N.A.SHAH ASSOCIATES
CHARTERED ACCOUNTANTS

BUDGET ANALYSIS 2010

FOREWORD

- We are glad to share our analysis of the Union Budget 2010 presented by the Hon. Finance Minister, Mr. Pranab Mukherjee.

- The Budget was presented with a view to drive the economy back to 9% GDP growth, curtail inflation and manage the fiscal deficit. The Budget attempted a balancing act to sustain momentum of domestic consumption through direct tax reliefs and moderated by partial roll-back of the fiscal stimulus.

- On account of partial rollback of fiscal stimulus, thrust on public spending and other measures, we believe the economy would continue its growth momentum. The risk of inflation continues to linger due to lack of substantial measures to curtail money supply or steps to mitigate rising commodity prices.

- The budget did not represent a significant departure from the legacy direct and indirect tax structures, as these are expected to be addressed comprehensively in the impending Direct Tax Code (DTC) and Goods and Services Tax (GST) to be implemented in the foreseeable future.

- Capital markets reacted positively to the FM's vision of driving economic growth while maintaining the fiscal deficit below 5.5%. Effect of increased levy on fuel and partial roll-back of stimulus may dampen the corporate profitability.

February 26, 2010 **Mumbai**

I DIRECT TAXES

1 TAX RATES

Personal Tax

- Relief in personal tax

Tax Rate	Present Slab	Proposed Slab
10%	INR 160,001 to INR 300,000	INR 160,001 to INR 500,000
20%	INR 300,001 to INR 500,000	INR 500,001 to INR 800,000
30%	Above INR 500,000	Above INR 800,000

- For taxable income of INR 800,000, savings in tax - INR 50,000.
- Tax rates remain unchanged.
- Basic exemption limits remain unchanged -

Individual, HUF, etc.	INR 160,000
Woman (below 65 years)	INR 190,000
Senior Citizen	INR 240,000

Corporate Tax

- No change in basic tax rate.
- Surcharge
  - On Domestic Companies
    - Reduced from 10% to 7.5%, where total income exceeds INR One Crore
    - Remains unchanged at Nil where total income is less than INR One Crore
  - On Foreign Companies remains unchanged at 2.5%.

Education Cess and Secondary & Higher Secondary Cess

- Remains unchanged at 2% and 1% respectively.

Effective rate of tax at maximum slab

Category	Present	Proposed
• Individual & HUF, • AOP & BOI • Firm	30.90%	No change
Domestic Companies - • Income upto INR 1 Crore • Income above INR 1 Crore	 30.90% 33.99%	 No change 33.22%
Foreign Companies - • Income upto INR 1 Crore • Income above INR 1 Crore	 41.20% 42.23%	 No Change No change
Dividend Distribution Tax	16.995%	16.608%

2 Minimum Alternate Tax (MAT)

- MAT rate increased from 15% to 18%
- Effective MAT rate (including surcharge & cess as applicable)

Category	Book Profit upto INR 1 crore	Book Profit above INR 1 crore
Domestic Companies	18.54%	19.93%
Foreign Companies	18.54%	19.00%

3 Direct Tax Code

- To be introduced from 1st April 2011

4 Conversion of Companies into LLP

- Conversion of Companies into LLP is presently liable to capital gains tax. Benefit of carry forward of losses and unabsorbed depreciation on conversion is not available to successor LLP.
- Conversion of Companies into LLP exempt from capital gains tax, provided Company is:
  - Private company or an unlisted public company
  - Does not have sales, turnover or gross receipts exceeding INR sixty lakhs in each of the past three years.
- Conditions for exemption:
  - All the assets and liabilities of the Company immediately before the conversion become the assets and liabilities of the LLP;

- All the shareholders of the Company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the Company on the date of conversion;

- The shareholders of the Company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the LLP;

- The aggregate of the profit sharing ratio of the shareholders of the Company in the LLP not to be less than fifty per cent at any time during the period of five years from the date of conversion;

- No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the Company on the date of conversion for a period of three years from the date of conversion

Breach of conditions

- If the stipulated conditions are not complied with, the tax will be charged on the LLP in the year in which the conditions are breached.

Depreciation

- Depreciation to be allowed on the written down value of the assets in the hands of the Company

Carry forward of losses

- Unabsorbed business loss and depreciation in the hands of the Company to be allowed to be carried forward and set-off in the hands of the LLP.

Cost of Capital Asset

- For the purpose of computing capital gains on subsequent sale of the capital asset by LLP, the cost of acquisition to be the cost at which the Company had acquired such asset.

Deduction for VRS

- Payment under voluntary retirement scheme not amortized by the Company to be allowed as deduction to LLP.

MAT credit

- LLP not entitled to avail of the unutilized MAT credit of the Company.

5 INCOME FROM OTHER SOURCES – GIFT, ETC

I. Immovable Property

- Under the existing provision, transfer of immovable property for inadequate consideration was considered as deemed income in the hands of recipient being individual and HUF to the extent of difference between stamp duty value and consideration paid

- It is now proposed to exclude immovable property received by an individual or HUF for inadequate consideration from such provision on the ground that there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable income.

- The above amendment is effective from 1st October 2009 i.e. from the date of inception of the above provision

II. Business Assets

- Under the existing provision, transfer of property such as land and building, shares, jewellery, painting, etc for inadequate or without consideration, which is in the normal course of the business, could be taxed as deemed income in the hands of recipient.

- It is now proposed to amend the definition of property to include only if it is capital assets and not stock in trade.

- The said amendment is effective retrospectively from 1st October 2009.

III. Bullion

- In addition to jewellery, bullion has now been added in the definition of property

- The said amendment is effective from 1st June 2010

IV. Firms and Companies

- Hitherto, provision relating to transfer of property without consideration or for inadequate consideration being taxed as income did not apply to persons other than individual or HUF.

- It is now proposed to tax the transferee if

    - Transfer is of shares of a company in which public are not substantially interested
    - The transfer occurs without consideration or for a consideration which is less than fair market value of the property
    - The difference exceeds INR Fifty Thousands
    - The transferee is a firm or a company in which public are not substantially interested.

- The above provision will not be applicable where shares are received by way of transaction not regarded as transfer under section 47 like amalgamation, demerger, etc

- The above amendment is proposed to take effect from 1st June 2010.

V. Currently, there is no method prescribed for determining the fair market value of the property. However, the assessing officer may require the Valuation Officer to estimate the fair market value of the property for the purpose of assessment

6 DEVELOPING AND BUILDING HOUSING PROJECTS

- Under the existing provisions 100 per cent deduction is available in respect of profits from developing and building housing projects approved by a local authority before 31st March, 2008.

- It is now proposed as under

Existing condition	Proposed amendment
The project is **completed within 4 years** from the end of the financial year in which the project is approved by the local authority	• In respect of project approved during the period 1st April 2004 to 31st March, 2005, the project is **completed within four years** from the end of the financial year in which the project is approved by the local authority • In respect of project approved on or after 1st April 2005, the project is **completed within five years** from the end of the financial year in which the project is approved by the local authority
The built-up area of the shops and other commercial establishments included in the housing project not to exceed- ▪ **5 per cent** of the total built-up area of the housing project, or ▪ **2,000** sq.ft. **whichever is less**	The built-up area of the shops and other commercial establishments included in the housing project not to exceed- ▪ **3 per cent** of the total built-up area of the housing project, or ▪ **5,000** sq.ft. **whichever is higher**

- These amendments are proposed to take effect retrospectively from 1st April, 2010 i.e. assessment year 2010-11

7 INVESTMENT LINKED DEDUCTION

- Investment linked deduction is extended to the business of building and operating hotels of two star category and above if the hotel commences operation after 1st April 2010.
- The capital expenditure is eligible for deduction in the year in which the operations of specified business is commenced.
- The capital expenditure does not include expenditure on acquisition of any land or goodwill or financial instrument.
- If Investment linked deduction is claimed u/s 35AD for any assessment year, no deduction in respect of such business shall be allowed under chapter VI-A for same or any other assessment year.
- Similarly, if deduction is claimed and allowed under Chapter VI-A then no investment linked deduction is allowable for the same or any other assessment year.

8 WEIGHTED DEDUCTION ON RESEARCH AND DEVELOPMENT

- Presently, weighted deduction of 150 % of the expenditure (excluding expenditure on land and building) incurred on scientific research on an approved in-house research and development facility by companies engaged in certain businesses (bio-technology, pharmaceuticals, electronic equipments, computers, telecommunication equipments etc.) is allowed
- The weighted deduction is proposed to be increased to 200 %. Further the benefit of weighted deduction is proposed to be extended to contribution to approved association engaged in research in social science or statistical research
- The weighted deduction proposed to be increased to 175% from 125% of the sum paid to approved research institution, National Laboratory, IIT, etc. is allowed from the business income

9 DISALLOWANCE OF EXPENSES - TDS

- Presently, if TDS in respect of payment of interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services, etc. is not paid within specified time then such expenses are disallowed in the computation of income.
- It is now proposed to relax the time for deposit of TDS to be eligible to get the deduction of such payments. The existing and proposed provision is as under -

Tax deducted during	Existing provision (TDS to be paid)	Proposed provision (TDS to be paid)
April to February	During the year	On or before due date of filing the return
March	On or before due date of filing the return	On or before due date of filing the return

- The above relief is in respect of payments only to residents and not to non resident
- The assessee will nevertheless be liable to interest u/s.201(1A) for delay in deduction and/or payment of TDS
- This amendment is proposed to take effect retrospectively for A. Y. 2010-11

10 Income deemed to accrue or arise in India

- Amendment was made in Finance Act, 2007 with retrospective effect from 1st June 1976 to provide that in case of a non-resident, income by way of interest, royalty and fees for technical services is deemed to accrue or arise in India and the same shall be taxable in India regardless of whether the non-resident has a residence or place of business or business connection in India.
- The Karnataka High Court has, in Jindal Thermal Power Company Ltd. vs. DCIT (TDS) held that inspite of such an amendment; such income will be taxable provided such services are rendered in India.
- In order to make such services taxable, it is now proposed that the income (interest, royalty and fees for technical services) will be taxed in India even if the non-resident does not have a residence or place of business or business connection in India or the services have not been rendered in India.
- This amendment is proposed to take effect retrospectively from 1st June 1976

11 Special Economic Zone

- The Finance Act (No.2) of 2009 provided that the profits of SEZ Unit would be computed with reference to the proportion of the export turnover to the total turnover of the SEZ Unit (as against total turnover of the assessee). This amendment was made with effect from 1st April 2010.
- The aforesaid amendment is now made retrospectively applicable from assessment years 2006-07

12 Tax Audit

Turnover limit for getting the tax audit report u/s.44AB of the Act revised as under

(INR in lacs)

Nature of payment	Existing limit of turnover or gross receipt	Proposed limit
Person carrying on business	40	60
Person carrying on profession	10	15

13 Penalty on Failure to Get Accounts Audited

- It is proposed to increase the maximum penalty leviable for failure to get accounts audited under section 44AB or to furnish a report of such audit from INR 100,000 to INR 150,000.

14 Issue of Certificate for TDS/ TCS

- Requirement for issue of TDS/TCS certificate was to be dispensed off with effect from 1st April, 2010.
- Now TDS/TCS certificate will have to be issued even after 1st April 2010

15 Interest on Late Deduction or Late Payment of TDS

- At present, failure to deduct tax or failure to pay tax after deduction, interest at one per cent per month is chargeable from the date on which tax is deductible to the date on which tax is actually paid.
- Proposed,
    - One percent for every month or part of month from the date on which tax is deductible to the date on which it is deducted (period of delay in deduction) and
    - One and half percent for every month or part of a month from the date on which tax is deducted to the date on which such tax is actually paid (period of delay in deposit of tax after deduction)
- Amendment to take effect from 1st July, 2010.

16 RATIONALISATION OF TDS LIMIT

- It is now proposed to raise the threshold limit for deduction of TDS

Sec.	Nature of payment	Existing limit of payment (INR)	Proposed limit of payment effective from 1.07.2010 (INR)
194B	Winnings from lottery or crossword puzzle	5,000	10,000
194BB	Winnings from horse race	2,500	5,000
194C	Payment to contractors	20,000 (for single transaction)	30,000 (for single transaction
		50,000 (for aggregate transactions during the financial year)	75,000 (for aggregate transactions during the financial year)
194D	Insurance commission	5,000	20,000
194H	Commission or brokerage	2,500	5,000
194-I	Rent	120,000	180,000
194J	Fees for professional or technical services	20,000	30,000

17 SETTLEMENT COMMISSION

- Presently, person, in whose case search was conducted, is not eligible to approach Settlement Commission for settlement
- It is proposed that such person can approach Settlement Commission
- The eligibility criteria for application to Settlement Commission

Particulars	Additional tax on income to be disclosed in the application	
	Existing Limit	**Proposed Limit**
In case of proceedings resulting from search or as a result of requisition of books of account	NA	Rs. 50,00,000/-
In any other case	INR 300,000	INR 1,000,000

18 TIME LIMIT FOR PASSING AN ORDER

- Presently, the Settlement Commission needs to pass the order within twelve months from the end of the month in which the application is made
- It is proposed to extend the time limit as under
  - In respect of an application filed from 1st June, 2007 to 1st June, 2010 - within twelve months.
  - In respect to application made on or after 1st June, 2010 – within eighteen months from the end of the month in which the application is made.
- Similar amendments proposed in Wealth-tax Act.
- Amendments proposed to take effect from 1st June, 2010.

19 CONDONATION OF DELAY IN FILING APPEALS

- Presently, an appeal has to be filed before the High Court within a period of 120 days from the date of receipt of the order of the Tribunal
- High Court has now been given power to admit an appeal after the expiry of time limit, if it is satisfied that there is a sufficient cause
- Similar amendment proposed in the Wealth-tax Act.
- These amendments are retrospectively applicable from 1st October, 1998.

20 CHARITABLE PURPOSE

- Under existing provisions, charitable trust having “the advancement of any other object of general public utility” as its object will loose exemption if it carries on any activity in the nature of trade, commerce or business for a cess, fees or any consideration.
- It is now proposed that such exemption will not be lost if the total receipts from the activity in the nature of trade, commerce or business does not exceed INR 10 lakhs.
- This provision is applicable with retrospective effect from 1st April 2009.

21 Deduction u/s 80D

- It is now proposed to allow deduction in respect of any contribution made to Central Government Health Scheme

22 Long-term infrastructure bonds

- Deduction of INR 20,000 is available to Individual and HUF on subscription to long-term infrastructure bonds

23 Hotel and Convention centre

- Time limit for commencement of operating a convention centre located in a specified area extended to 31st July 2010.

24 Profit of specified business

- Limit of turnover of specified business increased from INR 40 lacs to INR 60 lacs for computing the presumptive tax

25 Document Identification Number

- The system of allotment and quoting of Document Identification Number on every correspondence sent or received by the Income Tax Authority was to be effective from 1st October 2010. The said date is extended to 1st July, 2011

II SERVICE TAX

1 RATES OF TAX

- No change in service tax rate.

2 NEW SERVICES (EFFECTIVE DATE TO BE NOTIFIED)

Category of Services	Nature of services included
Rights, Permissions and Exploitation of Events	Granting right or permitting commercial use or exploitation of any event relating to art, entertainment, business, sports or marriage.
Health Services	Service provided by hospitals, nursing home or multi speciality clinics to: • Employee of any business entity[1] relating to Preventive care or check up and where payment is directly made by such business entity. • Any person relating to Preventive care or treatment and where payment is directly made by the Insurance Company.
Maintenance of Medical Records	Services provided to a business entity in relation to maintenance of medical records of their employees.
Additional Services by Builder	Additional services by builder of residential/commercial complex, like providing preferential location or external or internal development of complex on extra charges.
Services by Electricity Exchanges	In relation to trading, processing, clearing or settlement of various contracts.
Promotion of Brands	Contract to provide services of: • Promoting or marketing of Brand of goods, services or events • Endorsement of name including trade name, logo or house mark of a business entity by appearing in advertisement and promotional event • Carrying out any promotional activity for such goods, service or event.
Promotion / Marketing of Game of Chance	Promotion, marketing of game of chance including lottery (including through internet or

Category of Services	Nature of services included
	other electronic network) is being introduced as separate service. Consequently explanation in Business Auxiliary Service is being deleted.
Use of Copyright	Temporary transfer or permitting use of copyrights of cinematographic films and sound recording.

[1] Business Entity includes an association of persons, body of individuals, company or firm but doe not include an individual.

3 SCOPE OF CERTAIN SERVICES EXTENDED / MODIFIED / CLARIFIED

Category of Services	Particulars
Air Passenger Transport Service	Expanded to include: • Domestic journey • International journey by any class (earlier economy class was not covered) Statutory charges levied by any government are excluded from value of taxable services if they are shown separately on the invoice /ticket.
Information Technology Software Service	Currently limited to cases where IT Software Service is used in furtherance of business or commerce. Now the scope is expanded to include all services irrespective of its use i.e. the exclusion available to individuals for personal use has been withdrawn.
Commercial Training or Coaching Service	Clarified that it would include any training or coaching which is provided for consideration and consequently it is immaterial whether such entities are registered as trust, society or not for profit companies. This explanation is retrospectively inserted from 1st July 2003.
Sponsorship Service	The exemption pertaining to sports sponsorship has been withdrawn.
Construction of Residential Complex & Commercial and	Explanations have been added to clarify that construction of a new commercial / industrial building and construction of residential complex for sale by builder shall be deemed to be services

Category of Services	Particulars
Industrial Construction	provided by the builder to buyer unless entire consideration is paid by buyer after receipt of Completion Certificate.
Renting of Immoveable property	Earlier the wordings were: "in relation to renting of immovable property" which have now been amended to "renting of immovable property" By the above change, it is now explicitly provided that the activity of renting is itself the taxable service. This change is with retrospective effect from 1st June 2007. Further, in respect of retrospective effect, elaboration has been made with regards to nullification of court judgement/order, past action taken, etc. Immovable property to now include vacant land given on lease for construction of building or temporary structure at later stage for furtherance of business and commerce.
Port Services, Airport Services and Other Port Services	All services provided wholly within airport/ port / other port would be covered under these services. It is now clarified that contrary to general principle, the classification of various taxable services provided within port would be classified under port services. The earlier condition pertaining to authorization from airport/ port is now dispensed with.
Auctioneer Services	Phrase 'auction by government' is clarified to mean auction involving sale of government property and not when government acts as an auctioneer for sale of private property.
ULIP Service	Basis for calculation of taxable service has been changed. Now taxable service would be higher of (a) actual amount charged by the insurer for management of funds or (b) maximum charges for fund management fixed by the IRDA.

Note: Effective dates for the changes are yet to be notified, except otherwise mentioned above.

4 New Exemptions

- Services relating to erection, commissioning or installation of
  - Mechanised Food Grain Handling Systems
  - Equipment for setting up or substantial expansion of cold storage.
  - Machinery / equipment for initial setting up or substantial expansion of units for processing agricultural, dairy poultry products etc
- Pre-packaged IT software with licence for single use - subject to specified conditions like
  - Document for right to use the software is packed along with the software and
  - Original manufacture, duplicator or person holding copyright has paid appropriate duties of excise on the amount received from the buyer.
- Exemption on transportation by road is now extended to food grains and pulses.
- Indian News Agencies under Online Information and Database Retrieval Service subject to certain conditions.
- 'Technical testing and Analysis Services' and 'Technical Inspection and Certification Services' provided by Central and State Government seed testing and seed certification agencies.
- Transmission of electricity.
- Transport of goods by rail in respect of certain specified items like defence equipments, railway equipments, luggage of train passengers, post mail bags, relief material, etc.

The above changes will be effective with immediate effect.

5 Withdrawal or Amendment of Exemptions

- Earlier, transport of goods by government railway in containerised cargo was fully exempt. The said exemption has now been removed with effect from 1st April 2010. However, abatement of 70 % would be available.
- Exemption on commercial training or coaching classes is being restricted to only certain types of vocational training.

6 OTHERS

- In Export of Services Rules:
  - To qualify as Export of Services one of the conditions applicable to all categories of service provider was that "service is provided from India and used outside India". This condition has now been dispensed with.
  - Further for the category for certain service provider like Chartered Accountants, Cost Accountants and Companies Secretaries which were required to perform services outside India (whether wholly or partly) can now fully perform services from India and still avail the benefit of Export of Service rules.

- Construction and operations of installations, structures and vessels for the purpose of prospecting or extraction or production of mineral oil and natural gas in exclusive economic zone and continental shelf of India and for supply of goods connected with these activities would be within the purview of the Finance Act.

- Notification to be issued to remove bottlenecks in refund of accumulated credit to exporters.

- No penalty will be levied when service tax along with interest is paid before issue of Show cause notice by the department.

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