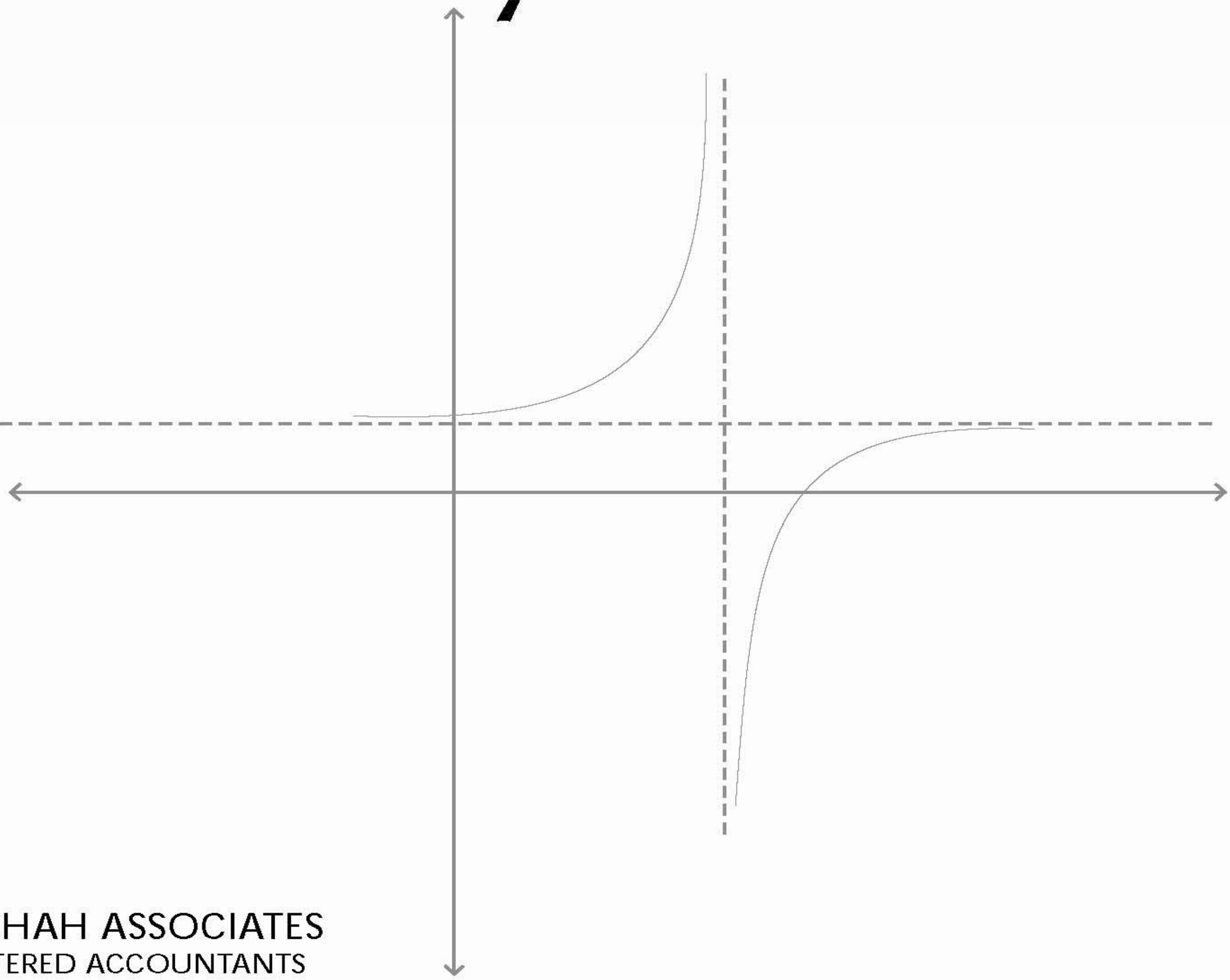
Budget Analysis 2009



N.A. SHAH ASSOCIATES
CHARTERED ACCOUNTANTS

FOREWORD

Dear Readers,

We are glad to share our analysis of the Union Budget 2009 unveiled today.

- With the UPA Government back in supremacy, sans grousing allies, there were huge expectations from the Hon. Finance Minister *(or rather the UPA Government)* in unfolding bold policy measures to place reforms back on track.

- While most of such expectations have been untouched, the FM has done his bit to usher in some all-encompassing reforms like focus on urban as well as rural sectors, greater spending on infrastructure, abolition of FBT, simplification of the tax compliance procedures for small businesses and working towards minimizing tax disputes, to name a few. The stock market's reaction seems to suggest that Budget has not lived up to the expectations.

- While not much clarity has been made on foreign investments in India, the Budget has taken steps to minimize disputes in connection with transfer pricing by introducing safe harbor rules and alternate dispute resolution mechanism.

- The quote '*Continuity for a Change*' has been well manifested by continuing with the overall rates and structure for customs, excise and service tax.

- The subtle mention about emphasis on disinvestments and increase in non-promoter public shareholding in listed companies makes us anticipate that there's a lot more to be unveiled and considering this is FM's first budget post re-election of UPA Government, one would like to wait and watch.

- With the FM's commitment to introduce the New Direct Tax Code in a few days and GST by April 1, 2010, provides hope that there's a lot more to come!!

July 6, 2009 **Mumbai**

I DIRECT TAXES

A RATES OF TAX

- Tax Rate remains unchanged.
- Basic exemption limit increased.

Category	Present	Proposed
Individual, HUF etc.	150,000	160,000
Woman (below 65 years)	180,000	190,000
Senior Citizen	225,000	240,000

- Surcharge
  - Abolished for non corporate entities.
  - Remains unchanged for companies - income exceeding INR One crore. 10% for domestic companies and 2.50% for companies other than domestic companies.
- The rate of Education Cess and Secondary & Higher Education Cess remains unchanged at 2% and 1% respectively. Applicable to both corporate and non corporate entities.
- Effective rate of tax at maximum slab

Category	Present	Proposed
• Individual & HUF, • AOP & BOI • Firm	33.99%	30.90%
Domestic Companies - • Income up to INR One crore • Income above INR One crore	 30.90% 33.99%	No Change
Foreign Companies - • Income up to INR One crore • Income above INR One crore	 41.20% 42.23%	No Change

B MINIMUM ALTERNATIVE TAX (MAT)-115JB

- The rate of MAT is increased to 15% from the existing level of 10% with effect from assessment year 2010-11.
- MAT credit shall be allowed to be carried forward and set off up to 10th assessment year as against 7th assessment year earlier.
- Any provision for diminution in the value of any asset shall be included in the computation of book profit for computing tax payable under MAT. This

- amendment will be effective from 01.04.1998 and 01.04.2001 for the purpose of computation of MAT under section 115JA and 115JB respectively.

C FRINGE BENEFIT TAX (FBT)

Fringe Benefit Tax is proposed to be abolished from current financial year i.e. FY 2009-10.

D PERQUISITE

- The definition of Perquisite is sought to be amended to include
  - Value of any specified security or sweat equity shares allotted/ transferred by an employer or former employer, free of cost or at concessional rate.
  - Amount of any contribution to an approved superannuation fund by the employer in respect o the employee in excess of INR 1.00 lakh.
  - Value of any other fringe benefit or amenity as may be prescribed.

- The above amendment is due to abolition of Fringe Benefit tax.

- Section 49 is amended to provide that cost of acquisition of aforesaid security/equity shares for the purpose of computation of capital gain will be the fair market value considered for the purpose of valuation of perquisite.

E INTERNATIONAL TRANSACTION - TRANSFER PRICE

- Where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices. However, if the arithmetical mean, is within 5% of the transfer price, then the transfer price will be treated to be arm's length price.

- Safe harbour rules proposed to be introduced. This will cover the circumstances in which the Tax Authorities shall accept the transfer price declared by the assessee.

F LIMITED LIABILITY PARTNERSHIP (LLP)

- Taxation of LLP will be on same lines as that of partnership firms.

- LLP will be taxed and partners will be exempt from tax on share of profit
  - Effective rate of tax for LLP - 30.90%
  - Salary to working partner deductible as expenditure and taxable in the hands of partners (subject to certain conditions).

- If tax due from LLP cannot be recovered, any person who was partner at any time during the year will be jointly and severally liable for payment of tax with other partners unless he proves that non recovery cannot be attributed to any gross breach of duty on his part.

- As per the explanatory statement, there is no tax liability on conversion of firm into LLP provided.

i. rights and obligations of the partners remain the same after conversion and
ii. there is no transfer of any asset or liability after conversion

- There is no provision in the budget for exemption from tax liability on conversion of company into LLP.

- The above amendments are applicable from AY 2010-11.

G DEDUCTION

1 SECTION 80-IA

- Time limit to claim deduction of profits and gains of undertaking engaged in business of generation or generation and distribution of power is extended from 31-03-2010 to 31-3-2011. This amendment will take effect retrospectively from 1-4-2009.

- Time limit to claim deduction of profits and gains of undertaking engaged in business of set up for reconstruction or revival of power generating plant is extended from 31-03-2008 to 31-3-2011. This amendment will take effect retrospectively from 1-4-2008.

- Undertaking carrying on the business of laying and operating a cross- country natural gas distribution network not entitled to deduction u/s 80-IA(4).

- Tax benefit of Infrastructure Development (section 80-IA) which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by the undertaking is not available. This explanation is inserted with effect from 01-04-2000.

2 SECTION 80-IB(9)

- It is proposed that in respect of an undertaking engaged in refining of mineral oil the time limit to begin refining is extended from 01-04-2009 to 31-03-2012.

- For the purpose of claiming deduction, all blocks licensed under a single contract, which has been awarded under the New Exploration Licensing Policy (NELP), shall be treated as a single undertaking.

- Undertaking engaged in commercial production of natural gas in blocks licensed (NELP-VIII) and begin commercial production of natural gas on or after the 01.04.2009, will be allowed deduction u/s 80-IB(9).

3 SECTION 80-IB (10)

- Following additional conditions are inserted to claim deduction from the profit of an undertaking engaged in developing and building housing projects

  (e) Only one residential unit is to be allotted in the housing project to a purchaser being a person other than an individual.

  (f) In case of residential unit is to be allotted to individual, no other unit to be allotted to any of the following persons
    a. The spouse or the minor children of such individual
    b. The HUF of which such individual is the karta
    c. Any representative of persons mentioned in a) and b) above.

- Deduction will not be available to business in nature of a works contract awarded by any person (including the Central or State Government). The said explanation is inserted with retrospective effect from 01-04-2001.

4 SECTION 80A

- Denial of multiple deductions in respect of same income clarified to avoid controversy. It is provided that
  - If a deduction in respect profit has been allowed in the one assessment year, no deduction shall be allowed for the same amount under any other section like 10A, 10B or under any provisions of Chapter VIA (under the heading "C- Deductions in respect of certain incomes").
  - The total of deduction cannot exceed profit of the undertaking.
- No deduction u/s 10A, 10B, 10AA, 10BA and Chapter VIA(C) shall be allowed if it is not claimed in the return of income.
- The above amendments are proposed to be effective from AY 2003-04.
- The transfer price of goods and services between the undertakings shall be determined at the market value of such goods or services as on the date of transfer. This amendment is applicable to AY 2009-10 and all the cases where the proceeding are pending before any authority on or after such date.

5 SECTION 10A, 10B & 10AA

- Tax holiday for units in Free Trade Zone (section 10A) and 100% EOU (section 10B) is extended by one year i.e. up to 31-3-2012.
- Computation of profits for units in SEZ eligible for deductions under Section 10AA has been amended to provide that the deduction shall be computed with reference to the total turnover of the undertaking.
- It is now provided that the profit will be computed as under

  Profit of the business of the unit x export turnover of the unit
  ----
  Total Turnover of the business carried out by the Undertaking

- This affected the tax payer with both domestic as well as export businesses as the quantum of deduction got reduced.
- The amendment seeks to rectify the anomaly.
- The above amendments are effective from AY 2010-11.

6 Weighted Deduction – Sec 35(2AB)

- The Finance Bill Proposes to extend the benefit of Weighted Deduction of 150% of expenditure incurred on in house scientific research by companies engaged in the business of manufacture or production of any article or thing (except those specified in Schedule XI of the Act).
- Presently, this deduction is only available to companies engaged in the business of bio-technology, drugs and pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals etc.
- The provision is applicable from AY 2010-11.

7 Investment Linked Benefit

- New section 35AD is proposed to be inserted to allow 100% deduction in respect of capital expenditure incurred for the following specified business
  - (i) setting up and operating cold chain facilities for specified products;
  - (ii) setting up and operating warehousing facilities for storage of agricultural produce;
  - (iii) laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution including storage facilities.
- The benefit will be available on fulfilment of specified conditions and if the business commences or has commenced its operation as under
  - in case of (i) & (ii) above - on or after the 1st day of April, 2009
  - in case of (iii) above - on or after the 1st day of April, 2007
  - The capital expenditure not to include expenditure on acquisition of any land or goodwill or financial instrument.
  - The assessee not allowed deduction in respect of such specified business under chapter VI-A.
  - No deduction in respect of such expenditure under any other provisions of the Income-tax Act.
  - Any loss of specified business shall be set off only against profits and gains of any specified business. There is no time limit specified for carry forward and set off of such loss.

- Any sum received or receivable on account of any capital assets demolished, destroyed, discarded or transferred shall be taxable as Income from Business or Profession.

8 Definition of manufacture

- The term "Manufacture", used for granting various tax exemptions, defined to remove ambiguity as under
  - a change in a non-living physical object or article or thing -
    - Resulting in its transformation into a new and distinct object or article or thing, having a different name, character and use; or
    - Bringing into existence of new and distinct object or article or a thing with a different chemical composition or integral structure.

H Transfer of immovable property – Section 50C

- Currently the provisions of section 50C do not cover transactions which are not assessed by the stamp duty authorities.
- The amendment proposes to extend the application of section 50C to the transfers assessable with the stamp duty authorities, though not assessed e.g. an agreement to sell or transfer of rights by means of a power of attorney.
- If the sale consideration is less than the price which the stamp duty authorities would have adopted or assessed the transfer would be attract provisions of section 50C.
- The above section will be effective from 01.10.2009 and shall accordingly apply in relation to transactions undertaken on or after such date

I Income from other sources – Gifts etc.

- Presently, any sum of money received by an Individual or HUF in excess of INR 50,000/- (without any consideration) and for other than specified persons is taxable as income in the hands of recipient.
- Presently receipt in kind is not covered.
- It is proposed to extend the aforesaid provisions to include transfer of immovable as well as movable assets without consideration or for inadequate consideration.
- Moveable property means shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or work of art.

- The taxability of the same is summarised as under

Nature of Asset Received	Amount considered as income in the hands of the recipient.
Movable Property • Without consideration • Consideration less than FMV - difference in excess of INR 50,000	• If the Fair Market Value (FMV) is greater than INR 50,000/-, the FMV. • FMV of such asset less the amount of consideration paid
Immovable Property • Without consideration • Consideration less than SDV - difference in excess of INR 50,000	• If the Stamp Duty Value (SDV) of such asset is greater than INR 50,000/-, the SDV. • SDV of such asset less the amount of consideration paid.

- The above provisions will be applicable to transactions undertaken on or 01.10.2009

- Money or property received from relative, on occasion of marriage, under a will or by way of inheritance or in contemplation of death of payer, from local authority, from any fund, foundation or university or educational institution or from charitable trust continue to be exempt under the amended provisions

J PARTNERS REMUNERATION

- The existing limits for remuneration paid by a Firm to partners are proposed to be increased.

- Uniform limit for both professional and non professional firms. The proposed revised limits

Book Profit	Remuneration allowable
On first INR 3,00,000 of the book profit	INR 1,50,000 or 90% of the book profit, whichever is more
On the balance book profit	60% of the book profit

- The above limit will also be applicable to LLP since definition of the term "Firm" includes "LLP"

K PRESUMPTIVE TAXATION

- The scope of section 44AD is extended from person carrying on business of civil construction or supply of labour for civil construction to all the eligible assessee engaged in the eligible business
- The silent features of the proposed amendments are
  i. Applicable to individuals, HUF's and partnership firms but does not apply to LLP.
  ii. Not applicable to assessee availing deductions under sections 10A, 10AA, 10B, 10BA or under any provisions of Chapter VIA.
  iii. Applicable to business which has a maximum gross turnover /gross receipts of INR 40 lakhs.
  iv. The presumptive rate of income is prescribed at 8% of gross turnover /gross receipts.
  v. Assessee availing this benefit not required to pay advance tax.
  vi. Books of accounts related to such business as required under section 44AA of the Income-tax Act not required to be maintained.
- The Finance Bill propose to enhance the presumptive income for business of plying, hiring or leasing goods carriages as under

Category of Vehicle	Present	Proposed
Heavy Vehicle (per month)	3500	5000
Other than Heavy Vehicle (per month)	3150	4500

- Both the above provisions are effective from AY 2011-12.

L DEDUCTION OTHERS

1 MEDICAL TREATMENT - DEPENDANT

The monetary limit of deduction u/s. 80DD in respect of dependent with severe disability is proposed to be increased from INR75,000/- to INR1,00,000/-

2 INTEREST ON LOAN - HIGHER EDUCATION

The scope of section 80E is proposed to be extended by amending the definition of Higher education which includes any course of study pursued after passing the Senior Secondary Examination or its equivalent.

M TDS

1 Permanent Account Number (PAN)

- Recipient of income which is subject to TDS has to furnish his PAN to the deductor.
- In the event PAN is not furnished, deductor is required to deduct TDS at 20% (or the rate prescribed in the Income Tax Act or Finance Act, if higher).
- The above provisions will also apply to payments to non-residents.
- In cases where the PAN provided is invalid or does not belong to the recipient, consequences of non provision of PAN to apply.
- It has been made mandatory for both deductor and recipient to quote their respective PAN in all correspondence, bills and vouchers exchanged between them.
- These amendments are proposed to be made effective from A. Y. 2010-11. Hence technically also apply to transactions effected from 1st April 2009.

2 Tax Deducted At Source (TDS)

- it is proposed to remove surcharge and cess on TDS on non salary payments made to resident tax payers.

Payment To Contractors

- Under the existing provisions, tax is to be deducted @ 1% in respect of payment for advertising contract/payment to sub-contractor and @ 2% in other cases.
- Now proposed that tax to be deducted @ 1% where payments to individuals/HUF and @ 2% where payments to any other entity. The proposed tax rates are as under:

Payment to	Existing rate	Proposed rate (w.e.f. 01.10.2009)
Individual/HUF contractor	2%	1%
Other than Individual/HUF contractor	2%	2%
Individual/HUF sub-contractor	1%	1%
Other than Individual/HUF contractor	1%	2%
Individual/HUF contractor/sub-contractor for advertising	1%	1%
Other than Individual/HUF contractor/sub-contractor for advertising	1%	2%

- No tax shall be deducted at source in case of payment for plying, hiring or leasing goods carriages provided that the contractor provides his Permanent Account Number.

- TDS on outsourcing contracts
  - i. Tax to be deducted where outsourcing contract involves manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.
  - ii. No tax to be deducted where outsourcing contract involves material purchased from a person, other than such customer.
  - iii. 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; otherwise TDS shall be deducted on the whole of the invoice value.

- The proposed amendments will apply to credits or payment effected on or after 01.10. 2009.

- Individual/HUF not liable to deduct tax on any sum paid exclusively for personal purposes.

RENT

- It is proposed to rationalise and reduce the TDS rates on rental payments w.e.f. 1.10.2009 as under:

Rent for	Existing rate	Proposed rate (w.e.f. 01.10.2009)
Use of plant, machinery or equipment	10%	2%
land, building or furniture to an individual and HUF	15%	10%
land, building or furniture to a person other than an individual or HUF	20%	10%

3 PROCESSING OF TDS STATEMENTS

- It is proposed to provide for electronic processing of TDS Statement on the same lines as processing of Income-tax returns.

- While processing the TDS statement, the tax deductible shall be computed after making adjustments of any arithmetical error or apparent incorrect claim in the statement and interest, if any, shall be charged on the sum so computed.

- 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.

N PROCEDURAL

1 DISPUTE RESOLUTION MECHANISM

- Applicable to tax payers who are foreign companies or in whose case, the Assessing Officer (AO) proposes to make addition as a result of order of Transfer Pricing Officer (TPO).
- Dispute Resolution Panel (Panel) to comprise of three commissioners of income tax.
- The AO to forward draft assessment order to the tax payer if the AO proposes to make any variation in income or loss returned which is prejudicial to the interest of the assessee.
- If the tax payer accepts or does not object to the proposed variation within 30 days, AO to pass final order.
- If the tax payer objects, Panel to consider
  - Objections of the tax payer,
  - Evidence furnished by tax payer,
  - Report of the AO, Valuation officer of TPO etc.
  - Panel can collect evidence or make additional enquiry.
- Panel to issue directions to the AO within nine months from the end of the month in which the draft order is forwarded to the tax payer.
- The Panel can confirm, reduce or enhance the variations proposed in the draft order. However, it cannot set aside any proposed variation or issue any direction for further enquiry and passing of the assessment order.
- Order of the Panel shall be binding on the AO.
- The AO shall complete the assessment within one month from the end of the month in which the direction is received.
- Tax payer can file an appeal against the above order before the Appellate Tribunal.
- These amendments will take effect from 01.10.2009.

2 TIME LIMITS - ORDERS U/S 201(1)

- Presently, the Act does not provide for any time limit for passing an order u/s 201(1) for failure to deduct tax or failure to deposit tax deducted.
- Time limit proposed for passing the order u/s.201(1)
  - within two years from the end of the financial year in which the statement of tax deduction at source is filed by the deductor in respect of payments to resident deductees; and
  - in other case, within four years from the end of the financial year in which payment is made or credit is given.

- This amendment will take effect from 01.04.2010.

3 Reassessment

- In order to overcome certain judicial decisions and to clarify the legislative intent, it is proposed to insert an explanation in section 147 to provide that the Assessing Officer may assess/reassess income in respect of any issue which comes to his/her notice subsequently in the course of reassessment proceedings, notwithstanding that the reason for such issue has not been recorded by the AO before issuing reassessment notice.

- This amendment is proposed to take effect form 01.04.1989.

4 Concealment of Income - Search

- Definition of concealment of income amended to include undisclosed income claimed to have been acquired in any previous year where such previous year has ended before the date of the search and where the return of income for such previous year has been furnished before the date of search but such income has not been declared therein and declared in an return of income subsequently filed.

- These amendments will take effect from 01.06.2007.

5 Mode of Service of Notice

- It is proposed to provide that the service of notice or summon or requisition or order or any other communication may be made by delivering or transmitting a copy thereof, to the person therein named, by post or courier service or in such manner as provided in the Code of Civil Procedure, 1908 for the purpose of service of summons; or in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or by any other means of transmissions as may be provided by rules made by the Board in this behalf.

- The Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered.

- This amendment will take effect from 01.10.2009.

6 Document Identification Number

It is proposed to introduce a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by the Income Tax Authority (ITA).

- Every ITA shall allot a computer generated DIN in respect of every notice, order, letter or any correspondence issued by him to any other ITA or tax payer or any other person and such number shall be quoted thereon. If the notice, order letter or any correspondence issued by any ITA does not bear a DIN, such notice, order, letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.

- Similarly, every document, letter or any correspondence, received by an ITA, shall be accepted only after allotting and quoting of a computer generated DIN. If any document, letter or any correspondence received by any ITA does not bear DIN, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

- This amendment will take effect from 01.10.2010.

O New Pension System (NPS)

- Any income received by any person on behalf of NPS Trust shall be exempt from tax.

- Dividend paid to NPS Trust shall be exempt from dividend distribution tax.

- All purchases and sales of equity and derivatives by the NPS Trust will be exempt from securities transaction tax.

- NPS Trust shall receive all income without any tax deducted at source.

- Tax benefit in respect of contribution to NPS is available to "employees" only. It is proposed to extend the tax benefit to "self-employed" individuals.

P Other Amendments

1 Zero Coupons Bonds

- Under the existing provision only infrastructure capital company or infrastructure capital fund or public sector company are empowered to issue zero coupon bonds.

- The Finance Bill proposes to empower scheduled banks including nationalized banks to issue zero coupon bonds.

2 Advance Tax

With effect from 01.04.2009 advance tax will be payable by the assessee during a financial year if advance tax payable is ten thousand rupees or more as against present limit of Rupees five thousand.

3 VRS Scheme

Benefit of section 10(10C) and section 89 can not be claimed simultaneously. If benefit u/s.89 is allowed, then the exemption u/s.10 (10C) shall not be available and vice versa.

4 Cash Payment

- Cash payment in excess of INR 20,000 not allowed as expenses.
- Limit for cash payment made for plying, hiring or leasing goods carriages increased to INR 35,000.
- The said provision will be effective from 1.10.2009.

5 Interest- compensation or enhanced compensation

- The interest received on compensation or enhanced compensation to be taxed in the year of receipt, irrespective of the method of accounting followed by the assessee.
- Assessee will be entitled to deduction equal to 50% of such interest.

6 Depreciation

- In the case of manufacturer of rubber, coffee and tea, out of the composite income, part is attributed towards agricultural operations and part towards business operation which is chargeable to tax under the head “Profits & Gains of Business”.
- The question arose before the Supreme Court (SC) in respect of treatment of depreciation, whether proportionate depreciation (attributable towards income chargeable under the head Income from Business or Profession) should be considered as actually allowed for determining the value of closing WDV. The Supreme Court had held that depreciation actually allowed should be considered while determining the closing WDV.
- The following table explains the position as provided by Supreme Court vis a vis proposed in the Finance Bill.

Particulars	Treatment provided by SC	Treatment proposed by Bill
Sale proceeds of tea	1000	1000
Less : Expenses		
Depreciation	100	100
Other expenses	300	300
Composite Income	600	600
Income taxable (40% as per the Rule)	240	240
Non taxable Income	360	360
Opening WDV	1000	1000
Adjustment for depreciation	40	100
Closing WDV	960	900

7 FINANCIAL CORPORATIONS AND BANKING COMPANIES

The benefit of deduction of 20% of the profits as available under clause (viii) of sec 36(1) is proposed to be extended to entities engaged in the business of providing long – term finance (including re-finance) for development of housing in India.

8 CHARITABLE PURPOSE

- At present, the definition of "Charitable Purpose" exclude advancement of any other object of general public utility if such activity involves activity in the nature of trade, commerce or business or any activity of rendering any service in relation thereto for a cess, fee or any other consideration.

- The definition of "Charitable Purposes" has now been amended so that above restriction do not apply to following activities

    - Preservation of environment (including watersheds, forest and wildlife)

    - Preservation of monuments or places or objects of artistic or historic interest

- The above amendment is applicable from AY 2009-10.

9 ANONYMOUS DONATIONS

- Anonymous donations are presently taxed at the rate of 30%.
    - Now, anonymous donations shall be taxable to the extent such donations exceed 5 percent of total income of such trusts/institutions or a sum of INR 1 lakh, whichever is more.

- This amendments are effective from AY 2010-11

10 WEALTH TAX

The basic exemption limit for wealth tax is proposed to be increased from INR15 lakhs to INR30 lakhs

11 COMMODITY TRANSACTION TAX

Commodity Transaction Tax abolished

II SERVICE TAX

A RATES OF TAX

- No change in service tax rate.

B NEW SERVICES

Category of Services	Nature of services included
Cosmetic / Plastic Surgery	◆ Services in relation to cosmetic or plastic surgery. ◆ Surgery undertaken to restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, degenerative diseases, injury or trauma are excluded.
Inland Transportation	◆ Transport of coastal goods & goods through inland waters.
Legal Consultancy Services	◆ Advice, consultancy or assistance in any branch of law provided by a Business entity to any business entity. ◆ Business entity does not cover individual and hence services provided by and to individuals would not be taxed. ◆ Taxable services exclude appearance before any court, tribunal or authority.

Note: Effective dates for above services are yet to be notified

C MODIFICATION/AMENDMENT TO EXISTING SERVICES

Category of Services	Nature of services included
Transport of goods by Rail	◆ Transportation of all goods by rail now covered. Earlier only containerized cargo was covered. ◆ Exemption provided to services provided by government railways withdrawn. ◆ No change in respect of the abatement allowed to service provider (i.e. 70%).
Business Auxiliary Service	◆ Only those activities which results into manufacture of excisable goods would henceforth be excluded from the purview of service tax. ◆ Previously it was contended/ clarified that activities qualifying as manufacturing but on which excise duty was not payable was not covered under Business Auxiliary Services.
Sub-Brokers	◆ The definition of stock broker has been amended to exclude sub-brokers.

Category of Services	Nature of services included
Information Technology (IT)	◆ Definition amended to clarify that the liability to pay service tax for transfer of right to use of IT is on the '**provider**' and not on the '**acquirer**' of service. ◆ This is retrospectively applicable from 16th May 2008.

Note: The above amendments are effective from 7th July 2009.

D EXEMPTION NOTIFICATION

- Following exemptions have been granted with immediate effect:

  - Club or Association services provided by Federation of Indian Export Organisation and specified Export Promotion Council to its members. This exemption is valid till 31st March 2010.

  - Services provided by one scheduled bank to another scheduled bank on inter-bank transactions in relation to purchase and sale of foreign currency.

  - Services provided by a tour operator having a contract carriage permit for inter-state or intrastate transportation of passengers excluding tourism, conducted tours, charter or hire service.

- Specified taxable services provided by persons to Goods transport agency (GTA) and used by GTA for providing services were exempted from levy of service tax. This exemption has now been given retrospective effect from 1st January 2005 and will become effective from the date of enactment of the Finance Bill.

E AMENDMENT OF CENVAT CREDIT RULES

- Service provider providing both taxable and exempt services and not maintaining separate accounts of inputs, to pay 6% on value of exempted services instead of 8%. Similarly in case manufacturer of dutiable and exempt goods, the amount to be paid on the value of exempt goods has been reduced from 10% to 5%.

- Service provider to pay back the amount of credit on the input/capital goods if the input/capital goods are fully written off / provided for in the accounts before the input/capital goods being put to use.

The above changes are effective immediately.

F REFUND SCHEME FOR EXPORTERS

Revised scheme pertaining to refund/ non levy/ procedures with regard to export of goods introduced with effect from 7th July 2009. The key changes are:

- Exemption from payment of service tax under reverse charge in respect of :

- Transport of goods by road
- Commission paid to foreign agents. The present limit of 10% remains & hence the exporter will have to pay service tax on the commission in excess of 10%.

- New services, procedure related:
  - Services in nature of Terminal Handling Charges also included. .
  - The time period for filing refund claim increased to one year from the date of export. Also exporter can file a refund claim after each export shipment as opposed to once in a quarter.
  - Self declaration in case the refund is less than 0.25% of FOB value and CA certificate in other case. (i.e. where refund is more than 0.25% of FOB value).
  - If the sales proceeds are not realized within the period prescribed under FEMA, the refund paid by the department to be refunded/returned back to the government.

G WORK CONTRACT (COMPOSITION SCHEME FOR PAYMENT OF SERVICE TAX) AMENDMENT RULES 2009

- The following amendment has been made to the definition of gross amount charged for the works contract.

Include	Exclude
▪ Value of **all goods** used in or in relation to execution of the works contract and includes free supplies as also supplies under any other contract. ▪ Value of **all services** that are required to be provided for the execution of works contract.	▪ Value added tax or sale tax paid in relation to transfer of property in goods. ▪ The cost of machinery and tools used in the execution of the works contract except for the charges for obtaining them on hire.

- The option to avail the composition scheme shall be permissible only when the declared value of the works contract is not less than the gross amount charged for such works contract.

Note: The above amendment does not apply to works contract where execution has commenced or payment has been made on or before 7th July 2009.

H Others

Definition of India under Taxation of Services (Provided from outside India and Received in India) Rules, 2006 has been changed to include Installation, Structures and Vessels in the continental shelf of India and exclusive economic zones of India.

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