

### **BUDGET PROPOSALS AT A GLANCE**

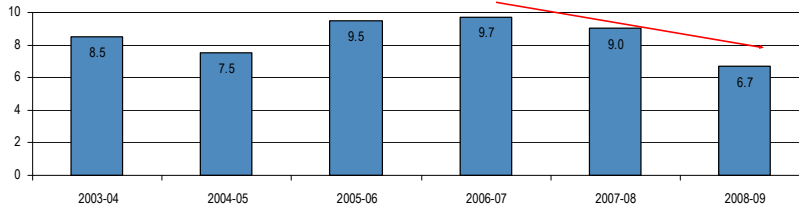
- GST to be introduced by 01-04-2010.
- New direct tax code to be introduced in 45 days.
- No change in corporate tax rates.
- Threshold limit increased for personal income tax
  - Individual Rs. 160000 from Rs. 150000
  - Woman assessee Rs. 190000 from Rs. 180000
  - Senior Citizen Rs. 240000 from Rs. 225000
- Surcharge scrapped in case of assesseees other than companies.
- Fringe benefit tax scrapped.
- Perquisite to include specified security or sweat equity shares allotted or transferred free of cost or concessional rate.
- Commodities transaction tax to be withdrawn.
- Minimum alternate tax rate increased from 10% to 15% of book profit.
- Credit of minimum alternate tax can be carried forward for 10 years instead of 7 years.
- Provision of section 50C applicable even when the document is not registered with stamp duty authority.
- Deduction in respect of interest on loan taken for higher education extended to cover all fields including vocational studies.
- Wealth tax exemption limit increased to Rs. 30 lacs from Rs. 15 lacs.
- Gift in kind under the tax net.
- Presumptive taxation @ 8% of turnover in case of all assesseees carrying on business in the capacity of Individual / HUF / Firm having turnover below Rs. 40 lacs.
- Limits of cash payment u/s 40A (3) increased from Rs. 20000/- to Rs. 35000/- in case of transporters.
- One time approval required for 80-G Certificate.
- Donation to political parties through electoral trust eligible for deduction @ 100%.
- Tax structure of limited liability partnership and partners of LLP to be similar to taxation of firm and their partners.

- Advance tax limit enhanced to Rs. 10000/- from Rs. 5000/-
- Dispute resolution panel to be set up in case of order passed by transfer pricing officer and in case of foreign companies.
- Every notice, communication, order, letter or notice issued / received by the Income Tax Authority shall now be given a computer generated Document Identification Number (DIN).
- Surcharge on TDS scrapped, except in case of company other than a domestic company.
- Education cess on TDS scrapped, except in case of non-resident person, company other than a domestic company and deduction in respect of salary.
- Branded Jewellery to be exempt from excise duty.
- Four new services included in the service tax net.
- Three existing services modified / altered.
- TDS proposals key highlights :
  - Steps taken to rationalize provisions relating to TDS.
  - Uniform rate of TDS for contractors and sub contractors.
  - TDS on rent reduced.
  - Computation of TDS eased.
  - Surcharge to be levied only in respect of companies other than domestic companies.
  - Education Cess and Higher Education Cess to be levied only in case of payment to non resident persons and companies other than domestic companies.
  - Salaried persons continue to bear Education Cess and Higher Education Cess.
  - Relief for transporters on furnishing PAN.
  - Definition of 'WORK' clarified.
  - Non-furnishing of PAN to attract higher rate of TDS.
  - Centralized processing for TDS statements filed.
  - Government to prescribe periodicity manner and form of TDS statements to be filed.
  - Proposed new rates applicable w.e.f. 1-10-2009.
  - Provisions related to non-applicability of surcharge, Education Cess and Higher Education Cess shall become applicable from the date when the Finance Bill is enacted.

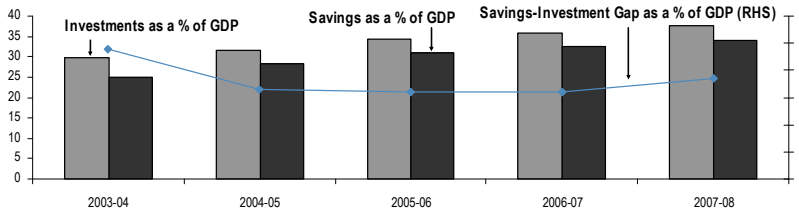
**INDIA ECONOMIC SURVEY – STILL STANDING TALL – JAY HO**

**Indian Economy – Key Features**

- **Total GDP** of US\$1.2 trillion and growing at 8% (Real) and 13.4% (nominal) over the last five years
- **Total population** of US\$1.2 billion and growing at 1.4% over the last decade
- **Young Country** : Half the population below the age of 25.
- **Healthy Forex reserves** : of over US\$250 billion versus peak of US\$ 304 billion last year and only US\$ 30 billion 10 years back
- **Investing for a brighter future** : Share of fixed investment in the economy is increasing while we are consuming less.
  - Total fixed investment is 38% of the GDP compared to 27% five years back (2004).
  - Overall Consumption has reduced from 71% to 63% in the same period.
- **Savings deficit** : India’s overall savings is 34% of GDP, less than the total fixed investments. India depends on foreign money to fill the gap.



**Fig. GDP growth rate over the years**



**Fig. Savings and Investments as a percentage of GDP**

**The Ultimate Stress Tests**

To appreciate India’s stability and achievements it is important to understand what the economy has gone through over the past two years.

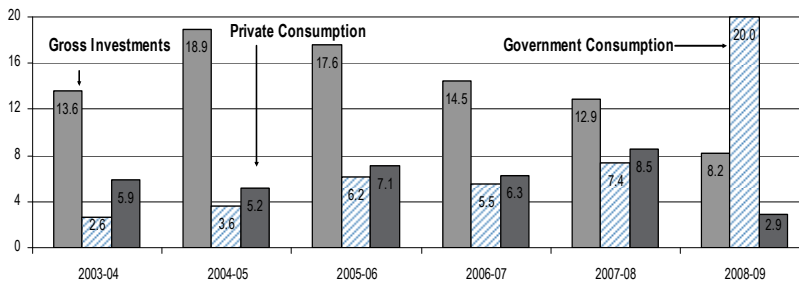
- **Foreign Capital Surge** : In 2007-08, everybody wanted to participate in the India growth story.
  - The problem was excess foreign capital coming in.
  - The rupee was getting stronger and this created a problem for India's export sector.
  - Record portfolio equity inflows of US\$29 bn in 2007.
  - Indian companies borrowing abroad at very low interest rates via external commercial borrowings.
  - The RBI ensured that the inflows were orderly and that companies did not borrow excessively.
- **Inflation spike** : Lots of liquidity, strong domestic growth and a surge in global commodity prices lead to a spike in inflation in the middle of 2008.
  - Wholesale price inflation peaked at 13% in Aug '08.
  - RBI increased interest rates to slow the economy and cool inflation.
- **Global Financial crisis** : The global financial crisis started as a US specific problem in August 2007.
  - In the beginning of the crisis, India received money from abroad as global investors looked for to invest in places which would not be affected by the crisis.
  - The crisis spread to other developed countries and there was low liquidity in global markets.
  - Investors withdrew money from emerging markets as they needed cash.
  - India depends on foreign capital to fill the savings-investment gap. Projects in India slowed down as capital went out of the country.
  - This happened while RBI's rate increases were having their effect on slowing the economy.

### **2008-09 Growth OK – Really?**

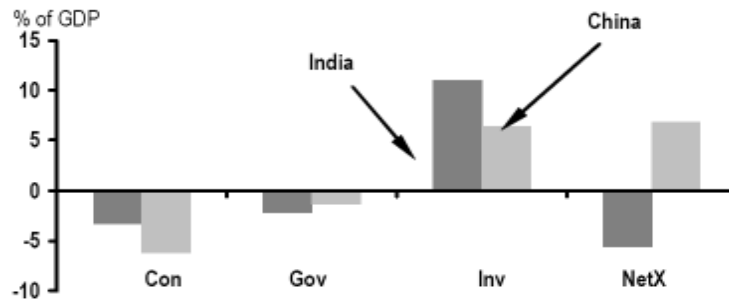
- **Investment growth stalled** : Investment growth slowed to 8.2% in 2008-09 from a peak of 19% in 2004-05. Investments had been the fastest growing segment (chart below) over the past few years. The lack of capital and the global financial crisis resulted in a dramatic slowdown.
- **Private consumption collapsed** : Following the interest rate increases in 2008 and the impact of the global financial

crisis, private consumption growth in India was below 3% in 2008-09. While private consumption growth has been lower than overall GDP for the past few years, it has averaged 6.6% in the last five years.

- Government Consumption pulling us along :** Government consumption growth in 2008-09 was massive at 20%. The government implemented various fiscal stimulus measures in 2008 as the economy was slowing down and the global financial crisis had hit exports. In the previous years government consumption has averaged 5%, much less than the average GDP growth of 8.8%. The government also put in a lot of measures to help the rural economy. The rural economy faced a problem from very low growth in agriculture at 1.6%. The farmer loan waiver and rural employment schemes were key supports for the rural economy.

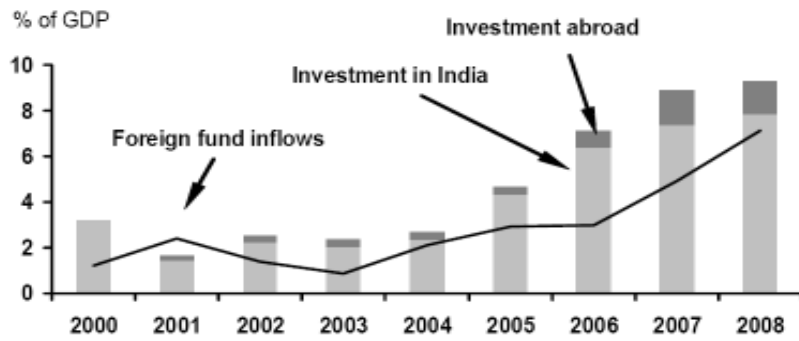


**Fig. Sectoral Growth rate through the years**

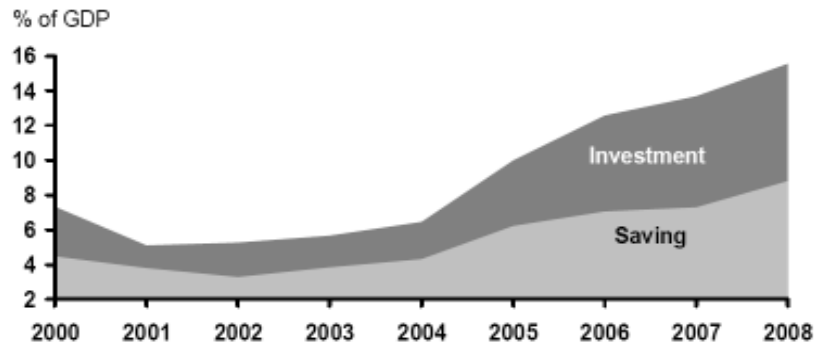


**Fig. India's Investment Lead Growth.**

India's GDP growth from 2002-07 has been more dependent on Investments than China's. Investments as a percentage of GDP increased more in India than in China. The slowdown in investments due to lack of foreign capital had a large impact on India's 2008-09 GDP.



**Fig. India Inc dependent on foreign capital for investments abroad**  
 The chart shows the amount of investment made by Indian companies in buying assets in foreign countries. Tata Motors, Tata Steel, Hindalco, Tata Tea etc have made large investments abroad



**Fig. India Inc in investment overdrive.**

The chart shows that Indian companies made large investments much greater than their savings in the last few years. Thus they were dependent on borrowed capital for the investments. It is a healthy trend that a large portion of the fixed investments are being made by the private sector rather than the government

**DIRECT TAXATION (INCOME TAX)**

All the amendments proposed in the Finance Bill No. 2 of 2009 would be effective from Assessment Year 2010-2011 (which corresponds with Financial Year 2009-10), unless specifically mentioned otherwise.

• **Rates of Taxes for F.Y. 2009-2010 (A.Y. 2010-2011) :**

In case of Individual, HUF, AOP and BOI other than woman assessee and senior citizen :

Income Slabs	Rate of Tax
Upto Rs. 1,60,000	NIL
Rs. 1,60,001 to Rs. 3,00,000	10%
Rs. 3,00,001 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

In case of Resident woman assessee (below 65 years) :

Income Slabs	Rate of Tax
Upto Rs. 1,90,000	NIL
Rs. 1,90,001 to Rs. 3,00,000	10%
Rs. 3,00,001 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

In case of Resident Senior Citizen :

Income Slabs	Rate of Tax
Upto Rs. 2,40,000	NIL
Rs. 2,40,001 to Rs. 3,00,000	10 %
Rs. 3,00,001 to Rs. 5,00,000	20 %
Above Rs. 5,00,000	30 %

- No change in Education Cess.
- Surcharge withdrawn.

**Chart showing impact due to enhancement of income slabs for levy of tax :**

	Male Assessee		Female Assessee		Senior Citizen	
	Proposed	Current	Proposed	Current	Proposed	Current
Total Income	10,00,000	10,00,000	10,00,000	10,00,000	10,00,000	10,00,000
Tax Payable	2,10,120	2,32,265	2,07,030	2,28,866	2,01,880	2,23,768
<b>Saving</b>	<b>22,145</b>		<b>21,836</b>		<b>21,888</b>	

Other tax rates intact, except surcharge withdrawn in all cases, except companies.

- **Enhancement of the limit for payment of advance tax**

Under the existing provisions, liability for payment of advance tax during a financial year arises when the amount of such tax payable during that year is Rs. 5,000/- or more.

It is proposed to raise the threshold limit for payment of advance tax from the present Rs. 5,000/- to Rs. 10,000/-.

- **Abolition of Fringe Benefit Tax**

It is proposed to abolish Fringe Benefit Tax (FBT).

***Taxation of Salary :***

Following perquisites shall now be chargeable to tax in the hands of employees (since FBT is proposed to be abolished).

- a) The value of any specified security or sweat equity shares (ESOPs) allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

The value of any specified security or sweat equity shares shall be its fair market value as reduced by the amount actually paid by the assessee. The “fair market value” will mean the value determined in accordance with the method as may be prescribed by the Board.

**Computation of Capital Gains on transfer of the specified security or sweat equity shares so charged to tax :**

Where the capital gain arises from the transfer of the said specified security or sweat equity shares, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause.

- b) Amount of any contribution in excess of Rs. 100,000 to an approved superannuation fund by the employer.
- c) Value of any other fringe benefit or amenity as may be prescribed.

- **Definition :**

The term “**Manufacture**” has now been defined in Income Tax Act. It may be noted that the definition does not include production or development of intangibles.

- **Proposed amendment to Section 10A and 10B to extend the tax benefit under these sections by one year**

It is proposed to extend the deductions available u/s 10A to undertakings in a Free Trade Zone and u/s 10B to an EOU for one more year upto 31-3-2011, i.e. A.Y.2011-12. Currently the deductions were available only upto 31-3-2010, i.e. A.Y.2010-11.

- **Sec 35(2AB) - Expenditure on in-house research and development**

With a view to promote research and development in all sectors of the economy, weighted deduction @ 150% of the expenditure incurred on in-house research and development is proposed to be extended to companies engaged in the business of manufacture or production of an article or thing.(except those specified in the Eleventh Schedule of the Income-tax Act). This benefit presently covers the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments and chemicals.

- **Sec 35AD – Investment linked-tax incentives by specified businesses**

It is proposed to provide investment-linked tax incentive for the following businesses :

- a) setting up and operating cold chain facilities for specified products;
- b) setting up and operating warehousing facilities for storage of agricultural produce;
- c) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities.

Certain salient features of tax incentives for (a) and (b) above are as follows :

- i) 100 per cent deduction of capital expenditure, except on acquisition of land, goodwill, financial instrument.
- ii) The benefit will be available if such business commences its operation on or after the 1st day of April, 2009.
- iii) The income generated on account of demolition, destruction, transfer or discarding of the capital asset whose deduction has been claimed u/s 35AD shall be

charged under the head “Profits and gains of business or profession”.

- iv) The loss arising in such specified business shall be eligible for set-off only against profits and gains of any other business specified u/s 35AD. The loss is eligible to be carried forward indefinitely.
- v) Any deduction from section 80HH to 80RRB shall not be available in respect of this business.

- **Enhancement of limit in case of payments made otherwise than by account payee Cheque or bank draft in the case of transporters [Section 40A(3) & (3A)] :**

Under the existing provisions of the Income-tax Act, where an assessee incurs any expenditure, in respect of which payment in excess of Rs 20,000 is made otherwise than by an account payee cheque or account payee bank draft, such expenditure is not allowed as a deduction.

Given the special circumstances of **transport operators** for incurring expenditure on long haul journeys, it is proposed to raise the limit of payments by such transport operators otherwise than by an account payee cheque or account payee bank draft to **Rs. 35,000/-** from the existing limit of Rs. 20,000/-.

The existing limit for other categories of payments will remain at Rs. 20,000/- subject to the exceptions covered in Rule 6DD of the IT Rules.

The proposed amendment will apply to transactions effected **on or after the 1st October, 2009.**

- **Special provision for computing profits and gains of business on presumptive basis :**

The current provisions for presumptive basis of taxation in respect of civil construction (Sec. 44AD), and retail trade (Sec. 44AF) are proposed to be covered under new section 44AD.

Business of plying, hiring or leasing of vehicles continues to be covered u/s 44AE.

**Comparison of current and amended provision is as under :**

<b>Particulars</b>	<b>Existing provisions of Sec.44AD and 44AF</b>	<b>Proposed Amendments Section 44AD</b>
Applicability	<p><b>Sec. 44AD :</b> Assessee engaged in the business of civil construction or supply of labour for civil construction.</p> <p><b>Sec. 44AF :</b> Assessee engaged in Retail Trade.</p>	Resident assessee : Individuals, HUF and partnership firm (excluding Limited Liability Partnership firm) engaged in any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE.
Turnover Limits	Assessee whose total turnover/gross receipts does not exceed Rs. 40 Lakhs.	Assessee whose total turnover / gross receipts does not exceed Rs. 40 Lakhs and who does not avail deduction u/s.10A, 10AA, 10B, 10BA and deduction under Part C of Chapter VI under the heading "Deductions in respect of certain incomes".
Presumptive income chargeable to tax	<b>Sec 44AD :</b> A sum equal to 8% of the total turnover / gross receipts or an amount claimed to have been actually earned, whichever is higher.	A sum equal to 8% of the total turnover/gross receipts or an amount claimed to have been actually earned, whichever is higher.

	<b>Sec. 44AF :</b> A sum equal to 5% of the total turnover / gross receipts or an amount claimed to have been actually earned, whichever is higher.	
Deeming Provision	Deduction under Sections 30 to 38 deemed to have been allowed.	Deductions under Sections 30 to 38 deemed to have been allowed.
Liability to pay advance tax	Liable to pay advance tax.	No liability to pay advance tax. Tax to be paid at the time of filing of return.
Maintenance of books of account and liability to get accounts audited u/s 44AB	Not required unless assessee claims that profits and gains are less than the prescribed rates	Not required unless the assessee claims that profits and gains are less than the prescribed rates and his income is below the taxable limit.

- **Section 44AE : Special provision for computing profits and gains of business of playing, hiring or leasing goods carriages.**

It is proposed to enhance the presumptive income per vehicle as under;

- Heavy goods vehicle from Rs. 3,500/- to Rs. 5,000/- per month or an amount claimed to have been actually earned from such vehicle, whichever is higher.
- Other than heavy goods vehicles from Rs. 3,150/- to Rs. 4,500/- per month or an amount claimed to have been actually earned from such vehicle, whichever is higher.

• **Taxation of certain transactions without consideration or for an inadequate consideration as “Income from other sources”**

As per the existing provisions any ‘sum of money’ (in excess of the prescribed limit of Rs. 50,000/-) received without consideration by an individual or HUF is chargeable to income tax in the hands of the recipient under the head ‘Income from other sources’. However, receipts from relatives or on the occasion of marriage or under a will and other instances are not taxable. Similarly, any property which is received in kind having ‘money’s worth’ are outside the purview of the existing provisions.

It is now proposed that value of any property received without consideration or for inadequate consideration will be liable to tax in the hands of the recipient. Property is further defined to include immovable property such as land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.

Further it is also proposed that :

- 1) In a case where an **immovable property** is received **without consideration** and the stamp duty value of such property exceeds Rs. 50,000/-, the whole of the stamp duty value of such property shall be taxed as the income of the recipient.
- 2) If an **immovable property** is received **for a consideration** which is less than the stamp duty value of the property (inadequate consideration) and if the difference between the two exceeds Rs. 50,000/-, the difference between the stamp duty value of such property and such consideration shall be taxed as the income of the recipient.

Example for point no. 2 above :

Consideration Paid (A)	Rs. 10,00,000/-
Stamp Duty Valuation (B)	Rs. 15,00,000/-
Difference (A – B)	Rs. 5,00,000/-
Taxable Amount (As difference between (A) & (B) exceeds Rs. 50,000/-)	Rs. 5,00,000/-

If the stamp duty value of immovable property is disputed by the assessee, the Assessing Officer may refer the valuation of such property to a Valuation Officer.

This provision may lead to a situation of double taxation of the same amount in the hands of transferor as capital gain and income from other sources in the hands of transferee.

- 3) In a case where **movable property** is received **without consideration** and the aggregate fair market value of such property exceeds Rs. 50,000/-, the whole of the aggregate fair market value of such property shall be taxed as the income of the recipient.
- 4) If a **movable property** is received **for a consideration** which is less than the aggregate fair market value of the property and the difference between the two exceeds Rs. 50,000/-, the difference between the fair market value of such property and such consideration shall be taxed as the income of the recipient.

Method for determination of Fair Market Value as on the date of receipt will be prescribed.

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

- **Provisions Related to Limited Liability Partnership (LLP)**

**Remuneration to Partners in a Firm/LLP**

**Allowable Remuneration in a Partnership Firm/LLP**

**I. Existing Provisions**

<i>For a Professional Firm</i>		<i>For any Other Firm</i>	
<i>Book Profits</i>	<i>Remuneration</i>	<i>Book Profits</i>	<i>Remuneration</i>
First 1,00,000	50,000 or 90% (whichever is higher)	First 75,000	50,000 or 90% (whichever is higher)
Next 1,00,000	60%	Next 75,000	60%
Balance	40%	Balance	40%

**II. Proposed Provisions (Firm/LLP)**

<i>Book Profits</i>	<i>Remuneration</i>
First 3,00,000	1,50,000 or 90% (whichever is higher)
Balance	60%

**Chart showing savings in Tax due to enhancement in limits :  
(Non-professional Firm / LLP)**

<b>Book Profit</b>	<b>5,00,000</b>		<b>10,00,000</b>	
	<b>Existing</b>	<b>Proposed</b>	<b>Existing</b>	<b>Proposed</b>
Remuneration Allowable	2,52,500	3,90,000	4,52,500	6,90,000
Extra Remuneration Allowable	1,37,500		2,37,500	

The remuneration paid to partners allowed as a deduction to the partnership firm, shall be taxable in the hands of the partners in their individual assessment. This remuneration received by the partners will be taxable at the slab rates applicable.

**Taxation of Limited Liability Partnership (LLP)**

The Limited Liability Partnership Act, 2008 has come into effect in 2009.

It is proposed to incorporate the taxation scheme of LLPs in the Income Tax Act on the same lines as the taxation scheme currently prevalent for general partnerships, i.e. taxation in the hands of the entity and exemption from tax in the hands of its partners

**Signing of Return for LLP :**

It is also proposed that Designated Partners, who carry on day to day management of LLP, as provided in LLP Act, shall be authorised to sign the Income Tax Return on behalf of an LLP. If for any unavoidable reason such designated partner is not able to sign the return, any partner shall sign the return.

**Liability of Partners of LLP in Liquidation :**

It is proposed to provide that in case of liquidation of an LLP, every partner will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part.

**Taxation at the time of Conversion of Partnership into a LLP :**

In general law, partnership firm and the partners are not considered as distinct. The partnership firm does not have a

separate legal existence, since the firm is only a compendious name of the partners.

As against this, an LLP is a separate legal entity recognised under law having perpetual existence, distinct from its partners.

Under these circumstances a question that arises for consideration is when a partnership firm is converted into a LLP whether this will give rise to transfer. While the Finance Bill and Notes on clauses to Finance Bill is silent on the issue, the memorandum to Finance Bill states as below "As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply."

Though the intention of legislature is reflected in the memorandum, it may not get legal force without insertion of appropriate provisions in law.

- **Minimum Alternate Tax**

Section 115JB provides for levy of Minimum Alternate Tax on the basis of Book Profit of the company if the tax payable on income as computed under the normal provision is lower than that calculated at the rate of 10% on Book Profit after making certain adjustments as provided.

In addition to other adjustments, it is proposed to add 'provision for diminution in the value of any asset' debited to the Profit & Loss A/c to arrive at book profit. The amendment to section 115JA is proposed to be made effective retrospectively from AY 1998-99 and subsequent years. The amendment to section 115JB is proposed to be made effective retrospectively from AY 2001-02 and subsequent assessment years.

It is further proposed to increase the rate to 15% from the existing rate of 10% for levy of Minimum Alternate Tax.

U/s 115JAA, tax credit is allowed to the assessee of the amount of excess tax paid as per the provision of the section 115JB over and above the tax payable under the normal provisions.

Under the present provision, this tax credit is allowed to be carried forward and set off for 7 Assessment Years from the end of Assessment Year in which such credit is allowed to be carried forward.

To provide the relief to the assessee, it proposed to allow the carry forward and set off of tax credit for 10 Assessment Years from existing 7 Assessment Years.

- **Section 50C**

According to provision of Section 50C, consideration received or accruing as a result of transfer of land or building or both is less than the value adopted or assessed by an authority of a State Govt. (Stamp Valuation Authority) for the purpose of payment of Stamp Duty in respect of such transfer; the value so adopted or assessed shall be deemed to be the full value consideration received or accruing as a result of such transfer for computing capital gain. However present provision does not cover transaction not registered with stamp duty valuation authority and executed through agreement to sell or power of attorney.

To prevent the leakage of revenue, it is proposed to replace the words '**adopted or assessed**' by the words '**adopted or assessed or assessable**' to cover the transaction not registered with stamp duty valuation authority and transfer executed through agreement to sell or power of attorney under section 50C.

This amendment will be **effective from 1st October, 2009** and be applicable for the transfer made on or after such date.

- **Deduction in respect of Interest on loan taken for higher education (Section 80-E)**

The deduction to an individual by way of interest on specified loan available for pursuing full time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics shall now be available to all fields of studies (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent.

- **Renewal and Approval of 80-G Certificate is not required**

It is proposed to provide that the approval u/s 80G, once granted shall continue to be valid until withdrawn. The Commissioner will have the power to withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund.

This amendment will take **effect from 1st day of October, 2009**. Accordingly, existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended unless specifically withdrawn. However, in case of approvals expiring before 1st October 2009, will have to be renewed.

- **Amendment in Chapter VI-A to prevent abuse of tax incentives**

**Section 80A :**

It is proposed to amend the provisions of section 80A to provide the following, namely :

- 1) deduction in respect of profits and gains shall not be allowed under any provisions of section 10A or section 10AA or section 10B or section 10BA or section 80H to 80RRB in any assessment year, if a deduction in respect of same amount under any of the aforesaid has been allowed in the same assessment year;
- 2) aggregate of the deductions under the various provisions referred to in (1) above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be;
- 3) no deductions under the various provisions referred to in (1) above, shall be allowed if the deduction has not been claimed in the return of income;

These amendments will take effect **retrospectively from assessment year 2003-2004** and subsequent years.

**Section 80IA : Enterprises carrying on the business of developing, operating and maintaining any infrastructure facility :**

It is proposed to amend the Explanation to the said section to clarify that nothing contained in the said section shall apply in relation to a business referred to in section 80-IA (4) which

is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by an undertaking or enterprise referred to in section 80-IA (1).

This amendment will take effect **retrospectively from A.Y.2000-2001** and subsequent years.

***Section 80IB(10) : Deduction of Profits derived by an undertaking from Developing and Building Housing Projects :***

The objective of this tax concession is to provide tax benefit to the person undertaking the investment risk i.e. the actual developer. However, any person undertaking pure contract risk is not entitled to the tax benefits. Therefore, it is proposed to provide that deduction will be allowable only to Builders and Developers and not Contractors. This amendment is proposed to take retrospective effect from the 1<sup>st</sup> April, 2001 and will, accordingly, apply in relating to assessment year 2001-2002 and subsequent years.

Further it is proposed to provide that the undertaking which develops and builds the housing project shall not be allowed to allot more than one residential unit in the housing project to the same person and where the person is an individual, no other residential unit in such housing project is allotted to any of the following person :

- 1) Spouse or minor children of such individual;
- 2) The Hindu Undivided Family in which such individual is the Karta;
- 3) Any person representing such individual, the spouse or minor children of such individual or the Hindu Undivided Family in which such individual is the Karta.

• **100% tax benefits for units in SEZ**

Earlier the language of section 10AA of the Income Tax Act restricted the benefit of exemption to an eligible unit in the proportion of SEZ 'unit' turnover to 'entity' turnover and hence where assessee used to have multiple undertakings both in SEZ and in domestic areas, it was getting lower tax benefit. Section 10A and 10B of the Act, provide for similar tax holiday benefits to units engaged in exports. Both these sections categorically provide for a comparison of export turnover of the 'undertaking' with the total turnover of the 'undertaking'. The

government has addressed the anomaly prevailing in law by substituting the word undertaking for assessee. By introducing this amendment, the denominator and numerator are made comparable. Accordingly exempted profit shall be that proportion of profit which export turnover bears to total turnover of that undertaking and hence turnover of other businesses of assessee, will not be included in denominator, resulting in the correct profit being exempted from tax u/s 10AA.

- **Double Taxation Avoidance Agreement**

Section 90 of Income Tax Act, empowers Indian Government to enter into double taxation avoidance agreement with a sovereign country. Proposed amendment seeks to provide power to Indian Government to enter into such agreement even with non-sovereign states which are administered by other sovereign state. For e.g. Bermuda, British Virgin Islands, Cayman Islands are non-sovereign states which are administered by UK. Indian Government has power to enter into agreement with UK but not with these states. Hong-Kong, Macau are non-sovereign state which are administered by China a sovereign state. India has entered into double taxation avoidance agreement with China however such agreement does not extent to Hong-Kong or Macau and hence where business is carried on between Hong Kong and India then there is every possibility that such income may be taxed twice. With the proposed amendment Indian Government will have power to enter into agreement with such non-sovereign states thereby avoiding double taxation and more co-operation in the field of exchange of information and by-lateral trade.

- **Transfer Pricing**

- Proviso to Section 92C(2) provided that where more than one price is determined by the most appropriate method, the arm's length price shall be arithmetical mean of such prices or at the option of assessee a price which may vary from arithmetical mean by amount not exceeding 5%.

It has now been provided that where more than one price is determined by most appropriate method, the

arms length price shall be taken to be the arithmetical mean of such prices.

It has been further provided that if the variation between the arms length price so determined and price at which the international transaction has been actually undertaken, does not exceed 5% of the later, the price at which the international transaction has actually been undertaken shall be deemed to be arms length price, otherwise;

- It is proposed to make rules for 'safe harbour'. 'Safe harbour' means circumstances in which the income tax authorities shall accept the transfer price declared by the assessee. This amendment will take effect retrospectively from 01-04-2009.

- **Clarificatory amendment in respect of reassessment proceeding under section 147**

The existing provisions of section 147 provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income after recording reasons for re-opening the assessment.

Some Courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded.

It is proposed to insert an explanation in section 147 to provide that the assessing officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

This amendment is to be effective retrospectively from 1st April, 1989 and will, accordingly, apply in relation to assessment year 1989-1990 onwards.

- **Reference to Dispute Resolution Panel (Section 144C)**

The subjects of transfer pricing audits and the taxation of foreign companies are at nascent stage in India. Often the

Assessing Officers and Transfer Pricing Officers tend to take a conservative view. The flow of foreign investment is extremely sensitive to prolonged uncertainty in tax related matters. The dispute resolution mechanism presently in place is time consuming and finality in high demand cases is attained only after a long drawn litigation till Supreme Court. Therefore, with a view to provide speedy disposal it is proposed to provide for an alternate dispute resolution mechanism which will facilitate expeditious resolution of disputes on a fast track basis.

This section shall be applicable to the following assesseees :

- i) any person in whose case any variation in income or loss returned arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and
- ii) any foreign company.

The salient features of this section are as under :

- 1) This section has been inserted to prevent litigation arising out of assessment completed u/s 143(3) or an order u/s 154.
- 2) The section provides that before passing any such order which is prejudicial to the interest of assessee a draft order must be forwarded to the assessee.
- 3) If the assessee has any objection to the draft order it must file the objections within 30 days of receipt of order before the Assessing Officer and the Dispute Resolution Panel.
- 4) The Panel shall issue any such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment within nine months from the end of the month in which the draft was forwarded to the assessee.
- 5) Upon receipt of the directions issued by the panel the Assessing Officer shall complete the assessment in conformity to the direction, within 1 month from the end of the month in which the direction is received.
- 6) The "Dispute Resolution Panel" shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908);

- 7) The orders of assessment passed u/s 143 (3) or u/s 154 in pursuance of directions of "Dispute Resolution Panel" are appealable before ITAT.

The above proposed amendments will be effective from 1<sup>st</sup> October, 2009.

• **282B – Allotment of Document Identification Number (with effect from 1st October, 2010)**

With a view to enhance the smooth functioning and transparency in the working of the Income Tax department and hopefully minimize the grievances of the taxpayers, it is proposed to insert a new section 282B.

Every notice, communication, order, letter or notice issued / received by the Income Tax Authority shall now be given a computer generated Document Identification Number (DIN) without which the above documents shall be treated as invalid and not issued / received.

• **TDS Proposals**

**Rationalisation of TDS rates :**

**Section 194I : Rent**

<i>Nature of Payment (194-I)</i>	<i>Existing rate</i>	<i>Proposed rate* (w.e.f. 1-10-2009)</i>
Rent —	10%	2%
a) rent of plant, machinery or equipment		
b) rent of land, building or furniture to an individual and Hindu undivided family	15%	10%
c) rent of land, building or furniture to a person other than an individual or Hindu undivided family	20%	10%

The rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee w.e.f. 01.04.2010.

**Section 194C : Payment to Contractors and sub-contractors**

<i>Nature of Payment (194C)</i>	<i>Existing rate</i>	<i>Proposed rate* (w.e.f. 1-10-2009)</i>
Payment to —	2%	1%
a) Individual/HUF contractor		
b) Other than individual / HUF contractor	2%	2%
c) Individual / HUF sub-contractor	1%	1%
d) Other than individual / HUF sub-contractor	1%	2%
e) Individual / HUF contractor / sub-contractor for advertising	1%	1%
f) Other than individual / HUF contractor / sub-contractor for advertising	1%	2%
g) Contractor in transport business	2%	Nil*
h) Sub-contractor in transport business	1%	Nil*

\* The nil rate will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 1% for an individual/ HUF transporter and 2% for other transporters upto 31.3.2010.

\*\* The rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee w.e.f. 1.04.2010.

**TDS COMPUTATION SIMPLIFIED**

In order to ease the computation of TDS, it is proposed to remove surcharge and cess on tax deducted on non-salary payments made to resident taxpayers, w.e.f. date of enactment of the finance bill.

**Relief to Transporters**

Under existing Section 194C, tax is required to be deducted on payments to transport contractors engaged in the business of plying, hiring or leasing goods carriages. However if they furnish a statement that they do not own more than two goods carriages, tax is not required to be deducted at source.

Transport operators report problem in obtaining TDS certificates as these are not issued immediately by clients and they are not able to approach the client again as they may have to move across the country for their business. It is, therefore, proposed to exempt payments to transport operators (as defined in section 44AE) from the purview of TDS. However, this would only apply in cases where the operator furnishes his Permanent Account Number (PAN) to the deductor.

Deductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details to the Income Tax Department in the prescribed format

**The word 'WORK' in Section 194-C Clarified.**

There is ongoing litigation as to whether TDS is deductible under section 194C on outsourcing contracts and whether outsourcing constitutes work or not. To bring clarity on this issue, it is proposed to provide that "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer as such a contract is a contract for 'sale'. This will however not apply to a contract which does not entail manufacture or supply of an article or thing (e.g. a construction contract). It is also proposed to include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, within the definition of 'work'. It is further proposed to provide that in such a case TDS shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value.

*The proposed amendments will apply to credits or payment effected on or after 1st October, 2009.*

**Improving compliance with provisions of quoting PAN through the TDS regime**

In order to strengthen the PAN mechanism, it is 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 per cent.

TDS would be deductible at the above-mentioned in cases where the taxpayer files a declaration in form 15G or 15H (under section 197A) but does not provide his PAN.

No certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

These provisions will also apply to non-residents where TDS is deductible on payments or credits made to them. To ensure that the deductor knows about the correct PAN of the deductee it is also proposed to provide for mandatory quoting of PAN of the deductee by both the deductor and the deductee in all correspondence, bills and vouchers exchanged between them.

#### **Processing of statements of tax deducted at source**

Currently almost all statements of tax deducted at source are filed in an electronic mode. It is proposed to provide for processing of statements of tax deducted at source on computer so that liabilities on account of interest and other defaults in TDS payment are promptly calculated and intimated to the deductor. In order to process TDS statements on computer, it is proposed to provide for electronic processing on the same lines as processing of Income-tax returns. It is proposed that the following adjustments can be made during the computerized processing of statements of tax deducted at source :

- i) any arithmetical error in the statement; or
- ii) an incorrect claim, if such incorrect claim is apparent from any information in the statement, for example, in respect of rate of deduction of tax at source where such rate is not in accordance with the provisions of the Act.

It is proposed to provide that after making adjustments, tax and interest [e.g. u/s 201(1A)] would be calculated and sum

payable by the deductor or refund due to the deductor will be determined. An intimation will be sent to the deductor informing him of his tax liability or granting him the refund due within one year from the end of the financial year in which the statement is filed.

**Providing time limits for passing of orders u/s 201(1) holding a person to be an assessee in default**

Currently, the Income Tax Act does not provide for any limitation of time for passing an order u/s 201(1) holding a person to be an assessee in default. In the absence of such a time limit, disputes arise when these proceedings are taken up or completed after substantial time has elapsed. In order to bring certainty on this issue, it is proposed to provide for express time limits in the Act within which specified order u/s 201(1) will be passed. It is proposed that an order u/s 201(1) for failure to deduct the whole or any part of the tax as required under this Act, if the deductee is a resident taxpayer shall be passed within two years from the end of the financial year in which the statement of tax deduction at source is filed by the deductor. Where no such statement is filed, such order can be passed up till four years from the end of the financial year in which the payment is made or credit is given. To provide sufficient time for pending cases, it is proposed to provide that such proceedings for a financial year beginning from 1st April, 2007 and earlier years can be completed by the 31st March, 2011.

However, no time-limits have been prescribed for order under sub-section (1) of section 201 where—

- a) the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,
- b) the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites,
- c) the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

These amendments will be effective from 1st April, 2010. Accordingly it will apply to such orders passed on or after the 1st April, 2010.

**Filing of TDS and TCS statements**

Any person deducting / collecting tax has to furnish, within the prescribed time, quarterly statements for the period ending on the 30th June, 30th September, 31st December and 31st March in each financial year. In order to provide administrative flexibility in deciding the periodicity of such statements, it is proposed to modify the existing provisions so as to allow the Government to prescribe periodicity of such statements besides prescribing their form and manner.

These provisions will be applicable from 1st October, 2009.

**Union Budget 2009-2010****Ghalla Bhansali**

<i>Nature of Payments made to Resident</i>	<i>Company</i>	<i>Partnership Firm/ LLP/ Co-op Society/ Local Authority Refer Note 8 and 9</i>	<i>Individual, HUF, AOP and BOI</i>	<i>Notes</i>
	<i>Basic % (No Surcharge &amp; Education Cess)</i>	<i>Basic % (No Surcharge &amp; Education Cess)</i>	<i>Basic % (No Surcharge &amp; Education Cess)</i>	
Interest on Securities	20	10	10	1
Other Interest	20	10	10	2
Winning from Lotteries	30	30	30	N.A.
Payment to Contractors/Sub-Contractors	2	2	1	3/9
Insurance Commission	20	10	10	4
Commission/Brokerage	10	10	10	5
Rent of machinery plant or equipment (w.e.f. 01.10.2009)	2	2	2	6
Rent of land, building, or furniture	10	10	10	6
Professional Fees	10	10	10	7
Salary	N.A.	N.A.	At the rates Applicable to Particular Slab of Income including Education Cess	

**Notes :**

- 1) TDS is not required if the amount does not exceed Rs. 5,000/-, however TDS on Interest on 8% Savings (Taxable) Bonds, 2003 shall be deducted if interest payable on such Bonds exceeds Rs. 10,000/- w.e.f. 01.06.2007.
- 2) TDS is not required if the amount does not exceed Rs. 10,000/- where the payer is a banking company or a co-operative society engaged in carrying on the business of banking, or interest is payable on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf, and five thousand rupees in any other case.
- 3) TDS is not required if contract amount does not exceed Rs. 20,000/- and aggregate payment do not exceed Rs. 50,000/- The liability of the tax deduction on Individual, and HUF is applicable.
- 4) TDS is not required if the amount does not exceed Rs. 5,000/-.
- 5) TDS is not required if the amount does not exceed Rs. 2,500/-.
- 6) TDS is not required if the amount does not exceed Rs. 1,20,000/-.
- 7) TDS is not required if the amount does not exceed Rs. 20,000/-.
- 8) Surcharge @ 2.5% is required to be levied in respect of company other than a domestic company.
- 9) Earlier Education Cess was levied @ of 3% but w.e.f. enactment of the Finance Bill, no Education Cess will be leviable except in respect of non resident persons and companies other than domestic companies.
- 10) Nil rate will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 1% for an individual / HUF transporter and 2% for other transporters upto 31.3.2010.
- 11) The rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee w.e.f. 01.04.2010.

**WEALTH TAX ACT*****Enhancement of the limit for payment of wealth tax***

Under the existing provisions, wealth tax is charged every year in respect of net wealth, on the valuation date, of every individual, Hindu undivided family and company at the rate of one per cent of the amount by which the net wealth exceeds fifteen lakh rupees.

It is proposed to raise the threshold limit for payment of wealth tax from fifteen lakh rupees to thirty lakh rupees.

**INDIRECT TAXATION (SERVICE TAX)**

**FOLLOWING NEW SERVICES ARE INCLUDED IN SERVICE TAX NET** (Effective from a date to be notified after the enactment of the Bill) :

- 1) *Transport of Goods through Rail*** : Presently, transportation of goods in containers by rail, by other than Government railways is taxable. It is now proposed to impose service tax 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 (as defined under the Customs Act-other than imported goods) and transport of goods through National Waterways, and inland waters are proposed to be brought under tax net.
- 3) *Legal Consultancy Service*** : Any consultancy, advice or technical assistance provided in any discipline of law is proposed to be subjected to service tax. However, the tax would be limited to services provided by a business entity to another business entity. It has been defined that a business entity includes firms, associates, enterprises, companies etc. but does not include an individual. Thus, services provided by an individual either to an individual or even to a business entity would be outside the scope of the taxable service. Similarly, the services provided by a corporate legal firm to an individual would also be outside the purview of taxable service. Further, any service of appearance before any court of law or any statutory authority would also be kept outside this levy.

- 4) **Cosmetic and Plastic Surgery Service** : Beauty treatment service provided by saloons, beauty parlours and beauticians are taxable since 2002. The service now proposed to be taxed is cosmetic surgery and 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 congenital defects, developmental abnormalities, degenerative diseases, injury or trauma would be outside the scope of this service. These processes could be undertaken to correct impairment caused by burns, fractures or congenital abnormalities like cleft lip etc.

**SCOPE OF CERTAIN EXISTING TAXABLE SERVICES EXTENDED/ALTERED AS FOLLOWS** (Effective from a date to be notified after the enactment of the Bill) :

- 1) **Modification in Business Auxiliary Service (BAS) [section 65(19)]** : Production or processing of goods for or on behalf of a client falls within the purview of this service. However, if any such activity amounts to manufacture within the meaning of section 2(f) of the Central Excise Act, the same is excluded from its purview. This exclusion has been modified to state that it would apply only if the activity results in manufacture of 'excisable goods'. The impact of this change would be that even if a process of manufacture is undertaken for the client, but the resultant product does not fall under the category of excisable goods, the service tax would be attracted.
- 2) **Stock-broker Service [section 65(105)(a)]** : The present definition of a stockbroker [section 65(101)] includes sub-broker as well. Previously, the sub-brokers could issue contract note and receive amounts from the investors. With effect from 01.06.2005, SEBI regulations have prohibited sub-brokers from these activities. The role of sub-brokers has thus reduced substantially. Considering that the entire broking charges are anyway taxable at the hands of stock-broker and a large number of small sub-brokers have to comply with the service tax laws, the sub-brokers have been excluded from the purview of service tax by making suitable amendment in the definition of stock-broker.

- 3) Information Technology Software Service [section 65(105)(zzzze)] :** The definition of 'Information Technology Software Service' is being amended to replace the word 'acquiring' by the word 'providing', considering the fact that it is the providing of 'right to use' and not the acquiring of 'right to use' is a taxable service. This amendment would have retrospective effect from 16.05.2008, when the service came into effect.

**Amendments in Rules and Existing Notifications :**

The following changes would come into effect immediately unless specified otherwise :

- 1) Changes in the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 :** These rules provide a simplified procedure for working out the tax liability by the service providers providing works contract service. Instead of working out the service element from the value of works contract and paying service tax at full rate (i.e. 10%) the service provider is allowed to pay 4% on the 'gross amount charged' for the works contract. It was intended that this 'Gross Amount charged' should include value of all the materials including the value of material received free of cost, but in certain cases such value of goods received free of cost was not included in the 'Gross Amount charges' offered for calculating service tax. In order to plug this loophole, the Explanation appearing in sub-rule (3) is being amended to provide that the composition scheme would be available only to such works contracts where the gross value of works contract includes the value of all goods used in or in relation to the execution of works contract whether received free of cost or for consideration under any other contract. This condition would not apply to those works contracts, where either the execution of works contract has already started or any payment (whether in part or in full) has been made on or before the date of the amendment, i.e. 07.07.2009, from which the said amendment becomes effective (refer notification No. 23/2009-ST dated 07.07.2009).

**2) Amendments made in CENVAT Credit Rules (pertaining to service tax) :**

- Rule 3(5B) of the CENVAT Credit Rules provide that, if manufacturer has claimed CENVAT credit on input or capital goods before being put to use, and has written off or has made provision for write off of such inputs or capital goods, then the manufacturer was required to repay the amount of CENVAT credit claimed on such input or capital goods. Such rule was not covering Service provider, hence the said sub-rule is being amended to bring taxable service provider within the ambit of the said restriction. This provision would come into force immediately (Refer notification No.16/2009-CE (NT), dated 07.07.2009).
- Rule 6(3) provides an option for a provider of taxable as well as exempt services, using common inputs or input services, but opting not to maintain separate accounts to pay an amount of 8 per cent of the value of exempted service. Since the service tax rate has been reduced to 10 per cent, the said amount payable on the exempted services is being reduced from 8 per cent to 6 per cent of the value of exempted service. This provision would come into force immediately (Refer notification No16/2009-CE (NT), dated 07.07.2009).

**4) Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 :** Vide Notification No. 1/2002, service tax provisions had been extended to the designated areas in the Continental Shelf of India (CEI) and Exclusive Economic Zones (EEZ) of India. Amendment has been carried out to further extend the scope of this notification to installations, structures and vessels in the entire CSI and EEZ of India. Thus, services provided to or from CSI and EEZ of India would be covered within the ambit of the provisions relating to service tax w.e.f. 07.07.2009 (Notification No. 21/2009-ST dated 07.07.09 refers)

- 5 Retrospective effect is being given to notification No. 1/2009-ST dates 05-01-2009 which provides exemptions to specified services received by Goods Transport Agents (GTAs) during the movement of goods en-route from service providers (such as warehouse keeper, cargo

handlers, C&F agents). Accordingly, the exemption is now made effective retrospectively from the date of inception of GTA service (i.e. 01.01.2005)

**EXEMPTION FROM SERVICE TAX :**

The following exemptions would be effective immediately.

- 1) **Tour Operator's Service** : Exemption from service tax is being provided to inter-state or intra-state transportation of passengers in a vehicle bearing "Contract Carriage Permit" subject to condition that such transportation is not in relation to tourism or conducted tours, or charter or hire. (Notification No. 20/2009-ST dated 07.07.09).
- 2) **Banking & Other Financial Services** : The inter-bank transactions of purchase or sale of foreign currency, when undertaken by scheduled banks, is being exempted. (Notification No. 19/2009-ST dated 07.07.09). Scheduled banks under this notification mean the banks, which are included in the Second Schedule of the Reserve Bank of India Act, 1934.
- 3) **Club or Association Service** : Associations, including trade associations, are taxable under clubs and association service. Federation of Indian Export Promotion Organization (FIEO) and Twenty-one specified export promotion councils sponsored by the Department of Commerce or by the Ministry of Textiles are being exempted from the levy of service tax under the said service. This exemption would remain valid till 31.03.2010. (Notification No. 16/2009-ST dated 07.07.09)

**Changes in the scheme for refund of service tax to the exporters of goods :**

Notification No. 41/2007-ST dated 06.10.2007 provides for a scheme of refund of service tax paid on taxable services, received and used in connection with export of goods by the merchant/manufacturer-exporter. In order to ensure that exporters get refunds speedily, the entire scheme has been revamped. The new scheme would consist of two parts :

- 1) **Exemption to taxable services** : The following two services have been exempted, if they are used for export of goods and where the liability to pay the tax on such services is on the exporter himself, on reverse charge basis-

- i) Transport of goods by road, from the place of removal to any ICD, CFS, port or airport; or from any CFS or ICD to the port or airport; and
- ii) Services provided by a foreign commission agent for procuring orders.

This has been done in order to avoid the circuitous route of first paying the tax and then receiving the refund.

- 2) **Modified Refund Scheme** : Notification No. 41/2007-ST, prescribing refund scheme in respect of 16 taxable services, is being superseded by Notification No. 7/2009-ST dated 07.07.2009. Service of 'terminal handling' has been added in the existing list of taxable services. The service 'transport of goods through road' is also added to cover such exporters who are not liable to pay service tax under reverse charge mechanism. The services of foreign commission agents have been deleted from the list, as it is comprehensively covered under Notification No. 18/2009-ST dated 07.07.2009.

While the general structure of the notification is similar to that of Notification No. 41/2007-ST, the new scheme is essentially trust based i.e. refund is to be granted on self-certification/certification by Chartered Accountant.

## INDIRECT TAXATION (CUSTOMS)

### CHANGES IN THE RATES OF CUSTOM DUTY

#### 1) *Precious Metal* :

No.	Item	From	To
1	Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units, and gold coins	Rs. 100 per 10 gm	Rs. 200 per 10 gm
2	Gold in any form (other than those specified, against S. No. 1)	Rs. 250 per 10 gm	Rs. 500 per 10 gm
3	Silver in any form	Rs. 500 per Kg	Rs. 1,000 per Kg

The revised rates shall also apply to gold and silver including gold/silver ornaments (excluding ornaments studded with stones or pearls) imported as baggage.

**2) *Electronic industry :***

- Set-top boxes will now attract basic duty of 5%.
- Basic customs duty on LCD panels for manufacture of LCD televisions has been reduced from 10% to 5%.
- Full exemption from CVD on parts for manufacture of mobile phones and accessories has been introduced for one year upto 06.07.2010.

**3) *Drugs and Medical Devices :***

- Basic customs duty on nine specified drugs and bulk drugs for their manufacture, and one vaccine has been reduced from 10% to 5%. CVD on these items would also be exempted by virtue of full exemption from excise duty.
- Basic customs duty on Artificial Heart (left ventricular assist device) is being reduced from 7.5% to 5%.

**4) *Textiles :***

- 1) Basic customs duty on cotton waste and wool waste has been reduced from 15% to 10%.
- 2) Basic customs duty on rock phosphate has been reduced from 5% to 2%.
- 3) Basic customs duty exemption on “concrete batching plants of capacity 50 cum per hour or more” available by virtue of exemption on specified machinery for construction of roads has been withdrawn. Such plants will now attract basic duty of 7.5%.
- 4) Basic customs duty on bio-diesel has been reduced from 7.5% to 2.5%.
- 5) On packaged or canned software, CVD exemption has been provided on the portion of the value which represents the consideration for transfer of the right to use such software, subject to specified conditions. This portion of the value is leviable to service tax as “Information Technology Software Service’.

**MAJOR AMENDMENTS IN CUSTOMS ACT, 1962**

It is proposed to insert a new section 26A in the Customs Act to provide for refund of import duty paid at the time of clearance for home consumption on imported goods which have been exported or the importer has relinquished his title to the goods, if such goods have been found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods and such goods are identified to the satisfaction of the officer of customs.

**AMENDMENTS IN CUSTOM TARIFF ACT 1975**

It is proposed to amend section 3 of the Customs Tariff Act so as to provide that where the Central Government has fixed tariff value for an article produced or manufactured in India under sub-section (2) of section 3 of the Central Excise Act, 1944 for the collection of central excise duty, the value of a like imported article shall be deemed to be such tariff value.

**CENTRAL EXCISE ACT, 1944.****AMENDMENT IN EXCISE DUTY RATES**

- 1) The concessional excise duty rate of 4% has been increased to 8%, with certain exceptions which are –
  - Specified food items including biscuits, sherbats, cakes and pastries
  - Drugs and pharmaceutical products falling under Chapter 30
  - Medical equipment
  - Certain varieties of paper, paperboard and articles thereof
  - Paraxylene
  - Power driven pumps for handling water
  - Footwear of RSP exceeding Rs.250 but not exceeding Rs.750 per pair
  - Pressure cookers
  - Vacuum and gas filled bulbs of RSP not exceeding Rs.20 per bulb
  - Compact Fluorescent Lamps
  - Cars for physically handicapped persons

**2) PETROLEUM SECTOR :**

- Excise duty on Special Boiling Point spirits has been reduced to 14%.
- Excise duty on naphtha has been reduced to 14%.
- Duty paid High Speed Diesel blended with upto 20% bio-diesel has been fully exempted from excise duties.

**3) TEXTILES :**

- Excise duty on manmade fibre and yarn has been increased from 4% to 8%.
  - Excise duty on PTA and DMT has been increased from 4% to 8%.
  - Excise duty on polyester chips has been increased from 4% to 8%.
  - Excise duty on acrylonitrile has been increased from 4% to 8%.
  - The scheme of optional excise duty of 4% for pure cotton has been restored.
  - Excise duty for man-made and natural fibres other than pure cotton, beyond the fibre and yarn stage, has been increased from 4% to 8% under the existing optional scheme.
  - An optional excise duty exemption has been provided to tops of manmade fibre manufactured from duty paid tow using 'tow to- top' process at par with tops manufactured from duty paid staple fibre.
  - Suitable adjustments have been made in the rates of duty applicable to DTA clearances of textile goods made by Export Oriented Units using indigenous raw materials / inputs for manufacture of such goods.
- 4) On packaged or canned software, excise duty exemption has been provided on the portion of the value which represents the consideration for transfer of the right to use such software, subject to specified conditions.
- 5) Excise duty on branded articles of jewellery has been reduced from 2% to Nil.
- 6) Earlier exemption from Central Excise on goods manufactured at site of construction, for use in construction work at site, was available to only the goods in which more than 25% by weight of red mud, press mud or

blast furnace slag or one or more of these materials, have been used. This condition has now been removed, and exemption is available to all kinds of goods irrespective of use of these materials in such goods.

**AMENDMENTS IN FIRST SCHEDULE TO THE CENTRAL EXCISE TARIFF ACT, 1985**

- 1) 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 known as 'supari' of tariff item 2106 9030 from its purview.
- 2) A Note (No. 6) has been inserted in Chapter 21 so as to provide that in relation to product of tariff item 2106 90 30 the process of adding or mixing cardamom, copra, menthol, spices, sweetening agents or any such ingredients, other than lime, katha (catechu) or tobacco to betel nut in any form shall amount to 'manufacture'.

**AMENDMENTS IN CENTRAL EXCISE RULES AND CENVAT CREDIT RULES**

- 1) A new rule is being inserted in Central Excise Rules, 2002 to provide that records seized by the department during an investigation but not relied upon in the Show Cause Notice should be returned to the party within 30 days of issue of Show Cause Notice.
- 2) An explanation has been inserted in Rule 2 of the Cenvat Credit Rules 2004 so as to clarify that 'inputs' which are eligible for availing Cenvat credit shall not include cement, angles, channels, CTD or TMT bar and other items used for construction of shed, building or structure for support of capital goods. [Notification No. 16/2009-CE (NT) refers].
- 3) Rule 6(3) of the Cenvat Credit Rules, 2004 is being amended to prescribe that a manufacturer of both dutiable and exempted goods, who does not maintain separate accounts of inputs, shall pay an amount equal to 5% of the total price of the exempted goods instead of 10%.

<p>This document has been prepared as a service to clients. It summarises the Union Budget 2009-2010 and the recent policy changes. We recommend you to seek professional advice before taking action on specific issues.</p>
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