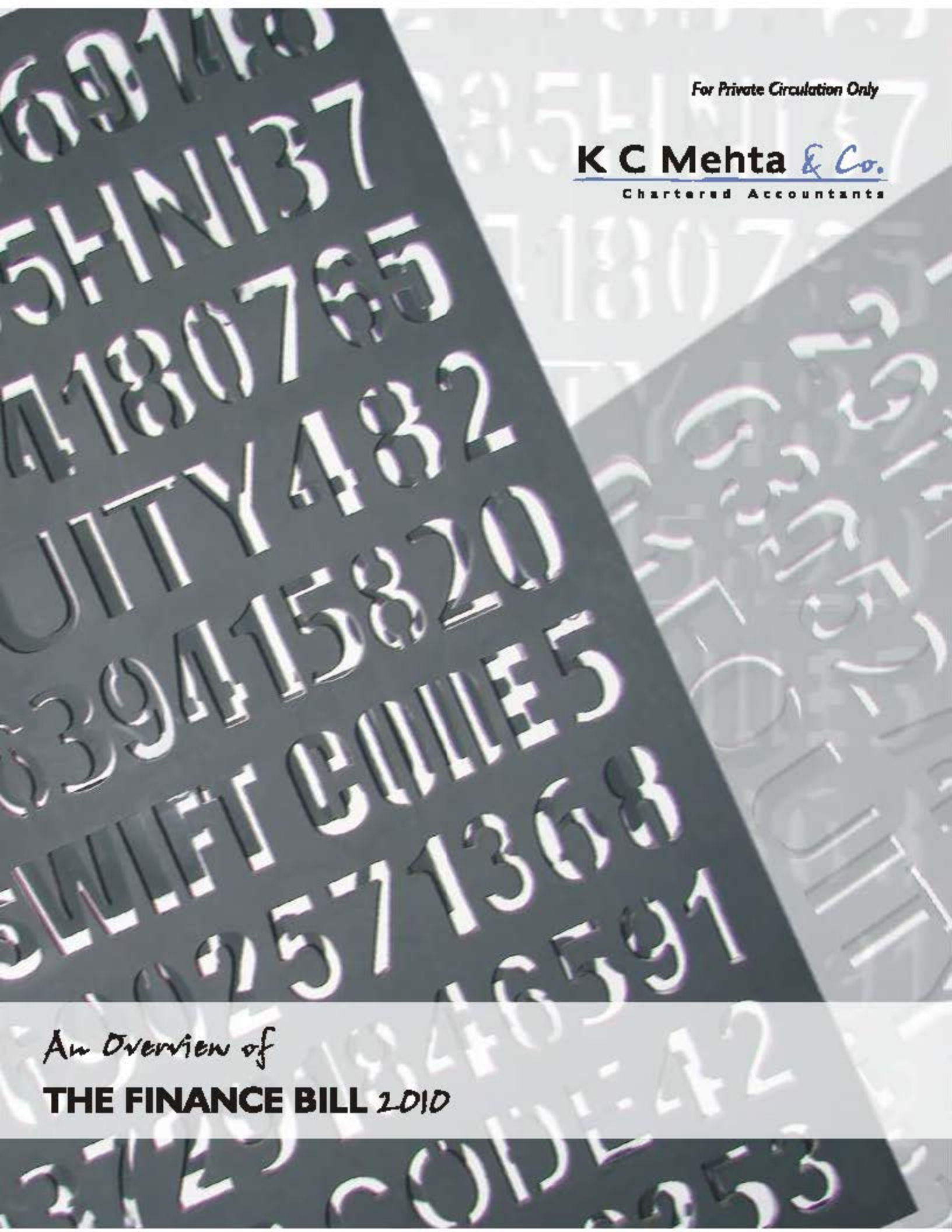

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An Overview of

THE FINANCE BILL 2010

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FINANCE BILL, 2010

Unless otherwise specifically mentioned, the amendments proposed are to be effective from A.Y. 2011-2012 and are therefore applicable with respect to income arising on or after 1st April 2010. Specific mention is made at the relevant places, when the effective date of a proposed amendment is other than 1st April 2010. Reference to the existing provisions means the provisions of the Act immediately prior to the amendments proposed in the Bill.

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, 2010:

- Basic exemption limit remains the same. The slab for 10% tax has been revised to Rs. 5,00,000/- from the existing Rs. 3,00,000/- in case of Individuals, HUFs, AOPs and BOIs.
- Surcharge of 10% applicable to domestic companies has been reduced to 7.5%. There is no change in the rate of surcharge of 2.5% in case of foreign companies.
- There is no change in tax rates of Firms, Domestic Companies, Companies other than Domestic Companies and Co-operative Societies.
- There is no change in rates of Education Cess, Secondary & Higher Education Cess and its applicability.
- Rate of Minimum Alternate Tax in case of Companies is proposed to be increased from 15% (effective 16.995% with surcharge and cess) to 18% (effective 19.9305% with surcharge and cess).
- Rate of Dividend Distribution Tax remains same.
- Rates of Securities Transaction Tax and its applicability remains the same.
- There is no change in the threshold limit and rate of wealth tax.
- Threshold limits in case of various provisions of Tax Deduction at Source have been changed.

The proposed income tax rates (including Surcharge, Education Cess and Secondary & Higher Education Cess) for the A.Y. 2011-12 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 2010 to 31st March 2011.

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 *		10.30%	N.A.
Rs. 190001 to Rs. 240000 **		10.30%	N.A.
Rs. 240001 to Rs. 500000		10.30%	N.A.
Rs. 500001 to Rs. 800000		20.60%	N.A.
Rs. 800001 onwards		30.90%	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	30.90%	N.A.
Domestic Company	1,00,00,000	30.90%	33.22%
Company other than Domestic Company	1,00,00,000	41.20%	42.23%
Local Authority	NIL	30.90%	N.A.
Co-operative Society	NIL		
Upto Rs. 10000		10.30%	N.A.
Rs. 10001 to Rs. 20000		20.60%	N.A.
Rs. 20001 onwards		30.90%	N.A.
Minimum Alternate Tax			
Domestic Company	1,00,00,000	18.54%	19.93%
Company other than Domestic Company	1,00,00,000	18.54%	19.00%
STCG on Listed Securities			
Individual, HUF,AOP & BOI	NIL	15.45%	N.A.
Partnership Firm	NIL	15.45%	N.A.
Domestic Companies	1,00,00,000	15.45%	16.61%
Company other than Domestic Company	1,00,00,000	15.45%	15.84%
STCG on assets other than listed securities			
Individual, HUF,AOP & BOI	NIL	As per slab	As per slab
Partnership Firm	NIL	30.90%	N.A.
Domestic Companies	1,00,00,000	30.90%	33.22%
Company other than Domestic Company	1,00,00,000	41.20%	42.23%
LTCG on assets other than Listed Securities			
Individual, HUF,AOP & BOI	NIL	20.60%	N.A.
Partnership Firm	NIL	20.60%	N.A.
Domestic Companies	1,00,00,000	20.60%	22.15%
Company other than Domestic Company	1,00,00,000	20.60%	21.12%

TABLE – 2

Particulars	Tax Rates
Dividend Distribution Tax	
By Domestic Company	16.61%
By Money Market Mutual Fund or Liquid Fund	27.68%
By Other Mutual Funds	
- For income distributed to Individual / HUF	13.84%
- For income distributed to others	22.15%
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	Tax Rate
For every individual, HUF and Company	30,00,000	1%

TABLE 3

TDS RATE FOR THE ASSESSMENT YEAR 2011-2012 (in %)

(TDS rates with effect from 1st April 2010)

Section	Nature of Payment	Threshold limit upto 30th June, 2010 (in Rs.)	Threshold limit w.e.f. 1st July, 2010 (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
192	Salary	As per slab	As per slab	Normal Rate (incl. cess)	N.A.	N.A.	N.A.
193	Interest on Securities						
	(1) Interest on Debentures or Securities (Listed)	2500*	2500*	10.00	10.00	10.00	10.00
	(2) Interest on 8% Savings (Taxable) Bonds, 2003	10000	10000	10.00	10.00	10.00	10.00
	(3) Any Other Interest on Securities (Unlisted)	0	0	10.00	10.00	10.00	10.00
194	Dividend other than dividend covered by Section 115-O	2500*	2500*	10.00	10.00	10.00	10.00
194A	Interest other than Interest on Securities (other than below)	5000	5000	10.00	10.00	10.00	10.00
	Where the payer is						
	(1) Banking Company	10000	10000	10.00	10.00	10.00	10.00
	(2) Co-operative Society engaged in banking business	10000	10000	10.00	10.00	10.00	10.00
	(3) Post Office (deposit scheme framed by Central Government)	10000	10000	10.00	10.00	10.00	10.00
194B	Winning from Lotteries	5000	10000	30.00	30.00	30.00	30.00
194BB	Winnings from Horse Races	2500	5000	30.00	30.00	30.00	30.00

* in case of resident only

Section	Nature of Payment	Threshold limit upto 30th June, 2010 (in Rs.)	Threshold limit w.e.f. 1st July, 2010 (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
194C	Payments to Contractors						
	(1) In case of Contract/ Sub-Contract/ Advertising	20000[1]	30000[1]	1.00	2.00	2.00	2.00
	(2) Contractor/ Sub-Contractor in Transport Business	20000[1]	30000[1]	NIL[2]	NIL[2]	NIL[2]	NIL[2]
194D	Insurance Commission	5000	20000	10.00	10.00	10.00	10.00
194E	Non-Resident sportsman/ sports association	0	0	10.00	10.00	10.00	NA
194EE	Deposits under NSS to Resident/Non-Resident	2500	2500	20.00	20.00	20.00	NA
194F	Repurchase of Units of Mutual Fund/UTI from Resident / Non-Resident	0	0	20.00	20.00	20.00	NA
194G	Commission on Sale of lottery tickets to Resident / Non-Resident	1000	1000	10.00	10.00	10.00	10.00
194H	Commission or Brokerage to Resident	2500	5000	10.00	10.00	10.00	10.00
194I	Rent to Residents						
	(a) Rent for Machinery/ plant/equipment	120000	180000	2.00	2.00	2.00	2.00
	(b) Rent for other than in (a)	120000	180000	10.00	10.00	10.00	10.00

1. This limit is for individual transaction. However, if aggregate payment to a contractor during the year exceed Rs. 50,000 (Rs. 75,000 w.e.f 1st July, 2010), then tax will be required to be deducted, even where individual transaction is less than the threshold of Rs. 20,000 (Rs. 30,000 w.e.f. 1st July, 2010)
2. The Nil rate will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 20%. (Transporter means persons engaged in plying, hiring and leasing of Goods Carriages)

Section	Nature of Payment	Threshold limit upto 30th June, 2010 (in Rs.)	Threshold limit w.e.f. 1st July, 2010 (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
194J	Fees for professional / technical services to residents	20000	30000	10.00	10.00	10.00	10.00
194LA	Compensation to Resident on acquisition of immovable property	100000	100000	10.00	10.00	10.00	10.00
195	Payment of other sums to a non-resident	0	0	Rate specified under Part II of First Schedule of Finance Bill, 2010 subject to provisions of DTAA			
196B	Income from units (including long term Capital Gain on transfer of such units) to an offshore fund	0	0	10.00	10.00	10.00	10.00
196C	Income from foreign currency bonds or GDR of Indian Company	0	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	0	20.00	20.00	20.00	20.00

Note:

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 (u/s 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.

TCS RATE FOR THE ASSESSMENT YEAR 2011-2012 (in %)

(TCS rates with effect from 1st April 2010)

Section	Nature of Payment	Threshold Limit (in Rs.)	Individual/ HUF/BOI/ AOP	Firm	Co-operative Society / Local Authority	Company
206CA	Alcoholic liquor for human consumption and Indian made foreign liquor	0	1.00	1.00	1.00	1.00
206CB/ CC/ CD	Timber obtained by any mode and any other forest produce	0	2.50	2.50	2.50	2.50
206CE	Scrap	0	1.00	1.00	1.00	1.00
206CF/ CG/ CH	Parking lot / toll plaza / mining and quarrying	0	2.00	2.00	2.00	2.00
206CI	Tendu leaves	0	5.00	5.00	5.00	5.00

B. PERSONAL TAXATION

B.1 Insertion of a new deduction for investment in Long Term Infra-structure Bonds - section 80CCF

Over and above the existing limit of Rs. 1,00,000/- u/s. 80CCE which is for specific deductions in computing the total income under section 80C, 80CCC & 80CCD; a new section has been inserted for granting deduction to individual or HUF in computation of its total income.

The proposed section 80CCF provides for a deduction to an individual or a HUF upto the limit of investment of Rs. 20,000/-. The said investment has to be made in Long-term infrastructure bonds to be notified by the Central Government.

B.2 Deduction for Medical Insurance under section 80D

Under the existing section 80D, deduction upto a sum of Rs. 15,000 on premium paid for insurance on the health (Mediclaim) of the assessee and his family was allowed. A further deduction of Rs. 15,000 is admissible if the medical insurance is taken for parents of the assessee. It is also provided in the existing provision that if the insured is a senior citizen, the said limit will become Rs. 20,000.

It is now provided that if any contribution is made to the Central Government's health scheme then the same would be also eligible for the deduction U/s. 80 D, subject to the above overall limit.

B.3 Income Tax on gift received

With effect from A.Y. 2005-06, a concept of income-tax on the gifts received by an individual or HUF was introduced in Section 56 (2) of the Act, provided the gift was received from a non-relative. At first the said concept was introduced for taxing gift in cash alone. However, consistently the scope of the said gifts has been enlarged. With effect from 1st October, 2009, the provisions not only cover the cases of gifts in cash, but also include the cases of gifts received by an individual or HUF in kind, being gift of immovable property (land or building or both), shares and securities, jewellery, archeological collection, paintings, sculptures or work of art ("Specified Properties"). The provisions are applicable only where the value of the gift exceeds Rs. 50,000 and is given at times other than specified occasions.

Amendments are sought to be made in this scheme of taxation:

- In this scheme of taxation of gifts, the gift of immovable property was chargeable to tax with reference to the stamp duty valuation as determined u/s. 50C of the Act. The present provisions also cover cases where a person purchases the property at a value lesser than the value which is determined by the stamp duty authorities. The law is sought to be amended to exclude cases of transaction of purchase of immovable property of land or building or both at value lesser than the stamp duty valuation. However, it is to be kept in mind that the cases of gifts of immovable property still continue to get taxed in the hands of the recipient. Further, purchase of Specified Properties other than immovable properties for consideration less than the fair market value will continue to be taxable in the hands of the purchaser.

- By an amendment it is proposed to specifically exclude the cases of transactions of stock-in-trade by restricting the definition of the Specified Property to apply to properties which would classify as capital asset, as defined u/s. 2(14) of the Act.

- Further, the definition of the Specified Properties has expanded by including "bullion" in the definition and accordingly now the gift of bullion (earlier only jewellery was included whereas bullion was not included) also will be chargeable to tax in the hands of the recipient.

B.4 Gifts received by partnerships and closely held companies

- Hitherto, the gifts received by the individuals and partnership firms were only covered by the provisions of Section 56(2), whereas the gifts received by the firms, companies, etc. were excluded from taxation. By proposed amendment, it is sought to tax the firms and closely held companies if they receive the gift of shares of a closely held company on or after 1st June, 2010. Further, it also includes the cases where the firm or closely held company receives the shares of the closely held company for a consideration which is less than the fair market value of such shares.
- It must be kept in mind that even transfer of the shares which are held as stock in trade will be covered as the amendment proposed in the definition of "Property" does not apply here.
- It applies only where the value of the shares gifted or difference between the consideration paid and the fair market value exceeds Rs. 50,000.
- Cost of acquisition in the hands of the recipient firm or closely held company would be the fair market value of the shares so received.

C. TRUSTS

C.1 Charitable Organisations

Organisations which are existing for charitable purpose are entitled to seek exemption from the tax liabilities under the Act. However, the institutions which were engaged in charitable activities other than relief to poor, education, medical relief, preservation of environment, monuments or places of artistic or historic interest, or religious institutions [i.e. institutions which were having object of general public utilitiy] were denied exemption, if these institutions were to be engaged in any activity of trade, commerce or business or activity of rendering any service for a cess or fees. Amendment to this effect of denying benefit of exemption was brought by Finance Act, 2008 w.e.f. 1.4.2009.

It is proposed in the Bill, that such benefit of exemption will not be denied to the institutions having object of general public utility, even where they are engaged in the activity of trade, commerce or business activity or for rendering any service for a cess or fee, provided the aggregate value of receipt from such activities is less than Rs. 10.00 lacs in the year under consideration.

The change is proposed w.r.e.f. 1st April 2009.

C.2 Cancellation of registration of Trust

Registration of trust was governed by Section 12A of the Act prior to the introduction of Section - 12AA vide Finance Act, 2007.

Section – 12AA(3) empowers the commissioner to cancel the registration of trust, if the registration is granted u/s. 12AA. However, the provision is silent for cancellation of registration, where the registration is granted u/s. 12A. This was unintended omission of powers of the CIT to cancel registration and accordingly amendments have been proposed to enable the CIT to cancel registration even in cases where the original registration is granted u/s. 12A of the Act.

This change is proposed w.e.f. 1st June 2010.

D. TAXATION OF NON-RESIDENTS

D.1 Income deemed to accrue or arise in India

Commensurate with generally accepted international tax practices, the Indian tax laws provide for taxation of interest, royalties and fees for technical services of non-residents in India, provided the source of such income is situated in India.

The question / dispute has been arising that where the Non-resident has rendered services from outside India whether the source of income shall be considered to be lying in India for the purpose of Section – 9. This dispute was settled by Hon'ble Supreme Court of India in the case of ***Ishikawajima-Harima Heavy Industries Ltd. vs. DIT [2007] 288 ITR 408.*** The Hon'ble Supreme court has held that to tax the income from fees for technical services, the services must be utilized in India as well as must be rendered in India.

The department considered this decision and came up with a retrospective amendment (w.e.f. 1/06/1976) vide Finance Act, 2007 by introducing an explanation to section – 9. As per the said explanation it was clarified that the income from Interest, Royalty and Fees for technical services shall be chargeable to tax in India irrespective of the fact that the non-resident has no residence or place of business or business connection in India.

However even after the introduction of said explanation the question of taxability when services have been rendered outside India remained unanswered. Therefore the dispute remained unresolved. The Hon'ble Karnataka High Court in the case of ***Jindal Thermal Company Ltd. 182 Taxmann 252*** recently held that the services provided off shore or outside India cannot be taxed in India.

The above decision of the High Court is proposed to be nullified by amending explanation to section – 9 to bring the income from services rendered outside India under the tax net. In view of the proposed change only requirement for taxing income from such services shall be the utilization of services in India and not place of rendering the services.

The change is proposed w.r.e.f 1st June 1976.

This amendment has far reaching impact and it can affect the taxability of several items, which hitherto were not chargeable to tax in India.

D.2 Computation of Income of Non-Resident providing services in respect of extraction or production of Mineral Oil

The income of Non-resident from royalty or fees for technical services is chargeable to tax as per section – 9(1)(vi) and (vii). In case the non-resident has permanent establishment in India the income shall be computed in accordance to the provisions of the Section – 44DA.

However, when the services were provided or the royalty was receivable in respect of a project which was otherwise eligible u/s. 44BB of the Act [extraction or production of mineral oil], the question was whether the said payment would be governed by section 44DA or section 44BB. It may be mentioned that section 44BB of the Act taxes only 10 % of the gross receipt to tax.

The Advance Ruling Authority in matter of Geofizyka Torun Sp. Zo. O. in Re [AAR no. 813 of 2009] and Seabird Exploration FZ LLC [AAR No. 815 of 2009] has given the ruling that since Sec – 44BB is more specific provision it should prevail over section 44DA for the purpose of computation of such Income.

The Finance Bill, 2010 in view to resolve the issue, proposes to amend the provisions of both the sections in such a way that when a non-resident has income from Fees for technical services or Royalties and has a PE in India his income shall be computed with respect to the royalty and fees for technical services in accordance with Section – 44DA only.

E. BUSINESS INCOME

E.1 Disallowance on account of non-deduction / non-payment of TDS

As per existing provisions of Section 40(a)(ia) of the Act, certain payments made to residents were not allowable as deduction on which tax was not deducted or after deduction it was not paid before end of the year. In case where the tax was deducted in the last month of the year, then no disallowance u/s. 40(a)(ia) would be made, so long as the tax was deducted during the year and paid before the due date of filing the return of income.

It is now proposed that so long as the tax is deducted during the year and it is also paid on or before the due date of filing the return of income, then no disallowance will be made u/s. 40(a)(ia) of the Act. However, it must be kept in mind that in any case, the deduction of TDS is required to be made on or before the end of the year. If there is a failure to deduct tax, the disallowance will be made, notwithstanding the fact that the tax has been deducted after end of the year and paid before the due date.

E.2 Enhancement in limit for Tax Audit

Persons carrying on business / profession are required to get their accounts audited, if their turnover exceeded the threshold limit of Rs. 40.00 lacs for business and Rs. 10.00 lacs for profession. These limits were fixed way back in the year 1985 i.e. since the inception of the provisions. For giving relief to the small assessees, it is proposed to raise the said threshold to Rs. 60.00 lacs for business and Rs. 15.00 lacs for profession and accordingly the assessees which have their receipts below these thresholds will not be required to get their accounts audited under the tax laws.

E.3 Penalties u/s. 271B for Tax Audit non-compliance

Presently, if the person fails to get his accounts audited then penalty of ½% of the total sales or Rs. 1,00,000, whichever is less, is imposed. Thereby, maximum penalty of Rs. 1,00,000 is provided.

Now it is proposed to increase the ceiling to Rs. Rs. 1,50,000 in place of Rs. 1,00,000.

E.4 Expansion of the Presumptive Tax Scheme u/s. 44AD

Under the existing provisions of section 44AD of the Act, a person carrying on any business is entitled to opt for a scheme of presumptive tax scheme, provided its turnover or gross receipts do not exceed Rs. 40.00 lacs. In such type of assessees, the assessee is required to presume its income at 8% of the turnover or gross receipts and pay tax accordingly. The assessee is also exempted from maintaining any records, accounts, etc. in respect of its business.

It is proposed to expand the scope of the said presumptive tax scheme to the assessees having its turnover or gross receipts upto Rs. 60.00 lacs. This would help the smaller businessman to reduce their hassles of compliance.

F. MINIMUM ALTERNATE TAX

F.1 Minimum Alternate Tax – Enhancement

Presently, the corporate entities are liable to pay 15% tax on its book profits u/s. 115JB of the Act, if the said amount is more than the tax computed under the other normal provisions of the Act. Due to the effect of surcharge, education cess and secondary and higher education cess, the effective rate of MAT worked out to be 16.995%.

The rate of MAT is proposed to be increased to 18%. With the reduction in the surcharge on the companies, the effective rate of MAT would be 19.9305% as compared to the effective rate of MAT being 16.995% upto and including A.Y. 2010-11. It may be kept in mind that the excess MAT paid for a year is allowed as a set off, subject to the conditions, in the subsequent year, if and to the extent, the tax as per the normal computation exceeds MAT. The set off is permissible for a period of 10 assessment years succeeding the assessment year in which the MAT is paid.

G. DEDUCTIONS AND EXEMPTIONS

G.1 Increase in amount of weighted deduction for scientific research

Under the provisions of section 35, a person carrying on business or profession, is entitled to the deduction of the expenditure (revenue as well as capital) incurred by it on scientific research. In specified cases, the weighted deduction is given to the person incurring the expenditure. For providing further impetus to the activities of research, the weighted deduction has been enhanced as mentioned below:

Nature of Expenditure	Applicable Section	Original Weight for deduction	Proposed weight for deduction
Contribution to an approved research association, university, college or other institution	35(1)(ii)	125%	175%
Any sum paid to **Research association** having its object in Social Science or Statistical Research or to a university**	35(1)(iii)	125%	125%
Payment to a National Laboratory, University, IIT or specified person for scientific research	35(2AA)	125%	175%
For in-house research by a person engaged in the business of bio-technology or any business of manufacture of an article or thing other than XIth Schedule	35(2AB)	150%	200%

Further, as a general amendment to various sections [10(21), 35, 80GGA and 139], the institutions carrying on social science research and statistical research has been placed at parity with the institutions and organizations carrying on scientific research.

** Scope u/s 35(1)(iii) has been broaden from "University" to "Research Association"

G.2 Special Incentive to Hotel Industry U/s. 35 AD

The Finance Act, 2009 inserted Section 35AD to allow deduction of capital expenditure (other than land, goodwill and financial instrument) incurred by the assessee engaged in the business of setting up and operating cold chain facility, warehousing facility for agriculture produce and laying and operating a cross-

country natural gas or crude or petroleum oil pipeline network for distribution / storage.

For giving impetus to the hotel industry, the Finance Bill 2010 proposes to extend the said incentive to assessee who builds and operates a new hotel of two star or above category, provided the assessee commences the operations of the said hotel on or after 1st April, 2010. Such deduction is also subject to the following conditions:

1. Such business is not set up by splitting up or the reconstruction of a business already in existence.
2. Such business is not set up by transfer of machinery or plant previously used for any purpose. However the assessee may use imported second hand plant machinery subject to certain specified conditions.

It may be mentioned that Section 35AD introduces the investment linked deductions, wherein, the entire capital expenditure (other than land, goodwill and financial instruments) is eligible for expenditure in the very year in which such expenditure is incurred. Further, set off of the losses of such businesses are not allowed against any other business. The losses arising in this business is not allowed as set off against income under any other source / head of income but is allowed to be carried forward indefinitely for setting off against the profits arising from such business only u/s. 73A of the Act. Inclusion of highly capital intensive industry like hotel industry would encourage lot of investment in this industry.

G.3 Modification of the conditions applicable to cross-country pipelines

Under the existing provisions, a business of laying and operating a cross-country natural gas pipeline network is eligible for deduction u/s. 35AD only if it makes available not less than 1/3rd of its total pipeline capacity for use on common carrier basis by any other person other than the assessee or an associated person of such assessee. The Finance Bill, 2010 proposes that the assessee is required to make available such proportion of its total pipeline capacity as specified by regulations made by the Petroleum and Natural Gas Regulatory Board established under Section 3(1) of the Petroleum and Natural Gas Regulatory Board Act, 2006 instead of 1/3rd of its total pipeline capacity. It may be mentioned that the concerned authority has provided in its regulation that gas pipeline network should have 1/3rd of the common carrier capacity, whereas petroleum pipeline network should have 1/4th common carrier capacity.

G.4 Prohibition of dual deduction U/s. 35AD and Chapter VIA

Under the existing provisions, benefit of any deduction Under Chapter VIA is denied to the businesses which are specified businesses, irrespective of any claim being made and / or allowed. The Finance Bill 2010 proposes to amend section 35AD(3) and Section 80A to provide that the deduction Under Chapter VIA will be denied for the specified business only if the deduction U/s. 35AD is claimed and allowed. This would therefore mean that if the Assessee chooses not to claim or if the assessee claims, but the Assessing Officer does not allow, then in both such circumstances, the benefit of other deductions under Chapter VIA cannot be denied.

G.5 Deduction for eligible housing projects U/s. 80IB(10)

Section 80IB(10) allows 100% of the profits as deduction from a housing project, provided it complies with various conditions stipulated therein. The said section provided that the housing project should be completed on or before the 31st March, 2008 (for projects for which the approval was granted prior to 1.4.2004) or before expiry of a period of 4 years from the date of approval (in cases where the approval was granted after 1.4.2004).

It is proposed to give one additional year for completion of the project. It has accordingly been provided that the projects approved prior to 1.4.2004 will have to be completed on or before 31.3.2008 (i.e. 4 years limit). Projects approved after 1.4.2004, but before 31.3.2005, will have to be completed on or before 31.3.2010. For projects which are approved on or after 1.4.2005 will have to be completed before expiry of 5 years from the end of the year in which the approval is given.

To further relax the rigours of the conditions stipulated in section 80IB(10)(d) relating to the quantum of permissible commercial construction, some amendments have been proposed. Existing provisions allows deduction only if the built-up area of shops and other commercial establishment included in the housing project does not exceed 5% of the aggregate built-up area or 2000 sq.ft. whichever is less. It is proposed to relax this condition by providing that the maximum commercial construction permissible will be 3% of the total built up area or 5,000 sq. ft. whichever is higher. The amendment brings about more logical meaning to the condition.

The proposed amendment is to be effective from A.Y. 2010-11. However, it leaves open the issue of commercial construction and also completion in cases where the profits have been charged to tax or where the deductions have been claimed for the period prior to A.Y. 2010-11. Availability of benefit of the amendment for the period prior to A.Y. 2010-11 is doubtful.

G.6 New Hotel Project and Convention Centres - Deduction under section 80 ID

This section was introduced by the Finance Act, 2007, for encouraging investment in the hotels and convention centers in the National capital territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Gaziabad. This provision was introduced specifically for giving impetus to investment for ensuing Commonwealth Games. In the said section, it is provided that for becoming eligible for the deduction, the hotel should start functioning and the convention centre should complete construction on or before 31st March, 2010. A further extension of period upto 31st July, 2010 is granted for commencement or completion of these projects.

G.7 Exemption to Research Organizations

The Finance Bill, 2010 proposes to extend the exemption u/s 10(21) of the Income Tax Act, 1961 to organizations engaged in social science and statistical research, which was earlier available only to those organizations engaged in carrying out scientific research.

This change is proposed as a consequential to the proposed amendment in section – 35. The change is proposed w.e.f. 1st April 2011 (F.Y. 2010-11).

G.8 Incentive to Special Economic Zone ("SEZ")

The Income Tax Act, 1961 provides an incentive for units in SEZs under section – 10AA. The exemption is required to be calculated based on profits earned by such units from their export. The provision of section 10AA(7) provides the way in which the exempted profit is required to be determined as under:

$$\text{Exemption} = \text{Total Profit} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$$

However, the disputes were arising on interpretation of the term "Total Turnover". Where the assessees were considering the total turnover of the eligible unit under SEZ, the department, in absence of clarity was considering the total turnover of the business of the assessee, including the turnover from activities other than that of the SEZ unit.

With a view to settling the dispute, the Finance (No. 2) Act, 2009 amended the provisions and clarified that the total profit and the total turnover shall be considered in respect of total business of the undertaking and not of the entire business of the assessee. The amendment was made effective from 1st April 2010. However, it was necessary to make the amendment with retrospective effect. Accordingly, the amendment is proposed to apply the change in law with retrospective effect from 1st April, 2006.

H. TAXATION OF LIMITED LIABILITY PARTNERSHIP (LLP)

H.1 Tax neutrality on conversion of Company into LLP

The concept of limited liability partnership came into existence by the introduction of the Limited Liability Partnership Act, 2008. LLP enjoys both, the advantages of a private limited company and also a partnership. LLP despite being 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. Similarly, as compared to partnership, for LLP 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.

The Finance Act, 2009, introduced several provisions in the Act to treat LLP as a partnership firm for the tax purposes in all respects.

The Finance Bill, 2010, takes the process of amendment further, primarily for small companies having turnover of less than Rs. 60.00 lacs, by amending sections 32, 35DDA, 43, 47, 47A, 49, 72A and section 115JAA of the Act, primarily aimed at providing tax neutrality for conversion of the private limited companies and unlisted public companies into LLP.

Section 47 of the Act deals with transactions not regarded as transfer. Under the existing provisions there was no provision dealing with conversion of a company into a LLP. By introducing clause (xiiib) in section 47, it is proposed that the transfer of assets on conversion of a company (private or unlisted public company) into a LLP in accordance with section 56 and 57 of the LLP Act, 2008 shall not be considered as transfer for capital gains purposes u/s. 45 of the Act. No capital gain therefore would accrue to the company upon transfer of assets from company to the LLP, despite the fact that the assets of the company would become the assets of the LLP by virtue of section 58 (4)(b) of the LLP Act, 2008.

The tax neutrality is subject to the following conditions:

(i) all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP;

(ii) all the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;

(iii) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the LLP;

(iv) the aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50 % at any time during the period of five years from the date of coversion;

(v) the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and

(vi) no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.

The conditions mentioned above are cumulative and each condition is required to be satisfied. Non-fulfillment of any one condition would render the transaction as transfer of assets and taxable as profits and gains of the successor LLP chargeable to tax in the previous year in which the requirements are not complied with.

The cost of acquisition of various assets acquired by the LLP upon conversion will be the cost of acquisition of these assets in the hands of the company prior to conversion and the written down value of the block of asset shall be the written down value of the block of asset of the company as on the date of conversion.

Section 72A, is proposed to be amended to allow carry forward and set off of accumulated loss and unabsorbed depreciation allowance in the hands of the company upon conversion. It is further provided that such accumulated loss and unabsorbed depreciation will be treated as the loss and depreciation of the year in which such conversion takes place and accordingly, fresh period of 8 years will be available for set off of loss in the hands of LLP upon conversion.

Specific provisions have been made for allowing the deduction u/s. 35DDA for the VRS expenses incurred by the Company prior to conversion for the balance period in the hands of the firm upon conversion.

Section 115JAA dealing with tax credit of tax paid u/s. 115JA or section 115JB is proposed to be amended by inserting clause (7) w.e.f. 1-4-2011 for denying the tax credit under MAT to the successor LLP.

In the scheme of conversion of the Company into the LLP, the shares held by the shareholders of the Company will get extinguished and will be substituted by

balance in their respective capital accounts. Unlike cases of amalgamation and demergers, the proposed amendment does not clarify the position of tax neutrality in the hands of the shareholders and that continues to be an open question. It is recommended that the said issue is clarified.

H.2 MAT Credit denied in case of conversion from Company to LLP

Under the Finance Bill, 2010, extensive provisions are made for providing tax neutrality to conversion of a private limited company or unlisted public company to Limited Liability Partnership (LLP). The only exception to the tax neutrality is denial of unutilized credit for the MAT available on the date of conversion of a company into LLP. It is provided that the provisions of section 115JAA granting credit for MAT paid shall not apply upon conversion into LLP.

I. RETURNS AND ASSESSMENT

I.1 Filing of returns by Research Association carrying on Social Science and Statistical Research

Extensive provisions have been made in the Finance Bill, 2010, for expanding the scope of benefits given to the research association so as to embrace non-scientific research (social science) and statistical research. Parity has been provided for the social science and statistical research with scientific research.

Further, the institutions which are engaged in the social science research or statistical research are also entitled to seek exemption of their income u/s. 10(21) of the Act. Continuing with the said parity, it has been provided that such institutions will also be obligated to file its return of income, provided their income (prior to claiming exemption u/s. 10) exceeds the maximum amount not chargeable to tax.

I.2 Power of the High Court to condone the delay u/s. 256 (reference) and 260A (Appeal)

Under the existing provisions, appeal u/s. 260A of the Act against the order of the Income Tax Appellate Tribunal can be filed with the High Court within a period of 120 days from the receipt of the order of the ITAT. Prior to introduction of the appeal provisions u/s. 260A w.e.f. 1st October, 1998, there were provisions of filing reference application before the High Court u/s. 256 of the Act, which also provided for similar period of 120 days from the receipt of the order of the ITAT.

None of the provisions were granting powers to the High Court to condone the delay in case where the assessee or the department failed to file the appeal / reference within the stipulated period. However, the High Courts under their inherent powers and also under the provisions of the Civil Procedure Code, 1908, were condoning the delay.

In Hongo India Pvt. Ltd. 236 E.L.T. 417 and Chaudharana Steels 238 E.L.T. 705, the Supreme Court held in the context of sections 35H & 35G of the Excise Act, that in the absence of specific powers, the High Court has no power to condone delay. Recently full bench of the Allahabad High Court in the case of CIT v. Mohd Farooq 317 ITR 305 held that the High Court has no power to condone the delay. Same verdict is given in following cases by various High Courts:-

- ACIT v Mahavir Prasad Verma & Others 225 CTR 305 (Chhattisgarh)

- CIT v. Williamson Tea (assam) Ltd. 319 ITR 368 (Guwahati)
- CIT v. Grasim Industries Ltd 319 ITR 154 (Bom)
- ACIT v Shubhash Traders 318 ITR 402 (MP)
- CIT v. West Coast Paper Mills Ltd 319 ITR 390 (Bom)

To obviate the difficulties likely to be created because of these rulings, a retrospective amendment (w.e.f. 1.6.81 in section 256 and w.e.f. 1.10.98 in section 260A) is proposed to grant power to condone delay to the High Courts.

Similar amendments are also proposed in Section 27 and 27A of the Wealth Tax Act, 1957 for giving powers to the High Court for condonation of delay in admitting reference / appeal filed under the Wealth Tax Act.

I.3 Unique Document Identification Number

Section 282B was inserted by the Finance (No. 2) Act, 2009, with effect from 01-10-2010.

Under this provision, an income tax authority is required to allot a computer generated Document Identification Number before issue of every notice, order, letter or any correspondence to any other income tax authority or assessee or any other person and such number shall be quoted thereon. It also provides that every document, letter, correspondence received by an income tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.

It is proposed to delay the implementation of the said scheme and accordingly it is provided that the UDIN will be required to be issued only on or after 1st July, 2011.

I.3 Provisions dealing with Settlement Commission

Inclusion of Search Cases

Entire scheme of the eligibility, powers and procedure before the settlement commission was overhauled by Finance Act, 2007, w.e.f. 1.6.2007. In the overhauled scheme, search / requisition cases covered by the provisions of section 153A of the Act were not allowed to take benefit of the settlement

commission. It also excluded the cases of related persons whose documents were seized as provided for in Section 153C of the Act.

To enable assessees, in whose case the search action has been taken to avail of the benefit of settlement commission, the definition of "case" u/s. 245A(b) is amended to include also the search / requisition cases, provided the settlement application is filed on or before completion of assessment in such cases. It also removes the prohibition in cases where the AO has to proceed u/s. 153C of the Act.

Minimum threshold of additional income tax payable

Under the existing provisions, application can be admitted by the settlement commission, only if additional income tax payable on the income disclosed in the application exceeds Rs. 3 Lacs. It is proposed to enhance this limit to Rs. 10.00 lacs for a case being eligible to be proceeded with before the Settlement Commission. In search cases (i.e. cases u/s. 153A as well as u/s. 153C), the said limit is further raised to Rs. 50.00 lacs of additional tax payable.

Time limit for passing order of settlement

Under the existing provisions, Settlement commission shall pass an order in respect of application made on or after 1st day of June, 2007, within 12 months from end of the month in which application was made.

It is proposed to extend the time limit to 18 months from end of the month in which the application is filed. However, this extended time limit shall apply only for settlement application made on or after 1st day of June 2010.

Provisions similar to the above provisions are made in the Wealth Tax Act, 1957 for enabling settlement under the Wealth Tax Act, 1957 in search cases. Amendments are proposed in Sections 22A and 22D of the said Act.

The amendments proposed are with effect from 01-06-2010.

J. TAX DEDUCTED/ COLLECTED AT SOURCE

J.1 Increase in threshold limits of deduction of tax from various payments

This bill proposes to increase various threshold limits for deduction of tax from various payments like Winning from Lottery or Crossword Puzzle, Winning from Horse Race, Payment to Contractors, Insurance Commission, Commission or brokerage, Rent, Fees for Professional and Technical Services. The proposed amendments w.e.f 1st July, 2010 made under the new provision are summarized as under:

(Amounts in Rs.)

Section	Nature of Payment	Existing	Proposed
194B	Winning from Lottery or Crossword puzzle	5,000	10,000
194BB	Winning from Horse Race	2,500	5,000
194C	Payment to Contractors [per Transaction]	20,000	30,000
194C	Payment to Contractors [Annual Limit]	50,000	75,000
194D	Insurance Commission	5,000	20,000
194H	Commission or Brokerage	2,500	5,000
194I	Rent	1,20,000	1,80,000
194J	Fees for Professional and Technical Services	20,000	30,000

J.2 Consequences of failure to deduct tax or after deducting fails to pay the tax deducted/tax collected at source u/s. 201(1A)

Under the existing provision of section 201(1A) of the Act, where the person does not deduct tax or after deducting fails to pay the tax, he is required to pay simple interest at the rate of 1% for every month or part of the month. Amendments are proposed to treat the cases of failure to make payment, after deducting the tax at source more severally then the cases of pure failure. The proposed amendment to this section w.e.f. 1st July, 2010 has increased the rate of interest in cases of failure of payment after deduction to 1 ½% for every month or part of the month till the

date on which such tax is actually paid. The rate of interest will remain same at one percent for the cases of actual default of deduction of tax itself.

J.3 Certificate for tax deducted or collected u/s. 203 and u/s. 206C

The tax department was proposing to grant the credit of tax at source under their Online Tax Accounting System (OLTAS), completely obviating the necessity to issue certificate of deduction of tax at source and furnishing the same with the tax returns. For going further under this scheme, in the Finance Act, 2005 section 203 and section 206C(5) were amended for abolishing the requirement for issuance of the TDS and TCS certificate. This was originally to come into effect from 1st April, 2005.

It appears that the tax department is not considering to discontinue with the system of issuance of the TDS / TCS certificates and accordingly provisions abolishing the issuance of the TDS / TCS certificates have been withdrawn.

K. SERVICE TAX

K.1 Exemptions

Exemption from service tax is being provided for following services:

- Services with respect to Information technology software with packaged or canned software and intended for single use and packaged.

- Transmission of Electricity by reverse charge method. This has been made necessary as the service tax has been levied on exchanges trading in electricity.

- Services of erection, commissioning or installation of

  - mechanized food grain handling systems

  - equipment for setting up or substantial expansion of cold storage

  - machinery or equipment for initial setting up or substantial expansion of units for processing agricultural, apiary, horticultural, dairy, poultry aquatic and marine products and meat,

  (This shall come into force from the date of its publication in the official gazette.)

- Services in relation to

  - on-line information and database access or retrieval or both in electronic form through computer network;

  - business auxiliary service

  by any Indian News Agency subject to fulfillment of specified conditions.

  (this notification shall come into force from the date of its publication in the official gazette.)

- Services with respect to transport of goods by rail namely Defence/ military equipment, Railway .equipment and material, postal mail bags, relief materials, luggage of train passengers, parcels, goods classified under ICRA goods tariff, kerosene oil w.e.f. 01.04.2010.

- Service provided by a goods transport agency to a customer by road for transport of food grains or pulses in addition to the existing fruits, vegetables, eggs or milk. (Applicable from the date of its publication in the official gazette of India.)

- Services provided in relation to "transport of goods in container by rail" will now be read as "transport of goods by rail."

- Services provided by Vocal training Institute will include only Industrial Training Institute or an Industrial Training Centre affiliated to the National Council for Vocational Training, offering courses in designated trades.

K.2 Addition of new services

1) Promotion, organizing or marketing of games of chance, including lottery, Bingo or Lotto.

2) Hospital, nursing home or multi-specialty clinic

   a. Where the employees are getting benefit of medical checkup from their employers and hospitals are paid directly by the employer. Preventive and health checkup are covered.
   b. Where the individual is covered by Health Insurance and the insurance company pays directly to the hospital preventive health checkup and treatment are covered.

3) Storing, keeping or maintaining of medical records of employees of a business entity.

4) Marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity.

5) Commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage organised by such other person.

6) Services provided, by an electricity exchange, by whatever name called, approved by the Central Electricity Regulatory Commission constituted under section 76 of the Electricity Act, 2003, in relation to trading,

processing, clearing or settlement of spot contracts, term ahead contracts, seasonal contracts, derivatives or any other electricity related contract.

7) Temporary transferring or permitting the use of copy rights.

8) Builder of a residential or commercial complex who charges extra for extra benefit particularly of providing preferential location is now covered under service tax.

9) Services provided by any air craft operator shall now be extended to any class including economic class for domestic and international journey.

10) The words "for use in the course, or furtherance, of business or commerce" in case of services of Information Technology has been omitted.

11) Change is made in respect of method of determining the gross amount charged by the insurer for providing the insurance services in respect of ULIP policies. By this now the actual gross amount charged by the insurer as fund management charges or amount fixed by IDRA, whichever is higher attracts tax.

12) Renting of immovable property (w.r.e.f. 1st July, 2007):

The definition for renting has been amended as to include all service which are provided in addition to pure rent.

Also, explanation 1 to such sub clause has been further extended to include:
"Vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce"

K.3 Other Amendments

1) Definition of business entity is now clarified so as not to include an Individual.

2) Definition of Port Service will now include the service provided within the Port also.

3) Commercial training or coaching centre shall include any centre or institute, where training is provided for consideration even though

provided by trust or society shall be taxable. This is with retrospective effect from 1st July 2003.

4) Commercial or Industrial construction and Construction of a complex: New explanation now includes any construction with intention to sell partly or wholly as taxable service (except for cases where no sum is received from prospective buyer by the builder before grant of completion certificate).

5) Sponsorship services will now include sponsorship of sports events, which was till now excluded from service tax

K.4 Amendments in rules

1. Export of Service Rules, 2005:

This shall come into force on the date of their publication in the official Gazette. Following service have been included in the scope of export of taxable services:

- Mandap keeper service is now associated with immovable property situated outside India. Till now it qualified for export without having to be so defined.

Following services has been omitted from the scope of export of taxable services:

- Mandap Keeper – it is now associated to the location of immovable property.
- a practicing chartered accountant in his professional capacity, in any manner;
- a practicing cost accountant in his professional capacity, in any manner;
- by a practicing company secretary in his professional capacity, in any manner;

<u>Condition to be satisfied for services being treated as export of service</u>

The condition as to the services are provided from India and used outside India; to be classified as export of service has been omitted out of the two conditions stipulated in the rules.

This means even if the services are provided outside India and used outside India but if the payment is received in convertible foreign exchange by the service provider in India then the same shall also be classified under the export of services rules.

"India" for the purpose of Export of Services Rule,2005 shall now be:

"India includes the installation structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof."

K.5 Service Tax (Determination of Value) Rules, 2006

This shall come into force on the date of their publication in the official Gazette. The taxes levied by any government on travel by air, if shown separately on the ticket or the invoice of such ticket, shall be excluded in determining the value of taxable service.

K.6 Taxation of Services (Provided from outside India and Received in India) Rules, 2006

The same shall come into force on the date of their publication in the official Gazette.

The definition of India for this rule has been substituted with the following definition:
India includes the installation structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purpose of prospecting or extraction or production of mineral oil and natural gas and supply thereof.

The scope of services classified under this rules has been extended to include the following service:

- Mandap keeper services

Following services has been omitted from the scope of Taxation of services (provided from outside India and received in India) Rules, 2006:

- Mandap keeper services;
- practicing chartered accountant in his professional capacity, in any manner;
- a practicing cost accountant in his professional capacity, in any manner;
- a practicing company secretary in his professional capacity, in any manner;

L. EXCISE

L.1 Retrospective Amendment in CENVAT Credit Rules

The amendment is made with retrospective effect in case of the rules past and present.

In respect of the credit on the inputs used in or in relation to the exempted goods manufactured by a manufacturer, the disputes which are pending from the very first time the CENVAT credit was allowed. Since the very beginning of the CENVAT regime disputes have arisen on account of utilisation of credit on input against the manufacture of exempted goods or goods which carry NIL rate of duty. An option has been inserted with effect from various dates in various rules as shown in the table below. The amendment gives an option to the Manufacturer to pay an amount equal to the input credit used in or in relation to manufacture of exempted goods. Eligible Manufacturer is one, who has a dispute pending regarding input credit on exempted goods and the dispute should be pending on the date of ascent to Finance Bill 2010.

Rules	With effect from - to	Amendment & Schedule of finance Bill
Central Excise Rules 1944	1-09-1996 to 28-02-1997 and 1-03-1997 to 31-03-2000	Rule 57CCC inserted By Fourth Schedule
Central Excise Rules 1944	1-04-2000 to 30-06-2001	Rule 57AD (5) inserted By Fifth Schedule
CENVAT Credit Rules 2001	1-07-2001 to 28-02-2002	Rule 6(5) inserted by Sixth Schedule
CENVAT Credit Rules 2002	1-03-2002 to 9-09-2004	Rule 6(5) inserted by Seventh Schedule
CENVAT Credit Rules 2004	10-09-2004 to 31-03-2008	Rule 6(5) inserted By Eighth Schedule

An application will have to be made within six months from the date when ascent is given to the finance bill 2010 by the President where the dispute is still pending on that date, to the Commissioner of Central Excise with documentary evidence and a certificate of a Chartered Accountant or a Cost Accountant certifying the amount of credit utilized in or in relation to manufacture of exempted goods or goods with nil rate of duty after making payment of such

amount with interest. Interest is at the rate of 24% from the due date to the date of payment.

Within 2 months from the date of receipt of the application, the commissioner will verify the correctness and either confirm or require the manufacturer to pay the deficit amount with interest within 10 days. The enabling provisions also inserted give Government power to make rules with retrospective effect even if the rules are rescinded.

L.2 Amendments in Central Excise Act, 1944

1. No penalty where the Tax is paid before SCN

Section 11A(2B) says that the assessee may pay the excise duty before service of notice by the Excise department under sub-section (1) of this section in respect of such duty where the duty has not been levied or paid or short levied or short – paid or erroneously refunded on the basis of his own ascertainment of such duty or on the basis of duty ascertained by a Central Excise Officer (CEO) and inform the CEO of such payment in writing. On receipt of such information, the CEO shall not serve any notice under sub-section (1) but the CEO has the right to determine the amount of short payment of duty, if any, which in his opinion has not been paid by the assessee. In this case the recovery would be done as per the provisions of sub-section (1) of Section 11A.

The Explanation 2 to Section 11A (2B) declares the liability for interest payment under section 11AB by the person chargeable with the duty on the amount paid under this sub-section and also on the amount of short payment of duty, if any as determined by the CEO for this sub-section.

After this Explanation 2, Explanation 3 has been inserted with the view to encourage timely payment of the duty levied under this sub-section. The Explanation 3 says that there shall be no penalty imposed under any of the provisions of this Act or the rules made there under where the assessee pays the duty and interest thereon (if any) which he is liable to pay within the prescribed time limit under this sub – section.

This will certainly reduce lot of litigation.

2. Application to Settlement Commission

Earlier, Section 32E prevented the assessee from filing application to the Settlement Commission mentioning the duty liability which has not been disclosed before the Central Excise Officer having jurisdiction, for settlement of the cases before adjudication where the he admits short levy for goods in respect of which no proper record has been maintained by him in his daily stock register. However, this prohibition is now removed to expedite settlement procedure before adjudication by substituting the words "or otherwise" for the words "but excluding the goods in respect of which no proper record has been maintained by the assessee in his daily stock register" in this section.

3. Allowing time to Settlement Commission

As per Section 32F (6), the time limit of passing the order under Section 32E by the Settlement Commission with respect to the applications filed on or before 31st May, 2007, later than 29th February, 2008 and in respect of an application made on or after 1st June, 2007 was nine months from the last day of the month in which the application was made failing which the case was to be disposed off by the adjudication authority in accordance with the provisions of this Act as if no application under section 32E had been made. Now the amendment has been made in this section to allow the Commission to extend the time period of nine months upto maximum of three months provided the reasons for such extention of time limit is recorded in writing by the commission.

4. Prohibition on filing application to Settlement Commission – where cases pending

The subsequent application for settlement of cases has been barred, which was earlier permitted in case of orders passed before 1st day of June, 2007 under sub-section (7) of Section 32F with respect to applications filed under section 32E for settlement on the ground of concealment of particulars of duty liability, cases where the assessee is convicted of any offence under this Act in relation to such case or where the assessee is sent back to the Central Excise Officer having jurisdiction. Now onwards, in any case, the assessee would not be allowed to file subsequent application

under the provisions of section 32E in relation to any matter other than the one which is already pending before the settlement commission.

5. Anti- Evasion of duty

To discourage the evasion of duty or breach of the Central Excise Act, 1944 or rules made there under including misuse of CENVAT credit, the provision of the Section 37 providing for the detention of goods, plant & machinery or material for the purpose of demanding the duty, the procedure for confiscation except under section 10 or section 28, of goods in respect of which breaches of the Act or rules have been committed, has been made more stringent by inserting clause (xiiia) after section 37 (2) (xiii) providing for withdrawal of facilities or imposition of restrictions on manufacturer or exporter or suspension of registration of dealer, for dealing with evasion of duty or misuse of CENVAT credit. This also includes restriction on utilizing CENVAT credit.

6. Unmanufactured Tobacco & Chewing Tobacco being notified by the Central Government.

The Central Government has specified the following items manufactured with the aid of packing machine and packed in pouches as notified goods by exercising its powers under section 3A of the Act, so as to charge excise duty on these goods on the basis of capacity of production.

- Unmanufactured tobacco, bearing a brand name, falling under tariff heading 2401 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

- Chewing tobacco falling under tariff item 2403 99 10 of the said Tariff Act.

The Central Government, in order to regulate the taxation procedure of the above mentioned tariff items which includes the procedure of levying duty, calculation of amount of duty, procedure for filing applications for settlement of the disputes in such cases, etc., formed the Rules called "The Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 which shall come into force w.e.f. 8th of March, 2010.

L.3 Tariff

Enhancement of Standard Rate: - The standard rate of excise duty, which was reduced to 8% in February 2009 as a part of the Stimulus package on non-petroleum products is now being enhanced from 8% to 10% with a few exceptions. Consequent to the increase in the standard rate, rates of excise duty on certain products, **where there is change in the duty and Chapter - 24**, Chapter-wise details are given below:

Chapter-25: Salt; Sulphur; Earths and Stone; Plastic Materials; Lime and Cement:

Consequent to enhancement in the standard rate of duty from 8% to 10%, **the specific rates of duty on cement and cement clinker is also being revised upwards as follows:**

i) Mini Cement Plant:

Sr. No.	CEMENT	Present rate	Proposed rate
1	Cleared in packaged form,- i) of retail sale price not exceeding Rs. 190 per 50 kg bag or of per tonne equivalent retail sale price not exceeding Rs. 3800; ii) of retail sale price exceeding Rs. 190 per 50 kg bag or of per tonne equivalent retail sale price exceeding Rs. 3800;	Rs.145 per tonne Rs. 250 per tonne	Rs.185 per tonne Rs.315 per tonne
2	Cleared other than in packaged form	Rs. 170 per tonne	Rs.215 per tonne

ii) Other than mini Cement Plant:

Sr. Number	CEMENT	Present rate	Proposed rate
1	Cleared in packaged form,- (i) of retail sale price not exceeding Rs. 190 per 50 kg bag or of per tonne equivalent retail sale price not exceeding Rs. 3800; (ii) of retail sale price exceeding Rs. 190 per 50 kg bag of per tonne equivalent retail sale price exceeding Rs. 3800	Rs. 230 per tonne 8% of retail sale price	Rs.290 per tonne 10% of retail sale price
2	Cleared other than in packaged form	8% or Rs. 230 per tonne, whichever is higher	10% or Rs.290 per tonne whichever is higher
3	Cement clinker	Rs.300 per tonne	Rs. 375 per tonne

Chapter – 27: Mineral Fuels, Mineral Oils and Products of their distillation; Bituminous Substances; Mineral Waxes:

- A new cess to be called 'Clean Energy Cess' is being imposed on Coal, Lignite and peat produced in India. This will come into force from the date to be notified after the enactment of the Finance Bill, 2010. See Clean Energy Cess on page number 52.

- Excise exemption on Avgas is being withdrawn and 4% excise duty is being imposed on it.

- The rates of excise duty on Motor Spirit (commonly known as petrol) and HSD (diesel) are being increased by Re.1 per litre. The revised rates of duty on these items are as under:

Description	Intended for sale without Brand Name	Intended for sale with Brand Name
Motor Spirit	*Rs.14.35 per litre	*Rs.15.50 per litre
HSD	**Rs.4.60 per litre	**Rs.5.75 per litre

Note:
* Includes Rs.2 additional excise duty and Rs.6 special additional excise duty.
** Includes Rs.2 additional excise duty.

Chapter- 33: Essential Oils and Resinoids, Perfumery, Cosmetics or Toilet Preparations:

- Excise duty is being exempted on security ink manufactured by Bank Note Press, Dewas (Madhya Pradesh) and supplied to Government Security Printing Press.

- Excise duty is being exempted on Fractionated/ De-terpenated Mentha oil (DTMO), De-mentholised Oil (DMO), Spearmint oil, Mentha Piperita oil and any other by products/ intermediate arising in the course of manufacture of Menthol

M. CUSTOMS

M.1 Legislative Changes

- The current limit of Rs. 1 lakh per annum for duty free import of samples is being enhanced to Rs. 3 lakh per annum. All types of samples are to be included in this limit.

- Section 127 of the Customs Act, 1962, dealing with Settlement Commission, is being amended so as to restore certain provisions as they obtained prior to the enactment of the Finance Bill, 2007. Accordingly, the filing of applications for the settlement of cases where an assessee admits to short-levy in respect of goods under the provisions of the Act (i.e. cases of mis-declaration, suppression etc.) is being allowed. This was earlier prohibited.

  Similarly, the restriction that an assessee may seek only one-time settlement is also being relaxed. The Commission is being empowered to extend the time limit of nine months for disposal of applications by another three months. The commission has to record the reasons in writing.

- Section 3 of the Customs Tariff Act is being amended to provide that the value of the imported goods for charging CVD (excisable Goods) on the basis of Maximum Retail Sale Price under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 or under any other law, shall be the retail sale price declared on such imported goods less the amount of abatement, if any. Unlike the other provisions which come into effect immediately, this change will come into effect on enactment of the Finance Bill. Where there is more than one retail price the maximum of these will be considered.

M.2 Fully exempted Customs Duty

Sr. No.	Particulars of Products
1	Compostable polymers/bio-plastic used for manufacture of bio-degradable agro mulching films, nursery plantation and flower pots (Chapter 39) **3913 90 90**

2	Imports of security fibre, security threads, M-feature for use in the manufacture of Security paper by Security Paper Mill Hoshangabad. (Chapter 39)
3	Geothermal ground source heat pumps with Nil special CVD. (Chapter 84)
4	Tunnel boring machines used for hydro-electric projects (Chapter 84)
5	Truck refrigeration unit (Chapter 84)
6	Parts, components and accessories for manufacture of mobile handsets including cellular phones and their parts, is being extended to parts, components for manufacture of battery chargers and hands-free headphones of mobile handsets including cellular phones (Chapter 85)
7	Motion pictures, music, gaming software for use on gaming consoles, recorded on media (Chapter 85) **8523**.
8	Promotional material (like Trailers, Making of Film etc.) imported in the form of Electronic Promotion Kits (EPK)/ Beta Cams (Chapter 85)
9	Commercial exploitation of imported packaged software (Chapter 85)
10	Specified goods for use in manufacture of electrically operated vehicles (Chapter 87)

- The import duty exemption provided for specified "**Raw Materials"** for use in electronics/IT industry is being extended to some more items. However, the exemption will be subject to the existing specified conditions.

- The import duty exemption provided for specified "**Capital Goods**" for use in electronics/IT industry is being extended to some more items. However, the exemption will continue to be subject to the existing specified conditions

- Basic Customs duty is being fully exempted on **Special Grade** Stainless Steel, Titanium Alloys, Cobalt-Chrome Alloys and High-Density Polyethylene, used for the manufacture of Orthopedic implants (Chapter 39, 72 & 81)

M.3 Reduction in rates of Custom Duty

Particulars of Products	**Rates**
Long pepper (Piper longum) (Chapter 9) **0904 11 10**	From 70% to 30%
Asafoetida (Chapter 13) **1301 90 13**	From 30% to 20%
Filter cigarettes of length not exceeding 70 mm is being broken up into two slabs: (Chapter 24) **2402 20 30** 1. length not exceeding 60 mm; and 2. length between 60 to 70 mm	The existing rate of 30% is being prescribed for the new tariff item.
Gold ores and concentrates for use in manufacture of gold (Chapter 26) **2616 90 10**	Exempt from Custom Duty and additional duty of customs (special CVD). CVD at the rate of Rs.140 per 10 gms of gold content.
Carbon Black Feed Stock (Chapter 27) **2707**	From 4% additional duty (special CVD) to Nil
Import of electrical energy (Chapter 27) **2716 00 00**	From 4% Special CVD To Nil
Wastepaper and Paper scrap (Chapter 47) **4707 90 00**	From 4% Special CVD To Nil
Rhodium (Chapter 71) **7110 3100**	From 10% to 2%
All items of machinery, including prime movers, instruments, apparatus and appliances, control gear and transmission equipment and auxiliary equipment (including those required for testing and quality control) and components, required for initial setting up of a solar power generation project or facility (Chapter 84)	From 7.5% to 5%

Particulars of Products	Rates
Magnetrons of up to 1000KW used for manufacture of domestic microwave ovens (Chapter 85) **8540 71 00**	From 10% to 5%.
Specified agricultural machinery (Chapter 84)	From 7.5% to 5%.
All medical, surgical, dental and veterinary equipments (Chapter 90) **9018 to 90 22**	From 7.5% to 5%.
All parts and accessories of medical, surgical, dental and veterinary equipments (Chapter 90)	From 7.5% to 5%.
Imports of hospital equipment for use in specified hospitals and life saving equipment (Chapter 90)	From Nil to 4% CVD

- Customs duty on six more specified items for use in "**Manufacture of Sports Goods"** is being reduced to nil.

  1. PU for inflatable balls;
  2. Extra tec (cricket bat facing tape);
  3. Resin hardener TTP-33S and release paper for composite hockey sticks;
  4. Table tennis glue;
  5. Evazote foam for protective equipments e.g. leg guards, thigh guards;
  6. Plywood for carrom board";

M.4 Increase in rates of Customs Duty

Particulars of Products	Rates
Crude (Chapter 27) **2710**	From Nil to 5%
Motor Spirit (Petrol) and HSD (Diesel) (Chapter 27) **2711**	From 2.5% to 7. 5%

Particulars of Products	Rates
Other petroleum products other than Naphtha, LPG, LNG, Petroleum Gases and Pet coke (Chapter 27) **2711**	From 5% to 10%
Electrical energy removed from a Special Economic Zone to the Domestic Tariff Area and non - processing areas of SEZ (Chapter 27) **2716 00 00**	From Nil to 16% ad valorem + Nil Special CVD (w.e. f.. 26/06/09)
Gold bars, other than tola bars, bearing manufacturer/ refiner's engraved serial number and expressed in matric units, and gold coins (Chapter 71) **7110 3100**	From Rs. 200 per 10gm to Rs. 300 per 10gm
Gold in any form (other than those mentioned above) (Chapter 71) **7110 3100**	From Rs. 500 per 10gm to Rs. 750 per 10gm
Silver in any form (Chapter 71) **7110 3100**	From Rs. 1000 per 10gm to Rs. 1500 per 10gm
Platinum (Chapter 71) **7110 3100**	From Rs. 200 per 10gm to Rs. 300 per 10gm
specified goods for use in manufacture of electrically operated vehicles (Chapter 87)	From Nil to 4% CVD
Project Import (Chapter 98) 9801 1) Monorail projects for urban public transport 2) Setting up of digital Headend 3) Installation of mechanized food grain handling systems and pallet racking systems in Mandis and warehouses for food grains and sugar 4)Cold storage/cold room (including for farm level pre-cooling) or industrial projects for preservation, storage or processing of agricultural, apiary, horticultural, dairy, poultry, aquatic & marine produce and meat	 From Nil to 5% From Nil to 5% From Nil to 5% From Nil to 5%

M.5 Additional Duty of Customs (Special CVD) of 4%

Goods imported in pre-packaged form and intended for retail sale and certain specified goods like ready-made garments, mobile phones and watches are being provided an outright exemption from additional duty of customs of 4%.

N. CENTRAL SALES TAX

N.1 Burden of proof in case of transfer of goods claimed otherwise than by way of sale

Under the existing provisions of Section 6A(2), assessing authority was required to confirm that no sale transaction had taken place. In the Finance Bill, 2010 it is proposed that the assessing authority has to satisfy that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true and **that no inter-state sale** has been affected. Here the emphasis has been on the interstate sale. This amendment is clarificatory in nature.

Further, new sub-section (3) to section 6A is proposed to be inserted which empowers re-assessment or revision on the ground of discovery of new facts or revision by a higher authority on the ground that the findings of the assessing authority are contrary to law.

N.2 Appeals to the Highest Appellate Authority of the State

In Finance Bill, 2010 the finance minister has introduced new CHAPTER VA. As per the new chapter the person can prefer an appeal against the order made by the assessing authority u/s. 6A(2) and 6A(3). These sections deal with the order in relation to interstate sale and deposit of tax. Where such orders are found to be in violation of these sections, appeal to the highest appellate authority of the state against such order within sixty days from the date of receipt of the order can be made.

N.3 Appeals

In the Finance Bill, 2010 section 20(1) and explanation to it substituted with accordingly. "An appeal shall lie to the authority against any order passed by the highest appellate authority of a State under this Act determining the issues relating to the stock transfer or consignment of goods, in so far as they involve a dispute of inter-state nature."

N.4 Power of Authority

As per the proposed amendment in section 22 (1A) the Authority may grant stay of the operation of the order of the highest appellate authority against which the appeal is filed before it or order the **deposit** of the tax before entertaining the appeal and while granting such stay or making such order for the **deposit** of the tax, the Authority shall have regard, if the assessee has made **deposit** of the tax under the general sales tax law of the state concerned, to such **deposit** or pass such appropriate order as it may deem fit. The requirement of pre-deposit has been done away with.

New sub section (1B) to section 22 proposed to be inserted where the state can order refund of tax which is proved not to be due. The maximum refund is restricted to the tax paid.

N.5 Transfer of pending proceedings

It is proposed to omit Section 25 which allowed transfer of all appeals pending before the notified authority together with the records thereof to the highest appellate authority of the concerned state. Consequently the transfer of appeals is now restricted.

O. NATIONAL CLEAN ENERGY FUND (NCEF)

There are many areas in the country where pollution levels have reached alarming proportions. While ensuring that the principle of "polluter pays" remains the basic guiding criteria for pollution management, to give a positive thrust to development of clean energy, it is proposed to establish a National Clean Energy Fund for funding research and innovative projects in clean energy technologies. Harnessing renewable energy sources to reduce dependence on fossil fuels is now recognised as a credible strategy for combating global warming and climate change.

Clean Energy Cess has been imposed on the following goods to ensure appropriate funding for the National Clean Energy Fund (NCEF). Detail is given vide schedule 10 of the Act.

Sl. No.	Chapter heading	Description of goods	Rate
1	2701	Coal; briquettes, ovoids and similar solid fuels manufactured from coal	Rs. 100 per tone
2	2702	Lignite, whether or not agglomerated, excluding jet	Rs. 100 per tone
3	2703	Peat (including peat litter), whether or not agglomerated	Rs. 100 per tone

Whereas **speech** of the Finance minister has been reproduced as under:-

"Harnessing renewable energy sources to reduce dependence on fossil fuels is now recognised as a credible strategy for combating global warming and climate change. To build the corpus of the National Clean Energy Fund announced earlier, I propose to levy a clean energy cess on coal produced in India at a nominal rate of **Rs.50 per tonne**. This cess will also apply to imported coal."

An Overview of

THE FINANCE BILL 2010

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The provisions contained in the Finance Bill, 2010 are the proposals and are likely to undergo amendments while passing through houses of Parliament before being enacted.