goods vehicles	Rs.5,000 p.m. per heavy goods vehicle plus Rs.4,500 p.m. per light goods vehicle

It is provided under both the provisions, that if the assessee claims that he has earned higher income then the above stated presumptive income, then such higher income shall be deemed to be his income from eligible businesses. In the earlier provision, higher income would have been chargeable to tax only where the assessee shows it in the return of income and not merely on its claim.

The above amendments in Section 44AD will enlarge the benefit of the presumptive taxation to most of the unorganized small business units. However the said benefit is now not available if the assessee is a company or a non-resident assessee. Also there is substantial increase in the limit of deduction available to person doing business of plying, hiring or leasing of goods carriage.

It is also provided that the assessee may claim lower profit than the profit determined under the aforesaid provisions provided he maintains books of accounts U/s. 44AA of the Act and get them audited U/s. 44AB of the Act. However such requirement U/s. 44AA/44AB is not applicable when income of the assessee is less than maximum amount which is not chargeable to income-tax.

This is a welcome move from the Government as most of the traders in our country are still operating under the unorganized sector. This would also reduce the cumbersome procedure of maintaining books of accounts and

other related procedures. This would also help the small businessmen and would induce them to file return of income as the tax liability would be very small in case the return is filed under the presumptive tax scheme.

F. CAPITAL GAINS

F.1 Expansion of Scope of Deemed Value of Immovable Property U/s.50C

The Finance Bill 2009 has proposed to amend the provision of Section 50C. The existing provisions of section 50C provide that where the consideration received or accruing as a result of the transfer of a capital asset, being land or building or both, is less than the value adopted or **assessed** by Stamp Duty Valuation Authority, the Value so adopted by such Stamp Duty Valuation Authority shall be deemed to be the full value of consideration from such transfer for computing capital gain.

Under the existing provisions, the deeming fiction does not apply where the transaction is not subjected to stamp duty valuation by Stamp Duty Valuation Authority. In order to bring such type of transactions within the purview of Section 50C, it is proposed that the provision of Section 50C will be applicable even in cases where there has not been any stamp duty valuation. A further deeming fiction is being created within the original deeming fiction. It is now proposed that when there is no reference to the stamp duty valuation authority, then also for transaction of transfer of immovable property, being land / building or both, fictional stamp duty valuation shall be ascertained on as if referred basis. Such fictional value will be deemed to be the full value full value of consideration and capital gains shall be payable accordingly.

It may further be mentioned that if the Assessee objects to this valuation, then the AO may make a reference to the valuation officer and the value determined by the DVO, shall be deemed to be the full value of consideration, subject however, that the value determined by DVO does not exceed the stamp duty valuation.

It is to be noted that in this fictional valuation cases, since there is no actual valuation, the option of contesting the valuation before the stamp duty authorities is not available.

G. MINIMUM ALTERNATE TAX

G.1 Rate of MAT

The rate of tax under minimum alternate tax scheme has been increased from 10% to 15% with effect from **1st April 2010 (A.Y. 2010-2011).** Effectively, the rate of MAT would now by 16.995 %, including education and higher education cess and the surcharge, as compared to earlier rate of 11.33 %.

G.2 Computation of Book Profit

Under the existing provisions for computing the book profit for the purpose of Minimum Alternate tax, some adjustments are required to be made. Disputes had arisen in case of adjustments made by the AO in the form of provision for bad debts, provision for diminution in the value of investments, provision for impairment of assets, etc. Whereas, the AO contended that the same pertains to making provision for unascertained liabilities, the Assessee contended that this is not provision for liability, but is merely a provision for diminution in value of assets.

The Finance bill 2009 proposes to amend the proviso to the section – 115JA retrospectively with effect from date of **introduction of 115JA and 115JB respectively**. The amendment mandates that any provision that has been set aside for diminution in the value of any asset during the year should be added back to the book profits. The minimum alternate tax shall have to be recalculated for each of the assessment years started on or after **1st April 1998.**

As it can be seen, the provision for liabilities is required to be added back only if it is for unascertained liabilities. However, in case of the proposed amendment, even the ascertained diminution in value, required under the applicable accounting standards also will have to be added back.

G.3 Allowance of MAT Credit

Under the present provision, the MAT paid is allowed to be carried forward, to the extent the same exceeds the tax computed under the normal provisions. However, the right of carry forward and set off is restricted to a period of 5 assessment years immediately following the A.Y. of payment of MAT. This period of 5 assessment years is proposed to be increased to 10 assessment years.

H. DEDUCTIONS AND EXEMPTIONS

H.1 A new definition of manufacture is inserted

Since several deductions / exemptions are hinged around the concept of manufacture of an article or thing, it is proposed to introduce definition of "manufacture" in the Act. The term manufacture is defined to mean change in a non-living physical object or article or thing,-

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of new and distinct object or article or thing with a different chemical composition or integral structure.

H.2 Profits of the SEZ units – Clarificatory amendment

A unit in SEZ is required to maintain its separate accounts. However, where an SEZ unit has sales made in the domestic tariff area (DTA), the benefit of deduction U/s. 10AA is restricted to the profits earned on exports of goods and therefore proportionate profits is denied exemption U/s. 10AA.

There was an anomaly in the manner in which the proportionate profit was computed. While the provision required taking the exports of the undertaking as the numerator, it erroneously required the assessee to take total turnover of the **business** as the denominator. Clarificatory amendment is proposed for considering the total turnover of the undertaking as the denominator.

H.3 Exemption to 100 % EOU / FTZ Units / STP Units

By Finance Act, 2000, a sun-set clause was introduced for availability of deduction U/s. 10A / 10B of the Act available to the 100 % Export Oriented Units or the units which were set up in Free Trade Zones, Hardware Technology Parks or Software Technology Parks. The original sunset clause applied to the A.Y. 2010-11 onwards and accordingly the deduction would have been withdrawn from A.Y. 2010 – 11. However, by Finance Act, 2008, an extension of 1 year was provided for benefit under this section and the sun-set clause was shifted to A.Y. 2011-12. A further extension of 1 year is proposed under in the Bill and accordingly profits earned by these undertakings till 31st March, 2011 will enjoy exemption.

H.4 Deduction for specified new businesses

[Cold Chain, Warehousing of agriculture produce, oil and natural gas pipeline network]

By introduction of section 35AD the assessees engaged in the business of:

i) Setting up and operating cold chain facility (commenced after 01.04.09);

ii) Setting up and operating warehousing facilities for storage of agriculture produce (commenced after 01.04.09); or

iii) 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 (commenced after 01.04.07)

("Specified Businesses")

would be eligible to claim deduction U/s. 35AD in respect of capital expenditure incurred wholly and exclusively for the purpose of the Specified Business.

Under the existing provisions, business of laying and operating the cross–country pipeline is eligible for deduction U/s. 80IA. This deduction will be discontinued. However, on satisfaction of same conditions as provided in the earlier provision of section 80IA(4)(vi) (introduced by the Finance Act, 2007 w.e.f. A.Y. 2008-09) the business will be eligible U/s. 35AD.

As per the proposed new section 35AD an assessee shall be allowed 100% deduction in respect of Capital Expenditure incurred wholly and exclusively for the purpose of Specified Business. The deduction will be allowed for capital expenditure incurred even after commencement of business. However no deduction shall be allowed in respect of expenditure incurred on acquisition of land, goodwill or financial instrument.

Special provision has been made for the pipeline network which has begun operations after 01.04.2007 but before 31.03.2009, but has not claimed any deduction in respect of capital expenditure incurred. In such a case, capital expenditure incurred by such undertakings prior to 31.03.2009 shall be allowed as deduction in the A.Y. 2010-11.

By proposed insertion of section 73A it has been provided that no set off of the losses arising of the Specified Businesses will be allowed against income of any other business of the Assessee. It is proposed that carry forward and set off of the Capital Expenditure allowable u/s. 35AD will be allowed without any limitation of time.

Under the amended provision, effectively, the deduction works as merely granting accelerated depreciation in the form of deduction U/s. 35AD. The

amended provision is likely to compare unfavourably with the earlier provision of section 80IA for the business of laying pipelines.

As compared to the earlier provision of the cold chain facility, the amended provision not only includes the cold chain facilities for agricultural produce, but also includes cold chain facilities for forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items. Similarly warehousing facilities would not only include storage of fruits and vegetables or foodgrains, but would include the entire gambit of agriculture produce.

It is also provided that no deduction is admissible in respect of profits of these Specified Businesses under any other section. The capital expenditure allowed as deduction under section 35AD will not be eligible for depreciation. Further amount received or receivable on account of transfer (including demolition, destruction or discarding) shall be chargeable as business income.

The proposed amendment also provide that in case of slump sale of the Specified Business, for computing the net worth of the business, the value of such capital expenditure eligible for deduction U/s. 35AD will be taken at Rs. Nil.

There are no provisions made in the proposed section about the transfer of the benefit to the transferee company, when the business / undertaking or network is transferred to the new entity as a result of sale or amalgamation.

H.5 Provision for avoiding double deductions

Under the existing provisions, there is a bar from making a claim under Chapter VIA for income based deductions simultaneously for more than one sections. However, this bar did not extend to cases where the exemption / deduction was sought U/s. 10A, 10AA, 10B or Section 10BA.

It is proposed to insert sub-section (4) in Section 80A specifically to remove this anomaly and to deny deduction of profit and gains under Chapter VI A – Part C, in respect of which deduction has already been claimed U/s.10A, 10AA, 10B, or Section 10BA. In view of the same, the controversy regarding claiming of simultaneous deduction under any of the above provisions is put to an end.

H.6 Belated claims Denied

In complete reversal of the stand of the revenue in its earlier circulars to grant relief to the assessee, if available, even where the assessee has not claimed it, an amendment is proposed for denying the benefit of deduction, if the

assessee has failed to claim it in the return of income. Under the present legal position, the assessee may claim such deductions under the above provisions at any time during the proceedings, including appellate proceedings, so long as it does not involve any investigation of additional facts and the terms and conditions for making such claim are duly complied with.

The provision of Section 80A is proposed to be amended by inserting sub-section (5) so as to provide that no deduction shall be allowed to the assessee U/s. 10A, 10AA, 10B or Section 10BA or under any of the provision of sections falling under Chapter C of Chapter VI-A of the Act if he fails to make claim of deduction under any of those sections in his return of income.

H.7 Transfer of goods and services between eligible and ineligible businesses

It is proposed to amend section 80A by inserting sub-section (6) to provide that the transfer price of goods and services between the undertaking or unit or enterprise or eligible business and any other undertaking or unit or enterprise or business of the assessee claiming deduction U/s.10A, 10AA, 10B, 10BA or in any provisions of part C of Chapter VIA shall be determined at the market value of such goods or services as on the date of transfer. Further, the expression "market value" has been defined to mean,-

(a) in relation to any goods or services sold or supplied, means the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;
(b) in relation to any goods or services acquired, means the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any.

This amendment will take effect from 1st April, 2009 and will accordingly apply to A.Y. 2009-10. It may however be noted that apart from defining the concept of "market value", the similar provisions were already present in the respective sections.

H.8 Extension of sun-set provisions for power Units

The sunset period of deduction in respect of undertaking engaged in power business, transmission and distribution business and business of reconstruction or revival of power generating plant has been extended to one more year. It is proposed that the benefit U/s. 80IA is available to such business if they start such business on or before 31st March 2011.

Also the benefit of deduction U/s. 80IA to undertaking setup for reconstruction or revival of power generating plant is also available if such undertaking begins to generate or transmit or distribute power before 31st March 2011.

H.9 Deduction in respect of profits and gains from undertakings engaged in commercial production of mineral oil and natural gas –80IB (9)

Sub-section (9) of section 80-IB of the Income Tax Act, 1961 provides for deduction in respect of profits and gains derived from commercial production or refining of mineral oil. The deduction under this sub-section is available to an undertaking for a period of seven consecutive assessment years including the initial assessment year-

(i) in which the commercial production under production sharing contract has first started; or
(ii) in which the refining of mineral oil has begun.

However, no deduction under this sub-section is available to an undertaking which begins refining of mineral oil on or after the 1st day of April, 2009, if such refinery is in private sector. The sun-set clause was inserted by Finance Act, 2008, giving very less time to complete the project before the threshold. It is now proposed to extend the sub-set provision to 31.3.2012 for the private sector. The new terminal date will be the same for both the public and the private sector.

Amendment is also proposed so as to extend the tax holiday under section 80IB(9) to natural gas. However, such extended benefit is available only to the blocks awarded under NELP VIII and which begin commercial production of natural gas on or after the 1st day of April, 2009.

The benefit of deduction U/s. 80IB(9) is available for a period of 7 years from the date of commencement of commercial production. In case of oil extraction, there were disputes whether each well or entire basin which is awarded is to be treated as one single undertaking. An explanation is sought to be inserted to provide that all the blocks awarded under single contract would be constitute 1 undertaking and therefore, the deduction shall be restricted to a period of 7 years from commencement of production from first such well.

H.10 Deduction in respect of profits and gains of housing projects

Section 80IB(10) provides for 100% deduction of profit and gains from housing projects if it satisfies various conditions prescribed in the section. One of the conditions for seeking the benefit restricts the size of each building / flat to 1,000 / 1,500 Sq. Ft. of built up area. In case of a housing project having houses beyond this size, the developers used to circumvent the provisions by

showing 1 house as 2 adjacent houses on paper, sell these premises to one person or persons belonging to one family and then combine it.

To avoid any such misuse, an amendment is proposed by inserting additional conditions for eligibility U/s. 80IB(10). Eligibility requirement prohibits making sell of more than one unit to one person (not being an individual) and if one unit is sold to an individual, the developer is prohibited from selling any unit to spouse or children of such individual or to the HUF of which such individual is a Karta or any person who represents such spouse, children or HUF.

The Finance Bill 2009 also provides that the benefit of deduction U/s. 80IB(10) is not available to any undertaking which executes the housing projects as works contract awarded by any person. This provision is inserted so as to provide tax benefit to the person undertaking investment risk i.e. the actual developer and not to the person who are undertaking pure contract risk. This provision is proposed to be made applicable with retrospective effect from 1st April 2001.

I. TRANSFER PRICING & INTERNATIONAL TAX

I.1 Double Tax Avoidance Agreements (DTAA)

Section 90 empowers the Government to enter into agreement with other countries for avoidance of double taxation, exchange of information for prevention of fiscal evasion / investigation or for recovery of taxes.

However, the existing provision does not empower the Government to enter into DTAA with any territory which may not be a country. Section 90 is proposed to be amended for enlarging the power of the Government to enter into DTAA with specified territory. "Specified Territory" is proposed to be defined as an area outside India as may be notified by the Central Government.

This amendment shall come into effect from **1st October 2009**.

I.2 Transfer Pricing - Computation of Arm's Length Price

As per the existing proviso to Section 92C(2), if the comparable price determined based on the arithmetical mean of several comparables, is at variance with the price of the related party transaction entered into by the Assessee, then an option is given to the assessee to adjust its price upto 5 % of the comparable price. For removing possible conflicts in the interpretation, it is now provided that if the variation between the comparable price and the price of the related party transaction is 5 % or less, then the price of the related party must be accepted.

The amendments are proposed to come into effect from **1st October 2009** and shall accordingly apply in relation to all pending matters.

I.3 Safe Harbour Rules for determining Arm's Length Price u/s 92CB

The increase in quantum of international transaction has resulted into increased number of cases of adjustment to arm's length price which has given rise to considerable disputes. With a view to providing clear guidance to the tax payers, a proposal is being introduced to empower the CBDT make way for "Safe Harbour Rules".

Applying the arm's length principle can be a fact-intensive process and can require proper judgment. It may present uncertainty and may impose a heavy administrative burden on taxpayers and tax administrations that can be exacerbated by both legislative and compliance complexity. The difficulties in applying the arm's length principle may be ameliorated by providing

circumstances in which taxpayers could follow a simple set of rules under which transfer prices would be automatically accepted by the national tax administration. Such provisions would be referred to as a "safe harbour" or "safe haven"

A safe harbour may have two variants regarding the taxpayer's conditions of controlled transactions:

(i) certain transactions are excluded from the scope of application of transfer pricing provisions (in particular by setting thresholds), or
(ii) the rules applying to them are simplified (for example by designating ranges within which prices or profits must fall).

Safe harbours do not include procedures whereby a tax administration and a taxpayer agree on transfer pricing in advance of the controlled transactions (advance pricing arrangements).

Safe harbour rules provide the circumstances in which the tax authorities would automatically accept transfer prices declared by the assessee. The efficacy of the provisions proposed to be introduced will have to be measured upon introduction of the delegated legislation in the form of Rules / notifications to be issued by the CBDT from time to time.

The Section-92CB shall be inserted with effect from **1st April 2010.**

I.4 Dispute Resolution Panel

For dealing with complex matters dealing with Transfer Pricing or the tax disputes of foreign companies, the bill proposes to introduce an alternative dispute resolution mechanism by introducing a concept of Dispute Resolution Panel (DRP), being a collegium of 3 Commissioners of Income Tax. The option to make a reference to the DRP is available only where the AO proposes to make a variation in the total income in the following two cases:

i) where variation arises due to adjustment proposed by the Transfer Pricing Officer;
ii) where the assessment pertains to a foreign company;

The AO is required to frame the draft assessment order and forward the same to the Assessee. The Assessee, if he chooses to file petition before the DRP, he may file his objections with DRP within a period of 30 days from receipt of the said draft order, with copy marked to the AO. In case, the Assessee does not file the objections before DRP within the above period, or files a letter accepting the variations, then the AO has to pass the final order within 1 month of the date of expiry of the said period of 30 days or filing of acceptance letter, in accordance with the draft order. Upon such order being passed, the assessee can file appeal before the CIT (A), U/s. 246 A of the Act.

If the Assessee files its objections before the DRP, then the DRP shall assume jurisdiction and shall be entitled to give necessary direction (including that of enhancing the variation) within a period of 9 months from the end of the month in which the draft order is forwarded to the assessee.

The DRP has been given powers of the Civil Court under the CPC for discovery and inspection, enforcing attendance and examining on oath, compelling production of books of account and other documents and issue of commission. The DRP is also empowered to collect evidence, conduct enquiries including requiring the income tax authority to make further enquiry. The DRP is required to give a reasonable opportunity of being heard to the Assessee and to the AO, if the proposed direction order is prejudicial to the interest of the assessee or the revenue, as the case may be.

In case of difference of opinion on any point, the view of the majority of the members of the DRP shall prevail. Orders of the DRP shall be binding on the AO. AO is required to pass the order in conformity with the directions given by the DRP within 1 month of end of the month in which the directions are received by him. Before passing such order, the AO is not required to give any opportunity of being heard. Upon receipt of the order of the AO, the assessee may file an appeal before the Income Tax Appellate Tribunal U/s. 253 of the Act.

The provisions do not provide about the period within which the draft order is required to be passed by the AO. The proposed amendment only provides that the order passed consequent upon forwarding the draft order is not fettered by the limitation provided in section 153 and the time limits provided in proposed section 144C shall apply to further proceedings. It can therefore be reasonably inferred that the time limit provided in section 153 for completing the assessment shall apply to forwarding the draft assessment order in above cases.

There is no provision for levying any fees for filing objections with the DRP.

The proposed amendments are effective from 1st October, 2009 and therefore would apply also in case of the pending assessment of A.Y. 2006-07 for transfer pricing cases and A.Y. 2007-08 for non-transfer pricing, but foreign company cases.

The proposed amendment also provides that when a reference is made to DRP in the cases of transfer pricing adjustments, the whole of the assessment is covered by the directions to be given by the DRP and the scope of direction is not restricted to the adjustments proposed for transfer pricing.

J. TAXATION OF LIMITED LIABILITY PARTNERSHIP (LLP)

With notification of the Limited Liability Act, 2008 and also notification of rules to be framed thereunder, lot of interest has been generated for moving the partnership firms into the LLP structure. However, there was a need to make provision for the tax computation of the LLPs and partners of such LLPs. The Finance Bill, 2009 provides for welcome provisions in respect of LLP by equating in all respect with the taxation of the partnership firm.

The Limited Liability Partnership Act, 2008 is a new enactment introduced for the first time extending to the whole of India. LLP is a body corporate formed and incorporated under the LLP Act, 2008 and is a legal entity separate from that of its partners. An LLP shall have perpetual succession. Any change in the partners of LLP shall not affect the existence, rights or liabilities of the LLP. The provisions of Indian Partnership Act, 1932 would not apply to a LLP. The partners of LLP may be any individual or body corporate. Every LLP shall have at least two partners. There is no ceiling in the number of partners in a LLP.

Amendment has been proposed in section 2(23) of the Income Tax Act, 1961 to include LLP within the definition of firm so as to ensure the same tax treatment to the LLP as that of the firm. Accordingly, the provisions applicable to the firm including that of pre-condition for being assessed as such, remuneration to partners, interest on capital, restriction on carry forward of losses in case of change of partners, etc. would ipso facto apply to LLP.

For an LLP to be assessed as such, it would be required to comply with the provisions of section 184 which would require that:

- The LLP should be evidenced by an instrument [section 184(1)(i)].
- Individual share of partners must be specified in instrument [section 184(1)(ii)].
- A certified copy of the instrument of partnership should accompany the first return of income of a firm [section 184(2)].
- Revised instrument should be submitted whenever there is change in the constitution of firm / profit – sharing ratio, duly signed by each of the partners [section 184(4)].
- There should not be any failure as is mentioned in section 144 [section 184(5)].

Conditions for claiming deduction of remuneration paid to partners of LLP would be as per section 40(b) of the Income Tax Act, 1961. Interest and profit sharing ratio should be defined in the agreement evidencing the LLP in order to claim deduction from the profits of LLP.

Despite the fact that an LLP would be fairly similar to a private limited company, it would not be liable to dual taxation on distribution of its profits as it is not liable for dividend distribution tax, which a private limited company would be.

Section 140 has been amended wherein it has been stated that the return in case of an LLP should be signed by the designated partner and if the designated partner is not available, then any other partner. Designated Partner has been defined in section 7 of the LLP Act, 2008 being an individual who shall be resident in India. The designated partners are necessarily individuals and in case of body corporate, individuals being nominees of such bodies corporate.

Also section 167C is proposed to be introduced wherein it is proposed that the partners would be jointly and severally liable for the payment of tax where the tax due from a LLP cannot be recovered. This provision is similar to provisions of section 179 of the Income Tax Act, 1961 which states that directors of the private company are jointly and severally liable for the tax liabilities of the company. In case of LLP a partner would be jointly and severally liable only if he is unable to prove that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to affairs of the LLP.

Provisions of section 78 relating to carry forward and set off of losses in case of change in constitution of firm or on succession are applicable to LLP also.

It may be noted that the newly amended provisions of section 44AD relating to presumptive taxation specifically exclude partnership firms established under the Limited Liability Partnership, 2008. Benefit of newly inserted provisions of section 44AD will not be availed in case of LLP.

K. RETURNS AND ASSESSMENT

K.1 Re-opening of Assessment

Section 147 empowers the AO to re-open a completed assessment if he has reason to believe that the income has escaped assessment. Before, re-opening the assessment the AO is duty bound to record his reasons for re-opening. Considerable dispute had arisen on the scope of assessment consequent upon re-opening.

The Punjab & Haryana High Court in the case of Vipan Khanna v. CIT 255 ITR 220 had held that the Assessing Officer cannot launch inquiry on the grounds not covered in reassessment notice. This decision by the P & H High Court was based on the observations made by SC in the case of V. Jaganmohan Rao v. CIT 75 ITR 373 and CIT v. Sun Engineering Works Ltd. 198 ITR 297.

Explanation 3 has been inserted in section 147 which allows the AO to venture into the issues which do not form part of reasons recorded for re-opening of assessment and which has come to the notice of the AO subsequently or during the course of proceedings. However, the proposed explanation is silent whether fresh enquiry can be conducted for ascertaining whether income has escaped assessment or not. This explanation nullifies the ratio laid down by Vipan Khanna's decision (*supra*).

This amendment is proposed to be introduced with retrospective effect from 1st April, 1989, being the date by which new scheme of re-opening assessment was introduced.

K.2 Concealment Penalty in Search cases

Existing provisions of Explanation 5A to section 271(1)(c) creates a legal fiction of concealment in cases where an income is detected as a result of search, even in cases where the return of income is not filed by the assessee, so long as the due date of filing the return of income has expired. However, Explanation 5 A is silent about levy of penalty in the cases where the assessee has already filed the return of income for an AY but the income found during the course of search pertaining to such previous year has not been disclosed in such return.

It is proposed to substitute Explanation 5A so as to include the even the cases where undisclosed income found as a result of search would be deemed to be liable for concealment penalty, even in cases where the assessee has already filed the return before search, but has failed to include this income in such return.

This amendment will take effect retrospectively from 1st day of June, 2007 and apply in cases where search u/s 132 is initiated on or after 1st June 2007.

K.3 Provisional attachment to protect revenue in certain cases

The provisions of section 281B empower the AO to make provisional attachment of the assets of an assessee during the pendency of any proceedings for assessment or reassessment. Currently the Chief Commissioner or Commissioner, Director General or Director are authorized to extend the period of provisional attachment up to a maximum of 2 years from the date of first attachment order.

It is proposed to insert third proviso to section 281B(2) to exclude period during which the proceedings for assessment or reassessment are stayed by an order or injunction of any court. Therefore the period of 2 years would get extended by a further period during which the order of Court or injunction order is in operation.

This amendment will be retrospective from 1st April, 1988.

K.4 Service of notice

Under the existing provision of section 282 a notice or any communication under the Act may be served on the person therein named either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.

It is proposed to substitute section 282 w.e.f. 1-10-2009 so as to include communication by way of Courier or by way of electronic mail or electronic record as defined under the Information Technology Act, 2000. The proposed amendment also authorizes the Board to notify any other means of service.

It seems that the Government has recognized the need of making communications through e-mails so as to reduce the time of communication, paper work involved in the same and also the cost involved in serving the notice.

K.5 Introduction of Document Identification Number

It is proposed to insert a new section 282B so as to provide that every income tax authority shall allot a new computer generated Document Identification Number (IT-DIN) in respect of every notice, order, letter or any correspondence issued by him to any other income tax authority or assessee or any other person and such number shall be quoted thereon.

It is further proposed that where the notice, order, letter or any correspondence issued by any income tax authority does not bear a IT-DIN, such notice, order , letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.

It is also proposed to provide 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 or a computer generated IT-DIN. It is also proposed to provide that where the document, letter or any correspondence received by any income tax authority or on behalf of such authority does not bear IT-DIN, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

This amendment will take effect from 1st October, 2010.

K.6 Power to withdraw approvals

Under the existing provisions of the income Tax Act, an approval is required to be granted by Income tax authority for availing of various incentives / seeking exemptions / benefits under the Act by the assessee.

It is proposed to insert an omnibus provision in the form of section 293C to provide that the authority empowered with the power to grant approval would also deemed to have the power to withdraw such approval, but only after granting an opportunity of being heard to the assessee before withdrawing such approval.

The amendment will be effect 1st October, 2009.

K.7 Simplification measures announced

The Finance Minister in his budget speech made a mention that he proposes to re-introduce "Saral" form for making the task of tax compliance and filing of returns very easy.

The Finance Minister has also mentioned on the floor of the house that he proposes to introduce a new Direct Tax Code within 45 days.

L. TAX DEDUCTED / COLLECTED AT SOURCE AND ADVANCE TAX

L.1 Deduction of tax at source on Interest other than "Interest on Securities"

As per existing provision of 194A (3)(x), tax is not required to be deducted on interest paid or payable on Zero Coupon Bonds issued on or after 1st day of June, 2005 by infrastructure capital company or infrastructure capital fund or public sector company. Now it is proposed that the proviso is extended to scheduled bank. W.e.f. 1st April, 2009, tax is not required to be deducted if income is paid or payable on or after 1st day of April, 2009 by scheduled bank in relation to zero coupon bond issued on or after the 1st day of June, 2005.

L.2 Deduction of tax at source from Payments to contractors U/s.194C

Section 194C is substituted in its entirety w.e.f. 1st October, 2009.

Rates of TDS

As per the existing provisions of Section 194C, TDS was based on the nature of Payment. Now as per new provisions, TDS are based on types of deductee.

With the amendment in this section, TDS rates for individual and/or HUF is kept at 1% of the amount paid or payable and for assessee other than individual and/or HUF is 2% of such sum. The rate of TDS will be Nil if the transporter engaged in the business of plying, hiring or leasing goods carriages, quotes his PAN. The payer is required to provide information of such cases of non-deduction to the tax authorities by filing the prescribed forms at such periodicity as may be prescribed. If PAN is not quoted, the rate will be 1% for an Individual/HUF transporter and 2% for other transporters.

Expansion of Scope – Deemed Job-work

It is now proposed to expand the scope of section 194C by including the cases of job-work which are otherwise styled as purchase and sale transactions. There are cases, where a person supplies material to the contractor on sale basis. The contractor is expected to do some work on the same and then invoice back the customer full value of the work, including the job-charges, etc. It is proposed to include such transactions within the scope of section 194C. However, the scope is restricted to cases where the material is supplied by the customer and is invoiced back to the customer after carrying out work on it. However, where the material is purchased from a person other than customer, TDS is not applicable. It is further provided that if the cost of material is separately mentioned in the invoice then the same is not to be considered for deduction of tax at source. However, if the cost of material is not separately mentioned then the whole of the amount of the invoice is to be considered for TDS.

TDS by foreign entities

Under the amended provisions of section 194C it is also intended that even the Government of a foreign State, a foreign enterprise or any association or body established outside India shall also be required to deduct tax if they are liable to make payment to a contractor resident of India. Enforceability of this provision needs to be examined.

L.3 Deduction of tax from Payment of Rent U/s.194I

Section 194I provide for deducting tax at source from payment made for rent. Presently, the applicable rates of rent are 10 % if it pertains to plant, machineries or equipments. This rate is proposed to be reduced to 2 % w.e.f. 1.10.2009.

Presently, TDS rate of 15 % and 20 % is applicable in case of rent for land and building for payments to Individuals / HUFs and others respectively. It is proposed to reduce these rates to 10% for all entities.

L.4 No Deduction to be made in certain cases u/s 197A

As a consequence of insertion of Sub-section (44) to Section 10 i.e. exemption of any income received by any person for, or on behalf of, the New Pension System Trust, a new clause (1E) to Section 197A has been inserted which provides that no TDS is required to be made on such income.

L.5 Preparation of Returns for TDS / TCS statements u/s 200 / 206C

Under the existing provisions TDS returns are required to be filed quarterly. By the amendment made in sub-section (5B) and (5D) to section 139A w.e.f. 1-10-2009 and section 200(3), the practice of filing quarterly returns is proposed to be substituted with a new scheme of compliance to be prescribed. Identical amendments are proposed for quarterly returns for TCS required to be filed under existing provisions of section 206C. Also penal provisions dealing with filing of quarterly returns of TDS and TCS have been amended.

L.6 Introduction of provisions for Processing of statements of TDS by the Department u/s 200A

With effect from 1st April, 2010 processing of TDS statements will be introduced like processing of Income Tax Returns. The proposed amendment give restricted right to the revenue for making adjustment in the TDS returns and re-work the TDS liability for any arithmetical error in the statement or

any incorrect claim, apparent from any information in the statement. The tax authorities are empowered to raise the demand or grant the refund, including charging of interest on processing the TDS returns.

Time limit of 1 year from the end of the financial year in which the statement is filed is provided for sending the intimation. It is also proposed that the processing of these statements can be undertaken in a centralized processing centre.

L.7 Time limits for recovering the TDS in case of default

There has been considerable dispute on the right of the department to recover the tax by invoking section 201 (1) in case of default of TDS after expiry of the financial year. Provision has been proposed to provide for the time limit for raising the demand in such cases where the assessee has either failed to deduct or having deducted failed to make payment of the TDS.

As per new sub-section, the order deeming a person to be an assessee in default for failure to deduct the whole or part of tax from a person resident in India, shall not be passed at any time after the expiry of

- 2 years from the end of the Financial Year (FY) in which the statement is filed in a case where the statement referred to section 200 has been filed
- 4 years from the end of the FY in which the payment is made or credit is given in any other case.

Special provision is made for for financial year commencing on or before 1st April, 2007, wherein it has been provided that the orders shall be passed at any time before 31st March, 2011.

L.8 Requirement to furnish PAN u/s 206AA

W.e.f. 1st April, 2010 harsh provisions are proposed to be introduced for penalizing the deductees who do not provide details of their PAN to the deductor of tax. It is proposed that unless higher rate is provided for, the deductor will be required to deduct tax at the rate of 20% in cases where the tax is to be deducted and the PAN is not furnished by the deductee to the deductor.

Declaration u/s 197A in regard to non-deduction of tax at source in certain cases, shall be invalid, if the deductee has not furnished his PAN in such declaration.

In case the PAN furnished is invalid or does not belong to the assessee, the above provisions shall apply accordingly and tax shall be deducted at the above-mentioned rates.

L.9 Increase in the threshold for applicability of advance tax provisions

Under existing provisions of section 208, an assessee is liable to make payment of advance tax if his liability is of Rs. 5,000/- or more. Amendment is proposed to be made for increasing this threshold to Rs. 10,000.

It is also proposed that the persons who are covered by the provisions of the presumptive taxation U/s. 44AD / 44AE shall also not be liable to pay advance tax and they would be liable to pay the tax only at the time of filing the return of income.

M. FRINGE BENEFIT TAX

M.1 Abolition of Fringe Benefit Tax and consequential changes for Perquisites

The Finance Minister made the announcement of much awaited abolition of the Fringe Benefit Tax (FBT) with effect from 1st April, 2009 and accordingly, no FBT is payable in respect of the expenses incurred on or after 1st April, 2009. At the time of introduction of the FBT, several provisions relating to perquisites to the employees were removed from the definition of perquisites. On removal of the FBT, earlier exempted perquisites have become taxable again. However, this time the tax will be payable by the employees.

Accordingly, provisions have been re-introduced for making the following perquisites taxable in the hands of the employees:

- ESOPs or Sweat Equity Shares allotted / transferred
- Contribution to an approved superannuation fund in respect of the assessee in excess of Rs. 1.00 lac
- Any other prescribed fringe benefit or amenity

It would be relevant to note that the immediately prior to introduction of FBT, ESOPs, Sweat Equity Shares and contribution to approved superannuation funds were not chargeable to tax as perquisites. However, on abolition of FBT, these have become taxable in the hands of the employees.

N. SERVICE TAX

N.1 Introduction of New Taxable Services

The following new services are proposed to be included in the list of taxable services. These services would get covered under the list of taxable services from a date to be notified after the enactment of Finance (No. 2) Bill, 2009. Amendments referred to here are amendments to the Finance Act, 1994, as no separate act for service tax has been enacted.

1. Transport of Goods through Rail
   Service tax is imposed on goods transported by railways including Government railways, whether in containers or otherwise.

2. Transport of Coastal Goods; and Goods transported through Inland water;
   Coastal goods and transport of goods through National Waterways, and inland waters are brought under the tax net. Coastal goods are defined in Section 2 of Customs Act as goods which are not imported but transported in vessel from one port in India to another port in India.

3. Legal Consultancy Services
   Any management consultancy or engineering consultancy service, advice or technical assistance provided in any **discipline of law** has been made brought under the service tax net.

   However, the tax would be limited to services provided or received by a business entity. The term business entity includes firms, associates, enterprises, companies etc. but does not include an individual.

   Thus, services provided by an individual advocate either to an individual or even to a business entity would be outside the scope of taxable service. Similarly, the services provided by a corporate legal firm to an individual would also be outside the purview of taxable service.

   Further exemption is provided for the services provided by way of appearance before any court, tribunal or authority is also excluded.

4. Cosmetic and Plastic Surgery Service:
   Service tax has been imposed on services provided in respect of cosmetic surgery or plastic surgery undertaken to preserve or enhance physical appearance or beauty.

   However, any reconstructive surgery undertaken to restore one's appearance, anatomy or bodily functions affected due to congenial defects,

developmental abnormalities, degenerative diseases, injury or trauma would be outside the scope of this service.

N.2 Alteration in the scope of existing taxable services

1. Modification in Business Auxiliary Service (BAS):
   Production or processing of goods for or on behalf of a client falls within the purview of Business Auxiliary Service. However, the definition of Business Auxilliary Service is being amended so as to exclude those processes or activities which fall within the definition of 'excisable goods' under the Central Excise Act. This means that any activity which comes under the definition of manufacture would be covered under the Central Excise Act and hence would not form part of the Service Tax as a consequence of this amendment.

2. Stock broker Service
   The definition of Stock broker is being amended to exclude sub broker form its ambit. As a consequence, sub –brokers will be outside the purview of service tax. However, this would be tax neutral provision, as the sub-broker in any case is required to provide service only through the broker, who in turn continues to be liable to service tax.

3. Information Technology Software Service
   A correction has been carried out in the definition of the information technology service by replacing the word 'acquiring' by the word 'providing', considering the fact that it is the providing of 'right to use' which is a taxable service and not the acquisition of the 'right to use'. Acquisition not being provision of service. This amendment would have retrospective effect from 16th May, 2008, when the service came into effect.

N.3 Amendments in Finance Act, 1994

1. Section 84 is to be substituted with a view to making the appeal procedure under service tax parallel with that of Central Excise Act. Consequentially, the revisionary powers of the Commissioner are done away with and it is proposed to provide for a procedure for referring the orders passed by any authority subordinate to the Commissioner of Central Excise to the Commissioner of Central Excise (Appeals), on such direction being made by the Commissioner reviewing such orders. A saving clause is being provided to protect the pending cases.

2. The service tax rules suffered from the deficiency of not having provisions relating to relevant date for determination of rate of service tax and place of provision of taxable services. Since service tax is chargeable on provision of services, but is payable on cash basis, clarity is required

especially when new services are introduced or when there is a change in the rates of taxation or when amendment in the scope of services are made. Hence for this purpose section 94 has been amended and Central Government is being empowered to make rules in this regards.

N.4 Amendments in rules

Changes in Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007

The Explanation appearing in the sub-rule (3) of the rules is being modified to allow benefit of the composition scheme to only such works contracts where the gross value of works contracts includes the value of all goods used in or in relation to execution of works contract whether received free of cost or for consideration under any other contract. It will also include the value of all services that are required for execution of the works contract. The contract value will include hire charges of machinery and tools.

The value will not include VAT/CST and the value of the machinery and tools used in execution of the contract.

However, this restriction would not apply to current works contracts where either the execution has commenced or any payment has been made on or before 7th July, 09.

N.5 Amendments in Cenvat Credit Rules, 2004

1. Explanation 2 of Rule 2(k) of Credit Rules dealing with input, has been amended to exclude from definition of input (for granting input credit) all construction material including cement, MS Angles, CTD and TMT bars and other items used in construction of shed, building or laying of foundation or support for capital goods. Effectively the excise and service tax or CVD on these materials is not available for credit.

2. Rule 3 (5B) of Credit Rules is being amended so as to provide that a service provider shall deposit the amount of credit taken on inputs / capital goods fully written off. All materials and assets, on which Cenvat is claimed, when written off on the books of accounts will require the assessee to deposit the duty equivalent to the credit claimed.

3. Rule 6(3) of the Cenvat Credit Rules, 2004 is being amended to prescribe that the provider of both taxable and exempted services, who does not maintain separate accounts of inputs, shall pay an amount equal to 6% of the value of exempted services instead of existing 8% and the

manufacturer shall pay 5% of the duty instead of 10%. This is in line with the reduction in the CENVAT from 14% to 8% in two phases.

N.6 Exemptions

1. Exemption from Service Tax is being provided to inter state or intra state transportation of passengers in a vehicle having "Contract Carriage Permit" with specified conditions.

2. Federation of Indian Export Organizations (FIEO) and specified Export Promotion Councils are exempted from Service Tax. This exemption is valid till 31.03.2010. This is as consequence of the representations by such voluntary organisations which were being pursued by the department to register and pay service tax since an earlier amendment removed the exemption for NGOs.

3. Inter bank transactions of sale purchase of foreign currency, under taken by schedule banks is now exempted from Service Tax.

N.7 Changes in the territorial jurisdiction

The Taxation of Services (Provided from outside India and Received in India) Rules, 2006 have been amended by expanding the scope of the definition of **'India'**. Now the term 'India' includes the installations, structures and vessels in the continental shelf of India and the exclusive economic zone of India. Thus, the services provided to these entities are now not considered as export of service under the rules and would therefore be liable to service tax.

N.8 Changes in the scheme for refund of service tax to the exporters of goods:

Following two services; which are related to export are exempted from payment of service Tax, if the exporter is liable to pay service tax on reverse charge basis

1. Commission paid to Foreign Agent for procuring export orders.
   The exemption is limited upto 1% of the FOB Value. Moreover, the present cap of 10% of Commission agency charges has been retained. The exemption is subject to certain conditions.

2. Transport of Goods by road from factory to Port in course of export

   1. The exporter shall have to produce a consignment note in his name

   2. Some of the salient features of the revamped refund scheme, in supersession of notification No. 41/2007 dated 6th October, 2007

a) 'Terminal Handling Charges' is being added to the list of eligible services.
b) The time period for filing refund has been increased to one year from the date of export.
c) Simplified format is prescribed for refund filing.
d) Self certification has been introduced upto 0.25% of the FOB value. Where the amount of refund claim exceeds 0.25% of the FOB value of exports, the documents submitted should be certified by a qualified Chartered Accountant.

O. CENTRAL EXCISE

O.1 Changes in the First Schedule to the Central Excise Tariff Act, 1985

a. Betel Nut & Betel Nut product known as Supari

Chapter 8 and Chapter 21 in the First Schedule to the Central excise tariff Act, 1985 both includes item Betel nut. So to remove taxation of same item under two different Chapters, Note 1 to Chapter 8 in the First Schedule to the central Excise Tariff Act, 1985 has been substituted so as to exclude 'betel nut product as Supari of tariff item 2106 9030 from its purview.

b. Betel Nut product known as Supari

To clarify that the process of preparing readymade Supari which comprises 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, Note (No. 6) has been inserted in chapter 21 related to product of tariff item 2106 90 30.

c. Cut corduroy Solely of Cotton

Previously in chapter 58, against tariff item 5801 22 10, in column (3) and (4), the "unit of quantity" and "rate of duty" were not indicated because the same were not in the Central Excise Tariff (Amendment) Act, 2004 (5 of 2005). Now as per the amended provision the entries 'm^2 and '8%' respectively are being inserted.

O.2 Changes in the Central Excise Act, 1944

1) Presently, Section 9A of the Central Excise Act, 1944 provides that the offences under section 9 shall be deemed to be non – cognizable within the meaning of the Code of Criminal Procedure, 1898 (5 of 1898) and any offence under this chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Central Excise on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be prescribed.

   Now Section 9A of the Central Excise Act, 1944 is being amended to provide for the manner of compounding of offences over and above the compounding of offences and also to provide for exclusion of certain offences and circumstances from compounding. Consequently section 37 of the Central Excise Act will also be change.

   This will facilitate clear understanding among the assesses as well as the department of the manner in which the compounding has been done.

2) As per the existing provisions under Section 14A and 14AA of the Central Excise Act, 1944 'Cost Accountant' is required to be nominated by the Chief Commissioner of Central Excise for conducting Special Audit under these Sections. Now the amendment is being proposed to replace to also include a 'Chartered Accountant' for being eligible to carry out the Special Audit. For the purpose of this section "Chartered Accountant" shall have the meaning assigned to it in clause (*b*) of sub-section (*1*) of section 2 of the Chartered Accountants Act, 1949. With this Amendment, a Chartered Accountant will also be entitled to conduct Special Audit. These audits under section 14A are conducted by the department by appointing Cost accountants and now also chartered accountants to ascertain the correctness of the declared value or value determined by the manufacturer. Under Section 14 AA the audits are conducted to confirm that the credit claimed is not in excess or availed by defrauding the revenue.

3) Section 23A of the Central Excise Act , 1944 presently defines "authority" as Authority for Advance Rulings (Central Excise, Customs and Service Tax) constituted under Section 28F of the Customs Act, 1962 (52 of 1962).

   Now, since the Section 28F of the Customs Act, 1962 (52 of 1962) itself is being amended by The Finance (No.2) Bill 2009 to provide that the Central Government may by notification authorize the Authority for Advance Rulings constituted under Section 245-O of the Income Tax Act to act as an Authority for the purposes of Customs, Central Excise and Service Tax subject to some modification regarding the constitution of the Authority. Section 23A of the Central Excise Act, 1944 has been proposed to amend to substitute the definition of the 'Authority of Advance Ruling to include therein the authority authorized under Section 28F of the Customs Act, 1962. So the Authority for Advance Ruling shall consist of members appointed by the Central Government as mentioned in Section 245- O of the Income Tax Act, 1961. With this amendment, there would be single authority for advance ruling having jurisdiction under the direct and indirect tax provisions.

4) Existing provision under section 35G of the Central Excise Act, 1944 does not empower High courts to condone delay in filing of appeals beyond the prescribed period. However The Finance (No.2) Bill 2009 proposes amendment in this section retrospectively with effect from 1st July, 2003 to expressly empower High Courts to condone delay in filing of appeals beyond the prescribed period if it is satisfied that there was sufficient cause for not filing the same within that period.

   This amendment will help those assesses who could not file the appeal within the prescribed time limit due to some genuine reason. This

amendment will also take care of difficulties likely to be caused by a recent judicial pronouncement which denied the right of condonation in absence of specific provision in this regard contained in the relevant statute.

5) Section 35H of the Central Excise Act, 1944 is being amended retrospectively with effect from 1st July 1999, to empower High Courts to allow delay in filing of applications or Memorandum of Cross Objections beyond the prescribed time limit. Earlier, High courts were not having any such powers.

   This amendment will help those assesses who could not file the applications or Memorandum of Cross Objections beyond the prescribed time limit due to some inevitable reasons.

O.3 Items where the excise duty rate has been increased to 8% from 4%

Chapter	Item
15	Animal or vegetable fats and Oils and their cleavage products; prepared edible fats; Animal or Vegetable Waxes
19	Preparation of cereals, Flours, Starch or Milk; Pastrycooks' products
50	Silk
51	Wool, Fine or Coarse Animal Hair; Horsehair Yarn and Woven Fabrics
52	Cotton
53	Other Vegetable textile fibres; paper yarn and woven fabrics of paper yarn
54	Man-made filaments; strip and the like of man-made textile materials
55	Man-made staple fibres
56	Wadding, felt, and non-wovens; special yarns, twine, cordage, ropes and cables and articles thereof
57	Carpets and other Textile Floor Coverings
58	Special woven Fabrics; Tufted Textile Fabrics; Lace; Tapestries; Trimmings; Embroidery
59	Impregnated, Coated, Covered or Laminated Textile Fabrics; Textile articles of a kind suitable for industrial use
60	Knitted or Crocheted fabrics
61	Articles of apparel and clothing accessories, knitted or croacheted
62	Articles of Apparel and Clothing Accessories, not knitted or croacheted
63	Other made up textile articles; sets; worn clothing and worn textile articles; rags
90	Optical, photographic, cinematographic, measuring, checking,

	precision, medical or surgical instruments and apparatus; parts and accessories thereof
95	Toys, games and sports requisites; parts and accessories thereof

Proposals on indirect taxes to seek to achieve stable framework by maintaining the overall rate structure for customs and central excise duties as well as service tax.

P. CUSTOMS

P.1 Refund of Custom Duty in certain cases

In present scenario, manufacturing sectors/ importers are incurring customs duty on defective imported material or imported goods not in conformity with agreed material specifications as a cost. This resulting loss of customs duty is sought to be reversed by a very forward looking section so that it benefits importers after imports of goods. Finance Bill (2), 2009 has inserted following section:

Insertion of the Section 26A (Refund of import duty in certain cases) by the Finance Bill (2), 2009

(1) Where duty has been paid on clearance of imported goods for home consumption, such duty shall be refunded to the person by whom or on whose behalf it was paid, if—

a) Goods are Defective; OR
b) Goods are not in conformity with specifications agreed between supplier and importer;

AND

c) That these goods have not been worked, repaired and used unless it is
    a. Necessary to use the goods before defect can be discovered
d) Above conditions are to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs;
e) The importer does not claim drawback under any other provisions of this Act;
f) (*i*) The goods are exported; or
    (*ii*) The importer relinquishes title of the goods and abandons them to customs; or
    (*iii*) Such goods are destroyed or become valueless in the presence of proper officer;

(2) The application in prescribed form is submitted within thirty days from the date of order of clearance of imported goods for home consumption passed by the proper officer under section 47.

Period of thirty days may be extended up to three months at the discretion of Commissioner of Customs.

(3) An application for refund of duty shall be made before the expiry of six months from the relevant date in such form and manner as appropriate.
For the purposes of this sub-section, "relevant date" means,—
    (*i*) The date on which the goods are exported; or

(*ii*) The importer relinquishes title of the goods and abandons them to customs; or
(*iii*) Such goods are destroyed or become valueless in the presence of proper officer;

(4) No refund shall be granted in respect of perishable goods and goods exceeded their shelf life or their recommended storage-before-use period.

Benefits:

After insertion of Section 26 A, refund of custom duty paid on imported goods will be available in respect of defected goods or goods not in conformity with specification which otherwise would have not been available to the importer in respect of defected goods before insertion of this section vide Finance Bill (2), 2009

P.2 Authority for Advance Ruling

A separate Authority for Advance ruling is presently functioning under the Central Board of Excise and Customs. The new insertion in the Customs Act in section 28F of sub sections 2A to 2D, the intention is now to have one Authority for Advance Ruling for all purposes. The Insertion authorizes the Government to notify the Authority for Advance Ruling under the Income Tax Act 1961 as constituted under Section 245 O of that Act as the sole authority on Advance Ruling for Income Tax, Excise, Service Tax and Customs. On and from the date when the Central Government notifies the authority under the Income Tax Act to be the sole authority the present authority functioning under the Customs Act will cease to exercise the jurisdiction. Consequent upon the amendment the cases pending with the present authority will stand transferred to the new authority and the acts and deeds done by the earlier authority will continue to be legally binding on all the parties.

P.3 Provisions for Condonation

1. A retrospective amendment is proposed to be inserted in the existing Section 130 which deals with the appeals to be filed with High Court. At present if the aggrieved party wants to Appeal to High Court on question of law, the party has to file this appeal within 180 days from the date on which the order is received. There was no provision to condone delay in filing appeal in cases of genuine difficulty of filing the appeal within the prescribed time. The new subsection 3A seeks to make this change from the date of operation of this section i.e. 1st July 2003. Consequences could be that all those who have sought condonation would stand to benefit by getting a chance to get in.

2. As in Section 130 so also in section 130 A, an amendment is proposed to incorporate the provision of condonation for delay in filing an application against the order of the Appellate Tribunal under Section 129B.

P.4 Provisions for compounding of Offences

In sections 137 and 156 the bill seeks to amend the compounding of offences provisions by providing that the compounding will be on payment of such amount for the manner of compounding prescribed.

P.5 Other consequential amendments

1. An amendment is proposed in Section 157 as a consequence to the insertion of section 26A where the bill seeks to insert the relinquishment of right or abandonment of the material as prescribed in Section 26A. The process by which this will be verified by a proper officer and the form and manner of application for the same.
2. In Customs Tariff Act the bill seeks to introduce a second proviso in Section 3 where if value has been fixed in the Central Excise Tariff Act then for the purpose of the Customs also it will be the same value of deemed basis.
3. Section 8B of the Customs tariff act provides for imposing safe guard duty on the goods imported and dumped into India. The amendment to this section is sought by insertion of sub section 4, where the provisions of the Customs act, rules and regulations there under are proposed to be made applicable to the duties payable under the tariff act as they are applicable to the duties payable under the Customs Act. Therefore the rules for penalties, interest, appeals and offences under the Customs Act are also applicable to provisions under the Tariff Act. This same amendment is sought to be inserted in Section 8C which provides for imposing anti dumping duty on the goods imported from Peoples Republic of China and in Section 9 which provides for CVD on import of articles subsidized by the exporting country which are imported into India.

P.6 Amendment to Anti-Dumping Duty provisions

Section 9A is proposed to be amended by insertion of Section 6A which proposes that the anti dumping duty rate will be decided based on the records of normal value and export price records maintained by the exporter or producer. Where such records are not available or are not maintained by the exporter or producer the duty will be decided based on the facts that are available. This amendment seeks to introduce an element of the natural justice.

P.7 Fully Exempted Customs Duty

Particulars of Products	Products
Water sports equipment	Inflatable rafts, snow-skis, water skis, surf-boats, sail-boards and other water sports equipment
Parts and accessories of mobile handsets	Parts, components and accessories of mobile handsets including cellular phones, are exempted from the whole of the additional duty of customs

P.8 Reduction in rate of Custom Duty

Particulars of Products	Rates
LCD Panels for manufacture of LCD television	From 10% to 5%
Un worked Corals	From 5% to nil
Inflatable Rafts	From 10 % to Nil
Life Saving Drugs 10 specified life saving drugs/vaccine and their bulk drugs. 1. Abatacept, 2. Daptomycin, 3. Entacevir, 4. Fondaparinux Sodium, 5. Influenza Vaccine, 6. Ixabepilone 7. Lapatinib, 8. Pegaptanib Sodium injection, 9. Suntinib Malate, 10. Tocilizumab	From 10% to 5% with Nil CVD by way of excise duty exemption
Specified Heart Devices Artificial heart and PDA/ASD occlusion device	From 7.5% to 5% with Nil CVD by way of excise duty exemption
Permanent Magnets for PM synchronous generator above 500 KW used in wind operated electricity generators	From 7.5% to 5%
Bio-diesel	From 7.5% to 2.5%
'Mechanical Harvester' for coffee plantation	From 7.5% to 5% with CVD from 8% to nil by way of excise duty exemption.
Cotton Waste	From 15% to 10%.
Wool Waste	From 15% to 10%.
Rock Phosphate	From 5% to 2%.

P.9 Increase in Rate of Customs Duty

Particulars of Products	Rates
Set Top Box for television broadcasting	From Nil to 5%
Gold and Silver Serially numbered gold bars (other than tola bars) and gold coins	From Rs.100 per 10 gram to Rs.200 per 10 gram.
Other forms of gold	From Rs.250 per 10 gram to Rs.500 per 10 gram.
Silver [These increases also to be applicable when gold and silver (including ornaments) are imported as personal baggage.]	From Rs.500 per Kg. to Rs.1000 per Kg.
Concrete batching plants of capacity 50 cum per hour	From NIL to 7.5%

P.10 Other Changes

1. **Exemption on Packaged or canned software**

   Custom duty exemption on packaged or canned software falling under Chapter 85 **(Exim code. 8524)** of the First Schedule of the Customs Tariff Act, 1975 (51 of 1975), from so much of the additional duty leviable thereon under sub-section (1) of section 3 of the said Customs Tariff Act.

   Provided that the transfer of the right to use shall be for **commercial exploitation** including the right to reproduce, distribute and sell such software and right to use the software components for the creation of and inclusion in other information technology software products.

   Further the importer shall make a declaration to the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, in respect of such transfer of the right to use for commercial exploitation:

2. Concessional customs duty of 5% on specified machinery for tea, coffee and rubber plantations to be continued up to 06.07.2010**. (Exim code 85 like)**

3. CVD exemption on Aerial Passenger Ropeway Projects to be withdrawn.

4. List of specified raw materials/inputs imported by manufacturer-exporters of sports goods which are exempt from customs duty, subject to specified conditions, to be expanded by including five additional items covered from 7th July 2009. **(Exim Code 95 Like)**

   1) Synthetic Rubber bladder
   2) Macau Cane
   3) Table Tennis Rubber
   4) Table Tennis bat handles
   5) Table Tennis blade

5. Raw materials and equipment imported by manufacturer-exporters of leather goods **(Exim Code 64 like)**, textile products **(Exim Code 63 like)**, and footwear industry **(Exim Code 64 like)** which are fully exempt from customs duty from 7th July 2009.

   1) Fittings, snaps of metals or alloys;
   2) Metal fittings / embellishments, webbing of any material for making
   3) Harness and saddlery items;
   4) Stirrup of any material and stirrup bars used for making Saddle Tree;
   5) Nylon polyester/PVE mesh and fabrics for making non-leather harness and saddlery items;
   6) Beading material - synthetic / leather / fabric;
   7) Chatons / stones / beads / crystals as decorative items;
   8) Shoe laces;
   9) Stretch fabric for shoe uppers;
   10) Cork sheets for soles covering soles and insoles;
   11) Artificial fur and alarm tag


CONTINUITY
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An Overview of

THE FINANCE BILL 2009

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The provisions contained in the Finance Bill, 2009 are the proposals and are likely to undergo amendments while passing through houses of Parliament before being enacted.