

The Finance Bill, 2011...

... Ek Samiksha



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Dear Madam/Sir,

"Seniors' Ki Jawani" is the key word of this year's budgets. A week ago, Hon'ble Railway Minister proposed senior ladies to be younger by two years and now Hon'ble Finance Minister is proposing all seniors to be younger by five years.

In 1991, when the then Finance Minister Shri Manmohan Singhji rose to present the Budget, India was on the edge of a financial precipice with forex reserves barely enough to pay for two weeks of imports. Today, 20 years on, it sits comfortably on \$ 300 billion, and is one of the two fastest growing big economies. Thanks to the bold steps taken by him, a Young Senior Minister.

This year, Income Tax Department is celebrating its 150 years.

In the mids of all this music, celebrations, world cup, scams and ghotalas, fluctuating prices of onions and ups and downs in economy, Hon'ble Finance Minister Shri Pranab Mukharjee presented Budget 2011-12 on 28th February, 2011. How far we will be able to achieve our targets, whether policies continues to be in the right direction or not, whether it's an aam admi budget, we leave all these questions to be answered by experts.

In the meanwhile, like all these years, this year also we have made an attempt to appraise our esteemed clients of the important amendments as proposed by the finance bill especially in the arena of Income tax Act, 1961. An attempt is made to cover other areas also by broadly outlining major proposals thereof.

We have included a Bird's eye view on status of proposed new acts and standard in the Chapter - "Challenges Ahead....."

This study note of ours titled "The Finance Bill, 2011 - Ek Samiksha" is enclosed herewith. After you had an opportunity to go through the same, we may discuss this further at your convenience.

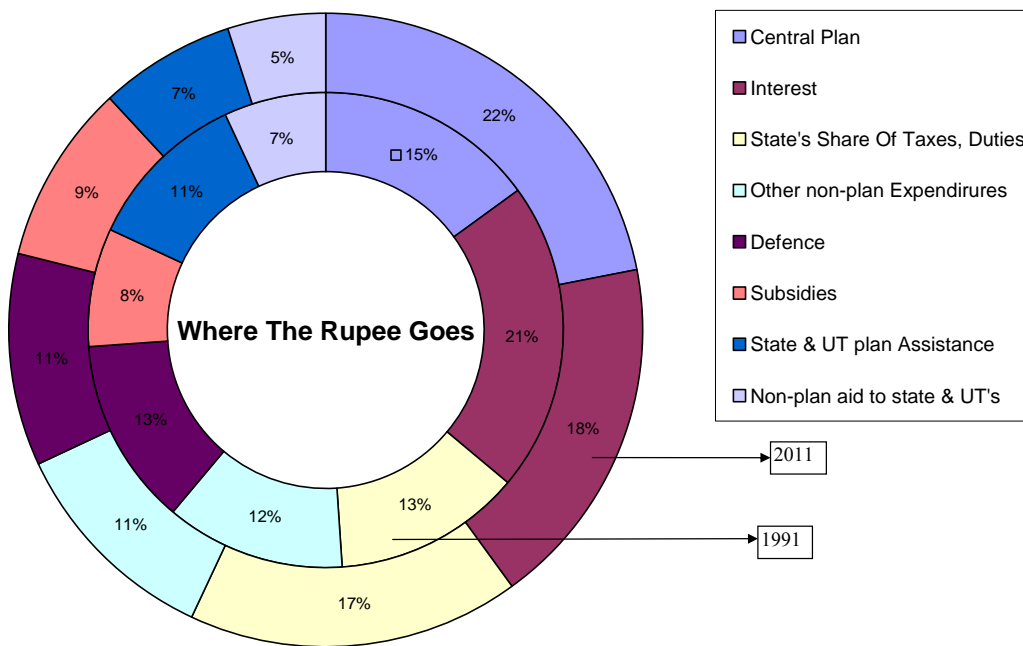
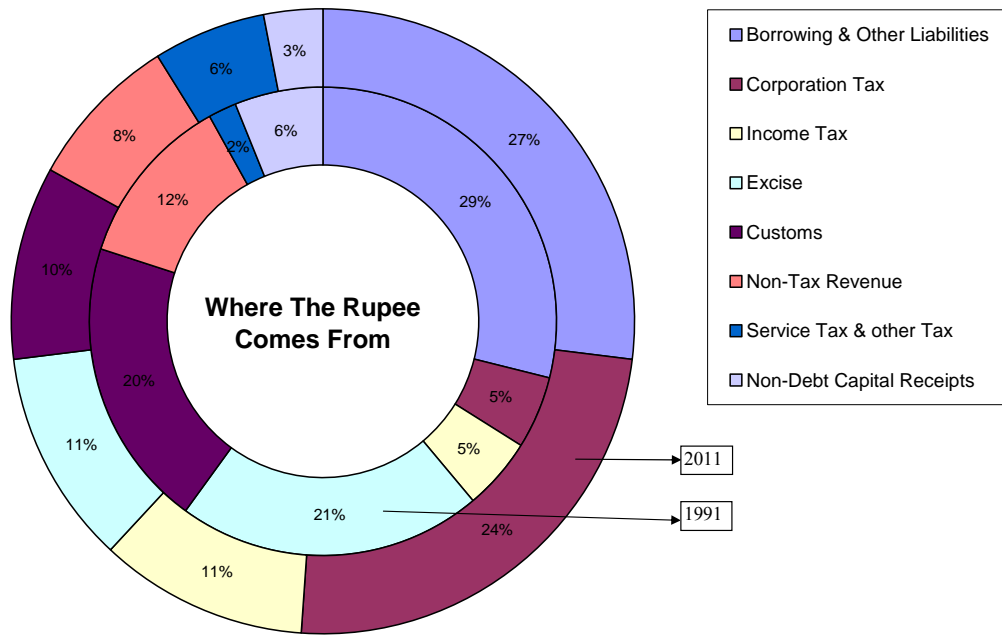
With regards,

Yours truly,

Team - S.S.Jhunjunwala & Co.

Encl: As above

1991 - 2011



C O N T E N T S

<u>Particulars</u>	<u>Page Nos.</u>
◆ Budget at a Glance	6
◆ Tax Receipts	7
◆ Excerpts from Experts	8
◆ Finance Bill, 2010 – an Introduction	10
◆ Income Tax Provisions:	
1) Effective Dates	11
2) Rates of Taxes	11
3) Surcharge and Education Cess	13
4) Tax rates over the generations for individuals	15
5) Rate of Tax Deduction at Source	16
6) Definition of Charitable purpose [Section 2(15)]	16
7) Exemption to allowance or perquisite of Chairman and Members of Union Public Service Commission [Section 10(45)]	17
8) Exemption of specified income of notified body or authority or trust or board or commission [Section 10(46)]	17
9) Income of Infrastructure Debt Fund [Section 10(47), 115A, 194LB]	18
10) Expenditure on Scientific Research [Section 35(2AA)]	19
11) Incentive for Specified Business [Sections 35AD, 80A]	19
12) Tax benefits for New Pension System (NPS) [Sections 36(1) and 80CCE]	21
13) Deduction for investment in long term infrastructure bond [Section 80CCF]	22
14) Extension of Tax Holiday for Power sector [Section 80IA(4)]	22
15) Sunset of tax holiday for certain undertakings engaged in commercial production of mineral oil [Section 80IB(9)]	23
16) Transfer Pricing Provisions [Section 92C, 92CA and 139]	24
17) Transactions with persons located in a notified jurisdictional area [Section 94A]	26
18) Taxation of foreign dividends [Section 115BBD]	27
19) Minimum Alternate Tax (MAT) [Section 115JB]	28
20) Alternate Minimum Tax for Limited Liability Partnership [Sections 115JC, 115JD, 115JE and 115JF]	29
21) Provisions relating to Special Economic Zone (SEZ) [Sections 115JB and 115-O]	30
22) Tax on Distributed Income to Unit Holders [Section 115R]	32
23) Collection of information on requests received from tax authorities outside India [Sections 131 and 133]	32
24) Return of Income [Section 139(1C)]	33
25) Notification for processing of returns in Centralized Processing Centers [Section 143(1B)]	34

26)	Extension of time limit for assessments in case of exchange of information [Sections 153 and 153B]	34
27)	Application before Settlement Commission [Section 245C]	34
28)	Power of the Settlement Commission to rectify its orders [Section 245D of Income Tax Act, 1961 and Section 22D of Wealth Tax Act, 1957]	36
29)	Omission of the requirement of quoting of Document Identification Number [Section 282B]	37
30)	Reporting of activities of liaison offices [Section 285]	37
31)	Recognition to Provident Funds – Extension of time limit for obtaining exemption from Employees Provident Fund Organization (EPFO) [Part A to IV Schedule]	38
32)	Other Proposals	38
◆	Service Tax Provisions	41
◆	Central Excise Provisions	48
◆	Custom Duty Provisions	55
◆	Central Sales Tax Provisions	63
◆	Challenges Ahead.....	64
◆	Gup Shup	73
○	Income Tax	
○	Taxation of Cross Border Transactions	
○	Other Bullet Points	

In this note an attempt has been made to summaries various proposals of Finance Bill, 2011. Specific guidance may be obtained before acting on the proposals and provisions.

It should be noted that the Finance Bill, 2011 will be discussed in the Parliament and is subject to any amendments that may be made pursuant to such discussion.

BUDGET AT A GLANCE

(In Crore of Rupees)

	2009-2010 Actuals	2010-2011 Budget Estimates	2010-2011 Revised Estimates	2011-2012 Budget Estimates
1. Revenue Receipts	572811	682212	783833	789892
2. Tax Revenue (net to Centre)	456536	534094	563685	664457
3. Non-tax Revenue	116275	148118	220148	125435
4. Capital Receipts (5+6+7)[§]	451676	426537	432743	467836
5. Recoveries of Loans and Advances [@]	8613	5129	9001	15020
6. Other Receipts	24581	40000	22744	40000
7. Borrowings and other Liabilities [*]	418482	381408	400998	412816
8. Total Receipts (1+4)	1024487	1108749	1216576	1257728
9. Non-plan Expenditure	721096	735657	821552	816182
10. On Revenue Account of which,	444832	394935	485992	465572
11. Interest Payments	213093	248664	240757	267986
12. On Capital Account	63171	92058	94803	82624
13. Plan Expenditure	303391	373092	395024	441547
14. On Revenue Account	253884	315125	326928	363604
15. On Capital Account	49507	57967	68096	77943
16. Total Expenditure (9+13)	1024487	1108749	1216576	1257729
17. Revenue Expenditure (10+14)	698716	710060	812920	829176
18. Capital Expenditure (12+15)	112678	150025	162899	160567
19. Revenue Deficit (17-1)	125905	27848	29087	39284
20. Fiscal Deficit {16-(1+5+6)}	418482	381408	400998	412817
21. Primary Deficit (20-11)	205389	132744	160241	144831

[@] excludes recoveries of short-term loans and advances from states and loans to Government servants, etc.

[§] The Receipts are net of repayments.

^{*} Includes draw-down of Cash Balance.

TAX RECEIPTS

The Statement below summarizes, by broad categories, the estimates of tax revenue receipts over a period. The estimates include the effect of Budget proposals.

Profile of central gross tax revenues

(₹ in Crores)

	1990-91	2000-01	2006-07 (R.E.)	2007-08 (R.E.)	2008-09 (B.E.)	2009-10 (R.E.)	2010-11 (R.E.)	2011-12 (B.E.)
DIRECT *	11024	68306	229272	304760	365000	387008	446000	532651
Income	5371	31764	82510	118320	138314	124989	149066	172026
Corporation	5335	35696	146497	186125	226361	255076	296377	359990
Wealth Tax & Others	318	846	265	315	325	6943	557	635
INDIRECT	45158	118681	237235	279316	321264	246087	340888	399789
Excise	24514	68526	117266	127947	137874	102000	137778	164116
Customs	20644	47542	81800	100766	118930	84477	131800	151700
Service	0	2613	38169	50603	64460	58000	69400	82000
Other Taxes	1394	1616	1341	1334	1451	1610	1910	1973
TOTAL	57576	188603	467848	585410	687715	633095	786888	932440
DIRECT (%)	19.15	36.22	49.01	52.06	53.07	61.13	56.68	57.12
Service Tax to total (%)	0.00	1.39	8.16	8.64	9.37	9.16	8.82	8.79

B.E.: Budget Estimates; R.E: Revised Estimates

* Includes Wealth Tax and Securities Transaction Tax.

The Hon'ble Finance Minister has stated in his Speech that:

“My proposals on Direct Taxes are estimated to result in a revenue loss of Rs.11,500 crore for the year. Proposals relating to Indirect Taxes are estimated to result in a net revenue gain of Rs.11,300 crore for the year. Taking into account the concessions being given in my tax proposals and measures taken to mobilise additional resources, the net revenue loss is estimated to be Rs.200 crore for the year.”

Excerpts from Experts

1. **Manmohan Singh – Prime Minister**

This budget meets all the challenges that our economy and our policy faces in the next fiscal. We need to sustain a high rate of growth and, therefore, this budget builds upon the good performance of the current fiscal's 8.6% growth rate to a projected 9% growth rate, for which adequate provisions have been made particularly in the area of infrastructure and in social sector plus agricultural development.

In reply to questions put before Hon'ble Prime Minister, he further stated as under:

Query: The finance minister has not raised any Additional taxes and yet tax revenue is up 25%. Is this achieved just because of rapid growth? And, therefore, can you continue to reduce the deficit by achieving rapid growth?

Reply: *Well, rapid growth is certainly one factor. But I think equally important is great tax compliances and for that moderate rate and simplified system are very essential. And the finance minister has walked on both these legs.*

Query: The expectation was that there would be some scheme to try and bring back money to invest in infrastructure. This hasn't happened. Was it all a factor the government considered?

Reply: *Well, amnesty schemes have been implemented in the past. I don't think they have succeeded in providing a permanent cure for black money. We need to have a system's reform in a holistic manner to deal with this menace.*

2. **Pranav Mukharjee – Finance Minister himself**

GST does not depend on me alone. The same story is with legislation. They require approval from parliament & I do not have 272 in the Lok sabha & 125 in the Rajya Sabha.

3. **A.M.Naik – Chairman L&T**

Increase in revenue is expected from government economic growth at 9 per cent & broadening the list rather than increasing the rates.

4. **Kumar Birla – Chairman –Aditya Birla Group.**

Overall, the budget is consistent with the vision of transforming India in to a major global economic player with Equitable Growth,

5. **Sunil Mittal – Chairman- Bharati Group**

The Finance Minister had little choice but to leave both Direct and Indirect tax rates untouched to maintain revenue Growth to meet his Fiscal Deficit.

6. **Amitabh Choudhary – MD & CEO HDFC Standard Life Insurance.**
The budget did not outline anything on a separate tax exemption limit for “Life Insurance”. We expected a separate limit of Rs.50,000 for Life Insurance Premiums.
7. **Neeraj Swaroop - -Regional CEO. Standard Chartered.**
The Finance Minister has touched upon several key issues such as fiscal deficit & infrastructural development. The budget has also supported growth by not raising taxes and raising the exemption limit on personal income.
8. **Sanjay Sinha - CEO,L&T Mutual Fund.**
This budget is giving a strong boost to agriculture, infrastructure and education sectors and provides a clear roadmap for the development of the manufacturing sector.
9. **Dr.GVK Reddy - Chairman of GVK Group.**
The union budget reiterated and indicates the significance of infrastructure to the economy. The key drivers: higher investment ,Massive up gradation of national infrastructure & Faster completion of projects, leading to visible impact on growth & job creation have all been given an up-thrust.
10. **Narendra Modi - Chief Minister of Gujarat**
UPA Government’s budget is an attempt to conceal its all round failures and directionless Governance.
11. **Chetan Bhagat – Writer**
Budget simplified: What ever squeezed from loser taxpayers- whatever we can steal subsidies to keep vote bank=deficit.
12. **Harsh Mariwala – Marico Ltd.**
Inflation could become a serious cause for concern with the middle-east crisis and global crude oil prices inching upward.
13. **Unny – The Indian Express**
The Indian Story to be co-scripted by opposition, states... and the advance Oscar goes to UPA’s Best Support- seeking actor.



FINANCE BILL, 2011 – AN INTRODUCTION

1. **Finance Bill**
The proposal of government for levy of new taxes, modification of the existing tax structure or continuance of the existing tax structure beyond the period approved by Parliament are submitted to Parliament through this bill. It is the key document as far as taxes are concerned.

2. **The provisions of Finance Bill, 2011, in the sphere of direct taxes relate to the following matters:-**
 - (i) Prescribing the rates of tax for financial year 2011-2012 relevant to assessment year 2012-13 for the purposes of tax deduction at source and for the purpose of computation of advance tax

 - (ii) Amendment of the Income-tax Act, inter-alia, with a view to provide –
 - increase the basic exemption limit in the case of individual taxpayers;
 - lower the qualifying age of senior citizens from 65 years to 60 years and also to increase the current exemption limit in such cases;
 - provide a higher exemption limit to very senior citizens above the age of 80 years;
 - reduce the surcharge on tax in the case of companies;
 - provide impetus to overseas borrowings by facilitating setting up of infrastructure debt funds;
 - rationalise the taxation of income distributed by debt mutual funds;
 - levy Minimum Alternate Tax (MAT) on developers of SEZ and units operating in them;
 - levy Alternate Minimum Tax (AMT) in the case of Limited Liability Partnerships;
 - provide a set of counter-measures in relation to jurisdictions with which there is a lack of effective exchange of information;
 - provide a concessional rate of tax on dividends received by Indian companies from their foreign subsidiaries during 2011-12.

INCOME TAX PROVISIONS

In this chapter, we have dealt with the proposed amendments to Income Tax Act, 1961 by Finance Bill, 2011 (hereinafter referred to as Bill). We have made references from Notes on Clauses and Memorandum explaining the provisions of the Bill.

The related amendments are put under one topic head in these notes.

1. Effective Dates:

Generally, –

- ◆ The amendments in income tax provisions are proposed to be effective from 1st April, 2012 relevant to the assessment year 2012–2013 unless otherwise specified.
- ◆ The amendments proposed in procedural section are effective for the proceedings taken on or after the date as specified.
- ◆ The amendments made in substantive sections are effective from the first day of the assessment year from which it is proposed to be effective.

2. Rates of Taxes:

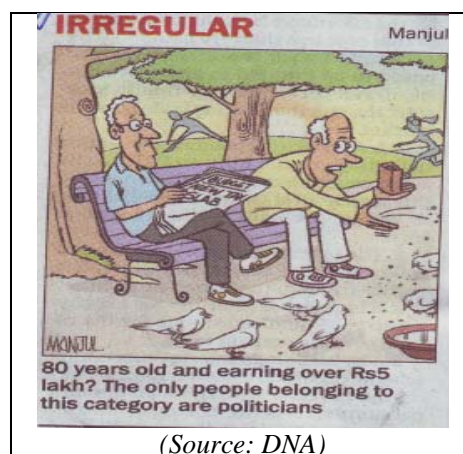
- The individuals are reclassified in following categories:
 - Individuals below the age of 60 years other than female assessees. This category includes all hindu undivided family, every association of persons or body of individuals and non residents individuals irrespective of their age.
 - Female assessee below the age of 60 years, being resident in India.
 - Every individual being resident in India of the age 60 years or more but less than 80 years (hereinafter referred to as “senior citizens”). Earlier an individual was treated as senior citizen on attaining the age of 65 years. It is now proposed to reduce this age to 60 years.
 - Every individual being resident in India of the age 80 years or more (hereinafter referred to as “very senior citizen”). This is a new category now proposed.

An individual is treated as senior citizen or very senior citizen on attaining the age of 60 years or 80 years anytime during the year.

- There is a change in basic limit and slab rates according to the above classification. The revised table is as under:

For very senior citizen - individuals who is of the age 80 years or more being resident in India:

Proposed	
Taxable income	Rate of tax
Upto 5,00,000	NIL
5,00,001 to 8,00,000	20% on amount exceeding 5,00,000
8,00,001 and above	Rs. 60,000/- + 30% on amount exceeding 8,00,000



For senior citizen - individuals who is of the age 60 years or more but less than 80 years being resident in India:

Existing for senior citizen of the age 65 years and above	
Taxable income	Rate of tax
Upto 2,40,000	NIL
2,40,001 to 5,00,000	10% on amount exceeding 2,40,000
5,00,001 to 8,00,000	Rs. 26,000/- + 20% on amount exceeding 5,00,000
8,00,001 and above	Rs. 86,000/- + 30% on amount exceeding 8,00,000

Proposed	
Taxable income	Rate of tax
Upto 2,50,000	NIL
2,50,001 to 5,00,000	10% on amount exceeding 2,50,000
5,00,001 to 8,00,000	Rs. 25,000/- + 20% on amount exceeding 5,00,000
8,00,001 and above	Rs. 85,000/- + 30% on amount exceeding 8,00,000

Female assessee (below the age of 60 years), resident in India:

Existing	
Taxable income	Rate of tax
Upto 1,90,000	NIL
1,90,001 to 5,00,000	10% on amount exceeding 1,90,000
5,00,001 to 8,00,000	Rs. 31,000/- + 20% on amount exceeding 5,00,000
8,00,001 and above	Rs. 91,000/- + 30% on amount exceeding 8,00,000

There is no change proposed in slab rates. The age limit is reduced from 65 years to 60 years.

Other individuals, HUF, AOP, BOI:

Existing		Proposed	
Taxable income	Rate of tax	Taxable income	Rate of tax
Upto 1,60,000	NIL	Upto 1,80,000	NIL
1,60,001 to 5,00,000	10% on amount exceeding 1,60,000	1,80,001 to 5,00,000	10% on amount exceeding 1,80,000
5,00,001 to 8,00,000	Rs. 34,000/- + 20% on amount exceeding 5,00,000	5,00,001 to 8,00,000	Rs. 32,000/- + 20% on amount exceeding 5,00,000
8,00,001 and above	Rs. 94,000/- + 30% on amount exceeding 8,00,000	8,00,001 and above	Rs. 92,000/- + 30% on amount exceeding 8,00,000

3. Surcharge and Education Cess:

- The surcharge on assessee's other than companies continues to be NIL.
- The education cess continues to be 3%.
- The surcharge on domestic company is reduced from 7.5% to 5% and on foreign company from 2.5% to 2% for income above Rs. 100 lakhs. The details are as under:

Type of assessee	Existing		Proposed	
	Amount above which surcharge will be levied Rs.	Rate of surcharge	Amount above which surcharge will be levied Rs.	Rate of surcharge
Domestic company	100 Lacs	7.50%	100 Lacs	5.00%
Company other than domestic company	100 Lacs	2.50%	100 Lacs	2.00%

- Proposed effective rate of tax for Firms, Company - domestic and Company - foreign for A.Y. 2012-13 and onwards would be as under:

	Income tax %	Surcharge %	Education cess %	Total %
<u>Firm (including LLP)</u> For income upto Rs. 100 Lacs	30	Nil	3	30.90
For income exceeding Rs. 100 Lacs	30	Nil	3	30.90

	Income tax %	Surcharge %	Education cess %	Total %
<u>Domestic Company</u>				
For income upto Rs. 100 Lacs	30	Nil	3	30.90
For income exceeding Rs. 100 Lacs	30	5.00	3	32.445
<u>Company – Foreign</u>				
For income upto Rs. 100 Lacs	40	Nil	3	41.20
For income exceeding Rs. 100 Lacs	40	2.00	3	42.024

- The existing surcharge of 7.5% in all cases including under sections 115JB, 115O, 115R, etc. is proposed to be reduced to 5.00% for A.Y. 2012-13.
- The MAT is proposed to be increased from 18% to 18.5% on book profit. Also, MAT is proposed to be levied on Limited Liability Partnership. The effective rates under the MAT for the A.Y. 2012-13 would be as under:

Particular	Section	Basic Rate	Sur-charge	Cess	Effective Rate
<u>Domestic Company</u>					
For income upto Rs. 100 Lacs		18.5%	Nil	3%	19.055%
For income exceeding Rs. 100 Lacs		18.5%	5%	3%	20.008%
<u>Company – Foreign</u>					
For income upto Rs. 100 Lacs		18.5%	Nil	3%	19.055%
For income exceeding Rs. 100 Lacs		18.5%	2%	3%	19.436%
<u>Limited Liability Partnership</u> (Also refer para 20 of the notes)					
For income upto Rs. 100 Lacs		18.5%	Nil	3%	19.055%
For income exceeding Rs. 100 Lacs		18.5%	Nil	3%	19.055%

- There is a change proposed in the rate of tax on income distributed by a mutual fund u/s 115R. No change is proposed in the rate u/s 115-O. The effective rates for the A.Y. 2012-13 under sections 115O and 115R would be as under:

Particular	Section	Basic Rate	Sur-charge	Cess	Effective Rate
Dividend Distribution Tax: On Shares	115-O	15%	5%	3%	16.22%
<u>On Mutual Funds:</u> (Also refer para 22 of the notes) Equity Oriented	115-R	Nil	Nil	Nil	Nil
Money Market or Liquid Fund (i) Individual or HUF		25%	5%	3%	27.04%
(ii) Others		30%	5%	3%	32.45%
Others: (i) Individual or HUF		12.50%	5%	3%	13.52%
(ii) Others		30%	5%	3%	32.45%

4. **Tax rates over the generations for individuals:**

Year	Exemption Limit	Number of Rates	Entry Rate (%)	Peak Rate (%)	Income At Which Peak Rate Applies
1949-50	1,500	4	4.69	25	15,000
1970-71	5,000	11	11	93.5	2,00,000
1980-81	8,000	8	15	66.0	1,00,000
1985-86	18,000	4	25	50.0	1,00,000
1990-91	22,000	4	20	56.0	1,00,000
1995-96	40,000	3	20	40.0	1,20,000
1998-99	50,000	3	10	30.0	1,50,000
1999-00	50,000	3	10	33.0	1,50,000
2000-01	50,000	3	10	35.1	1,50,000
2001-02	50,000	3	10	30.6	1,50,000
2002-03	50,000	3	10	31.5	1,50,000
2003-04	50,000	3	10	30.0	1,50,000
2004-05	60,000	3	10	33.6	8,50,000
2005-06	1,00,000	3	10	33.6	10,00,000
2007-08	1,10,000	3	10	33.9	10,00,000
2008-09	1,50,000	3	10.3	33.9	10,00,000
2009-10	1,60,000	3	10.3	30.9	5,00,000
2010-11	1,60,000	3	10.3	30.9	8,00,000
2011-12	1,80,000	3	10.3	30.9	8,00,000
Proposed					

(Source: Times of India)

5. Rate of Tax Deduction at Source:

- 5.1) There is no change proposed in the rate at which tax is required to be deducted at source and the rates as applicable for financial year 2010-11 will continue to apply for financial year 2011-12.
- 5.2) In case of payment to a company other than domestic company, the amount of tax so deducted shall be increased by a surcharge at the rate of two percent instead of two and half percent in the earlier year. The education cess in such cases continues to be three percent.
- 5.3) In the case of a resident assessee including a domestic company no surcharge and education cess would be levied on the amount of tax deducted at source. However, education cess of 3% would continue to apply on tax deducted at source in the case salary payments.
- 5.4) A new rate of TDS is proposed u/s 194LB of the Act for A.Y. 2012-13.

Sr. No.	Section	Nature of Payment	Existing rate of Deduction (%)	Proposed rate of deduction (%)
1.	194LB	Interest payable to Non Resident, not being Company or to a foreign company by infrastructure debt Fund	Not Applicable	5

The above rate will be effective from 1st June, 2011.
(Also refer para 9 of the notes)

6. Definition of Charitable purpose [Section 2(15)]:

For the purposes of the Income-tax Act, "charitable purpose" has been defined in section 2(15).

Existing Provision	Proposed Amendment
Charitable purpose includes the advancement of any other object of general public utility". However, "the advancement of any other object of general public utility" is not a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income	It is proposed to amend section 2(15) to enhance the current monetary limit in respect of receipts from such activities from ten lakhs rupees to twenty-five lakhs rupees.

from such activity and receipts from such activities is ten lakh rupees or more in the previous year.	
-------------------------------------------------------------------------------------------------------	--

Originally, the amendment was made by the Finance Act, 2008 with effect from Assessment Year 2009-10. It was provided that the advancement of any other object of general public utility is not a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. This amendment had far reaching implication and to reduce the hardship to smaller trust, the Finance Act, 2010 brought in the amendment whereby the object of general public utility will be treated as charitable purpose if the gross receipts from such activities are upto Rs. 10 lakh. Now it is proposed to increase the limit to Rs. 25 lakh.

The proposed amendment will be effective from 1st April, 2012 and will accordingly, apply to Assessment year 2012-13 and subsequent assessment years.

7. Exemption to allowance or perquisite of Chairman and Members of Union Public Service Commission [Section 10(45)]:

The existing provisions of the Income-tax Act provide for the taxation of any perquisites or allowances received by an employee under the head "Salaries" unless it is specifically exempt under the Act.

Currently, specified perquisites of the Chief Election Commissioner or Election Commissioner and the judges of the Supreme Court are exempt from taxation consequent to the enabling provisions in the respective Acts governing their service conditions. It is proposed to amend section 10 by inserting a new clause to extend similar benefit of exemption in respect of specific perquisites and allowances, which will be notified by the Central Government, received by both serving as well as retired Chairmen and Members of the Union Public Service Commission.

This amendment is proposed to take effect retrospectively from 1st April, 2008 and will accordingly apply in relation to the assessment year 2008-09 and subsequent years.

8. Exemption of specified income of notified body or authority or trust or board or commission [Section 10(46)]:

It is proposed to insert a new clause in section 10 of the Income-tax Act to provide exemption from income-tax to any specified income of a body, authority, board, trust or commission which is set up or constituted by a Central, State or Provincial Act or constituted by the Central Government or a State Government with the object of regulating or administering an activity for the benefit of the general public, provided-

- (i) it is not engaged in any commercial activity, and
- (ii) is notified by the Central Government in this behalf.

The nature and extent of income to be exempted will also be specified by the Central Government while notifying such entity.

A consequential amendment is proposed in section 139 of the Act to provide for filing of the return of income by such notified entity.

These amendments are proposed to take effect from 1st June 2011.

9. Income of Infrastructure Debt Fund [Section 10(47), 115A, 194LB]:

The Hon'ble Finance Minister in his budget speech has stated that -

“144. To attract foreign funds for financing of infrastructure, I propose to:

- create special vehicles in the form of notified infrastructure debt funds;
- subject interest payment on the borrowings of these funds to a reduced withholding tax rate of 5 per cent instead of the current rate of 20 per cent;
- exempt the income of the fund from tax.”

Section 10 of the Income-tax Act excludes certain incomes from the ambit of total income. It is proposed to insert new clause (47) in section 10 of the Income-tax Act so as to provide enabling power to the Central Government to notify any infrastructure debt fund which is set up in accordance with the prescribed guidelines. Once notified, the income of such debt fund would be exempt from tax. It will, however, be required to file a return of income.

Under the existing section 115A of the Act, Income tax payable on income derived by non-resident by way of:

i)	Dividend other than dividends referred to in section 115-O	20% subject to applicable surcharge and education cess;
ii)	Interest received from Government or an Indian concern on monies borrowed or debt incurred in foreign currency	20% subject to applicable surcharge and education cess;
iii)	Income received in respect of units, purchased in foreign currency, of a Mutual Fund specified under section 10(23D) or of the Unit Trust of India	20% subject to applicable surcharge and education cess

It is proposed to amend section 115A of the Income-tax Act to provide that

iii a)	Any interest received by a non-resident from such notified infrastructure debt fund	5% subject to applicable surcharge and education cess;
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It is further proposed to insert a new section 194LB to provide that tax shall be deducted at the rate of five per cent, by such notified infrastructure debt fund on any interest paid by it to a non-resident.

However, if the non-resident is covered by a particular DTAA, then the rates prescribed under particular DTAA or above rates whichever is beneficial to the assessee will apply.

It is explained in the memorandum that in order to augment long-term, low cost funds from abroad for the infrastructure sector, it is proposed to facilitate setting up of dedicated debt funds.

These amendments are proposed to take effect from 1st June 2011.

10. Expenditure on Scientific Research [Section 35(2AA)]:

Section 35 of the Income Tax Act, 1961 provides for deduction in respect of expenditure on research and development. It is proposed to increase the quantum of deduction as under:

Nature of Deduction	Existing Weighted Deduction	Proposed Weighted Deduction
Contribution to - Approved National Laboratory or a university or an Indian Institute of Technology or a specified person for scientific research undertaken under an approved programme [Section 35(2AA)]	175%	200%

Finance Act, 2010 has increased the quantum of deduction to 175% (from earlier 125%) with effect from 1st April, 2011 and now it is proposed to increase the weighted deduction to two times the sum paid.

This amendment is proposed to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

11. Incentive for Specified Business [Sections 35AD, 80A]:

A new section 35AD was inserted by Finance (No. 2) Act, 2009 in respect of expenditure on specified business. The amendment provided that an assessee shall be allowed a deduction in respect of the whole of an expenditure of a capital nature (other than on land, goodwill and financial instrument) incurred, wholly and exclusively for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him.

Finance Act, 2010 further increased the scope of incentive.

Now, the Hon'ble Finance Minister in his Budget Speech has stated that:

“147. In order to give a boost to production in the agriculture sector, I propose to extend the benefit of investment linked deduction to businesses engaged in the production of fertilisers.

148. Considering the importance of housing, I also propose investment linked deduction to businesses which develop affordable housing under a notified scheme.”

and the following further amendments are proposed in this section:

Existing Provision	Proposed Amendment
<p>Under the existing provisions of section 35AD of the Income-tax Act, investment-linked tax incentive is provided by way of allowing hundred per cent, deduction in respect of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business". Currently, the following specified businesses are eligible for availing investment-linked deduction under section 35AD(8)(c)</p> <p>(i) setting up and operating a cold chain facility;</p> <p>(ii) setting up and operating a warehousing facility for storage of agricultural produce;</p> <p>(iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;</p> <p>(iv) building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government;</p> <p>(v) building and operating, anywhere in India, a new hospital with at least one hundred beds for patients;</p> <p>(vi) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed</p>	<p>It is proposed to include two new businesses as "specified business" eligible for availing investment linked deduction-</p> <p>a) developing and building a housing project under a scheme for affordable housing framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed; and</p> <p>b) production of fertiliser in India.</p> <p>The dates of commencement of the "specified business" as an eligibility condition are detailed in section 35AD(5). It is proposed that the date of commencement of operations in the case of the two "specified businesses" of affordable housing projects and production of fertilizer in a new plant or in a newly installed capacity in an existing plant shall be on or after 1st April, 2011.</p> <p>It is proposed to omit the word “new” from clause (iv) and (v) of clause (c) of sub-section (8) from the definition of “specified business”.</p>

by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed.	
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These amendments will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

Under section 73A, any loss of a "specified business" (under section 35AD) is allowed to set-off against profit and gains of any other "specified business". It is proposed to remove the word "new" from the definition of "specified business" in the case of hotels and hospitals under section 35AD(8)(c). With this, the loss of an assessee on account of a "specified business" claiming deduction under section 35AD would be allowed to be set off against the profit of another "specified business" under section 73A, whether or not the latter is eligible for deduction under section 35AD. Therefore, an assessee who currently operates a hospital or a hotel would be able to set off the profits of such business against the losses, if any, of a new hospital or new hotel which begins to operate after 1st April, 2010 and which is eligible for deduction of expenditure under section 35AD.

This amendment is proposed to take effect retrospectively from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

The other terms and conditions of section 35AD continues for specified business including the proposed business.

One should keep in mind that on combined reading of section 35AD and provisions of MAT (Section 115JB) the company assessee in such cases would be liable to pay MAT even though under normal computation he will get 100% of capital expenditure as a deduction. Thus, the company assessee would continue to pay MAT at the rate of 19.93% / 20.01%.

12. Tax benefits for New Pension System (NPS) [Sections 36(1) and 80CCE]:

Existing Provision	Proposed Amendment
The contribution made by an employer towards a recognised provident fund, an approved superannuation fund or an approved gratuity fund is allowable as a deduction from business income under section 36, subject to certain limits. However, the contribution made by an employer to the NPS is not allowed as a deduction.	It is proposed to amend section 36 so as to provide that any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD(2) on account of an employee to the extent it does not exceed ten per cent, of the salary of the employee in the previous year, shall be allowed as deduction in computing the income under the head "Profits and gains of business or profession".

Section 80CCD of the Income Tax Act provides a deduction in respect of contributions made by an employee as well as an employer to the New Pension System on behalf of the employee.

Existing Provision	Proposed Amendment
The existing provisions contained in the aforesaid section 80CCE provide that the aggregate amount of deductions under section 80C, section 80CCC and section 80CCD shall not exceed one lakh rupees.	It is proposed to amend the aforesaid section 80CCE so as to provide that contribution made by the Central Government or any other employer to a pension scheme under sub-section (2) of section 80CCD shall not be included in the limit of deduction of one lakh rupees provided under section 80CCE.

These amendments are proposed to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

13. Deduction for investment in long term infrastructure bond [Section 80CCF]:

Existing Provision	Proposed Amendment
Under the existing provisions of section 80CCF of the Income-tax Act, a sum of Rs. 20,000 (over and above the existing limit of Rs. 1 lakh available under section 80CCE for tax savings) is allowed as deduction in computing the total income of an individual or a Hindu undivided family if that sum is paid or deposited during the previous year relevant to the assessment year 2011-12 in long-term infrastructure bonds as notified by the Central Government.	It is proposed to amend section 80CCF to allow deduction on account of investment in notified long-term infrastructure bonds for the year 2011-12 (assessment year 2012-13) also.

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13.

14. Extension of Tax Holiday for Power sector [Section 80IA(4)]:

Existing Provision	Proposed Amendment
Under the existing provisions of section 80-IA(4)(iv) of the Income-tax Act, a deduction of profits and gains is allowed to an undertaking which,— a) is set up for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1 st April, 1993 and ending on 31 st March, 2011;	It is proposed to amend section 80-IA(4)(iv) to extend the terminal date for a further period of one year, i.e., upto 31 st March, 2012.

<p>b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2011; or</p> <p>(c) undertakes substantial renovation and modernisation of existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2011.</p>	
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This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to assessment year 2012-13 and subsequent years.

15. Sunset of tax holiday for certain undertakings engaged in commercial production of mineral oil [Section 80IB(9)]:

Under the existing provisions of section 80-IB(9) of the Income-tax Act, a seven-year profit-linked deduction of hundred per cent, is available to an undertaking, if it fulfils any of the following, namely:-

- (i) is located in North-Eastern Region and has begun or begins commercial production of mineral oil before 1st April, 1997;
- (ii) is located in any part of India and has begun or begins commercial production of mineral oil on or after 1st April, 1997;
- (iii) is engaged in refining of mineral oil and begins such refining on or after 1st October, 1998 but not later than 31st March, 2012;
- (iv) is engaged in commercial production of natural gas in blocks licensed under the VIII Round of bidding for award of exploration contracts (NELP-VIII) under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 and begins commercial production of natural gas on or after 1st April, 2009;
- (v) is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after 1st April, 2009.

For the purposes of claiming this deduction, all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or in pursuance of any law for the time being

in force or by the Central or a State Government in any other manner, are treated as a single "undertaking".

Thus, an undertaking, which is located in any part of India and is engaged in commercial production of mineral oil, is eligible for the above-mentioned deduction, if it has begun or begins commercial production of mineral oil at any time after 1st April, 1997. No sunset date has been provided for such business.

It is proposed that the aforesaid deduction available for commercial production of mineral oil will not be available for blocks licensed under a contract awarded after 31st March, 2011 under the New Exploration Licencing Policy announced by the Government of India *vide* Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or in pursuance of any law for the time being in force or by the Central or a State Government in any other manner.

The proposed amendment is applicable to only new blocks awarded after 31st March, 2011. The existing blocks will be eligible to claim relief under this section for 7 years from the date of commencement of commercial production of mineral oil.

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

16. Transfer Pricing Provisions [Section 92C, 92CA and 139]:

- Section 92C of the Income-tax Act provides the procedure for computation of the Arm's Length Price (ALP). The section provides the methods of computing the ALP and mandates that the most appropriate method should be chosen to compute ALP. It is also provided that if more than one price is determined by the chosen method, the ALP shall be taken to be the arithmetical mean of such prices.

Existing Provision	Proposed Amendment
The second proviso to section 92C(2) provides that if the variation between the actual price of the transaction and the ALP, as determined above, does not exceed 5% of the actual price, then, no adjustment will be made and the actual price shall be treated as the ALP.	It is proposed to provide that instead of a variation of 5%, the allowable variation will be such percentage as may be notified by Central Government in this behalf.

It is explained in the memorandum that a fixed margin of 5% across all segments of business activity and range of international transactions has out-lived its utility and therefore, it is proposed to amend section 92C of the Act to provide that instead of a variation of 5%, the allowable variation will be such percentage as may be notified by Central Government in this behalf.

This amendment is proposed to take effect from 1st April, 2012 and it shall accordingly apply in relation to the Assessment Year 2012-13 and subsequent years.

- Section 92CA of the Act provides that the Transfer Pricing Officer (TPO) can determine the ALP in relation to an international transaction, which has been referred to the TPO by the Assessing Officer.

It is proposed to amend section 92CA so as to specifically provide that the jurisdiction of the Transfer Pricing Officer shall extend to the determination of the ALP in respect of other international transactions, which are noticed by him subsequently, in the course of proceedings before him. These international transactions would be in addition to the international transactions referred to the TPO by the Assessing Officer.

The Hon'ble Income Tax Appellate Tribunal, Delhi Bench in the case of Amadeus India Pvt. Ltd. v/s A.C.I.T. (2011-TII-22-ITAT-DEL-TP) has held that if the TPO come across any other transaction, which has bearing on the international transactions and the determination of ALP, during the course of assessment proceedings, he cannot take such transaction suo moto for verification and then suggest necessary adjustment. In order to overcome this limitation, this amendment is proposed with effect from 1st June, 2011, whereby the TPO can suo moto verify the transaction which has not been referred to him by Assessing Officer. This would enlarge the scope of jurisdiction of the TPO to make adjustment.

- Section 92CA (7) provides that for the purpose of determining the ALP, the TPO can exercise powers available to an assessing officer under section 131(1) and section 133(6). These are powers of summoning or calling for details for the purpose of inquiry or investigation into the matter.

In order to enable the TPO to conduct on-the-spot enquiry and verification, it is proposed to amend section 92CA(7) so as to enable the TPO to also exercise the power of survey conferred upon an income-tax authority under section 133A of the Act.

These amendments are proposed to take effect from 1st June 2011.

- Section 139 of the Income-tax Act stipulates 30th September of the assessment year as the due date for filing of return of income in case of corporate assessee. In addition to filing a return of income, assessee who have undertaken international transactions are also required (under the provisions of section 92E) to prepare and file a transfer pricing report in Form 3CEB before the due date for filing of return of income.

It is proposed to amend section 139 to extend the due date for filing of return of income by such corporate assessee to 30th November of the assessment year.

Under the Companies Act, 1956, the companies are required to hold their annual general meeting within 6 months of the end of the financial year and thereafter within 30 days thereof the Audited Statement of Accounts are required to be filed with Registrar of Companies. Thus, generally, the data is available in public domain only somewhere in November for the year ending March. In terms of Rule 10B(4) of the Income Tax Rules, 1962, the data to be used in analyzing the comparability of an uncontrolled transaction with an international transaction shall be the data relating to the financial year in which the international transaction has been entered into. Whereas Rule 10D(4) requires the assessee to maintain amongst other details such

comparable data, as far as possible, and such data should exist latest by the due date of filing income tax return i.e. 30th September at present. The corporate assesseees face practical difficulties in accessing contemporary comparable data before 30th September in order to furnish a report in respect of their international transactions. In order to remove this difficulty, it is proposed to amend sub-clause (i) of clause (a) to the said Explanation 2 and to insert a new clause (aa) after the said clause (a) so as to provide that for filing a return of income in case of an assessee being a company, which is required to furnish a report referred to in the said section 92E, the due date shall be the 30th day of November of the assessment year.

This amendment is proposed to take effect retrospectively from 1st April 2011.

17. Transactions with persons located in a notified jurisdictional area [Section 94A]:

The Hon'ble Finance Minister in his Budget Speech has stated that:

“**150.** In order to strengthen our system of collection of information from foreign tax jurisdictions, I propose to provide a toolbox of counter measures to discourage transactions with entities located in non-cooperative jurisdictions as may be notified by the Government.”

In order to discourage transactions by a resident assessee with persons located in any country or jurisdiction which does not effectively exchange information with India, anti-avoidance measures have been proposed in the Income-tax Act.

It is proposed to insert a new section 94A in the Act to specifically deal with transactions undertaken with persons located in such country or area.

The proposed section provides –

- a) an enabling power to the Central Government to notify any country or territory outside India, having regard to the lack of effective exchange of information by it with India, as a notified jurisdictional area;
- b) that if an assessee enters into a transaction, where one of the parties to the transaction is a person located in a notified jurisdictional area, then all the parties to the transaction shall be deemed to be associated enterprises and the transaction shall be deemed to be an international transaction and accordingly, transfer pricing regulations shall apply to such transactions;
- c) that no deduction in respect of any payment made to any financial institution shall be allowed unless the assessee furnishes an authorization, in the prescribed form, authorizing the Board or any other income-tax authority acting on its behalf, to seek relevant information from the said financial institution;
- d) that no deduction in respect of any other expenditure or allowance (including depreciation) arising from the transaction with a person located in a notified jurisdictional area shall be allowed under any provision of the Act unless the

assessee maintains such other documents and furnishes the information as may be prescribed;

- e) that if any sum is received from a person located in the notified jurisdictional area, then, the onus is on the assessee to satisfactorily explain the source of such money in the hands of such person or in the hands of the beneficial owner, and in case of his failure to do so, the amount shall be deemed to be the income of the assessee;
- f) that any payment made to a person located in the notified jurisdictional area shall be liable to deduction of tax at the higher of the rates specified in the relevant provision of the Act or rate or rates in force or a rate of 30 per cent;
- g) “person located in a notified jurisdictional area” shall include, –
 - i) a person who is resident of the notified jurisdictional area;
 - ii) a person, not being an individual, which is established in the notified jurisdictional area; or
 - iii) a permanent establishment of a person not falling in sub-clause (i) or sub-clause (ii), in the notified jurisdictional area;
- h) the term “permanent establishment” and “transaction” shall have the meaning as defined in section 92F.

These amendments are in line with current global trend of having transparency in tax matters. The Hon’ble Finance Minister in his budget speech has stated that “during the year, we have concluded discussions for 11 Tax Information Exchange Agreements (TIEAs) and 13 new Double Taxation Avoidance Agreements (DTAAs) along with revision of provisions of 10 existing DTAAs. To effectively handle the increase in tax information exchange and transfer pricing issues, Foreign Tax Division of CBDT has been strengthened. A dedicated Cell for exchange of information is being set up to work on this agenda.”

This amendment is proposed to take effect from 1st June, 2011.

18. Taxation of foreign dividends [Section 115BBD]:

The Hon’ble Finance Minister in his Budget Speech has stated that:

“**146.** It has been represented that the taxation of foreign dividends in the hands of resident taxpayers at full rate is a disincentive for their repatriation to India and they continue to remain invested abroad. For the year 2011-12, I propose a lower rate of 15 per cent tax on dividends received by an Indian company from its foreign subsidiary. I do hope these funds will now flow to India.”

Under the existing provisions of the Income-tax Act, dividend received from foreign companies is taxable in the hands of the resident shareholder at his applicable

marginal rate of tax. Therefore, in case of Indian companies which receive foreign dividend, such dividend is taxable at the rate of thirty per cent, plus applicable surcharge and cess.

It is proposed to insert a new section 115BBD to provide that where total income of an Indian company for the previous year relevant to the assessment year 2012-13 includes any income by way of dividends received from a foreign subsidiary company, then such dividends shall be taxable at the rate of fifteen per cent, (plus applicable surcharge and cess) on the gross amount of dividends. The effective rate would be 16.22%.

No expenditure in respect of such dividends shall be allowed under the Act.

For this section the term “dividend” and “subsidiary foreign company” are proposed to be defined as under:

“(i) “dividends” shall have the same meaning as is given to “dividend” in clause (22) of section 2 but shall not include sub-clause (e) thereof;

(ii) “subsidiary foreign company” means a foreign company in which the Indian company holds more than half in nominal value of the equity share capital of the company;”

The dividend received from foreign subsidiary will be included in book profit for the purposes of calculation of MAT and if Indian company is paying tax under MAT, the effective rate of tax would be 19.06% / 20.01%.

This amendment is proposed to take effect from 1st April, 2012 and will accordingly, apply in relation to the assessment year 2012-13.

19. Minimum Alternate Tax (MAT) [Section 115JB]:

Under the existing provisions of section 115JB(1), a company is required to pay a minimum alternate tax (MAT) on its book profit, if the income-tax payable on the total income, as computed under the Act in respect of any previous year relevant to the assessment year commencing on or after 1st April, 2011, is less than the MAT. The amount of tax paid under the said section is allowed to be carried forward and set off against tax payable up to the tenth assessment year immediately succeeding the assessment year in which the tax credit becomes allowable under the provisions of section 115JAA.

It is proposed to amend this section to increase the rate of MAT from

Existing Provision	Proposed Amendment
18% of book profit (plus surcharge and education cess)	18.5% of book profit (plus surcharge and education cess)

Thus, the effective rate would increase from 19.93% to 20.01%.

This amendment will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

The proposed amendment regarding Special Economic Zone (SEZ) in this section is dealt with in Para 21.

20. Alternate Minimum Tax for Limited Liability Partnership [Sections 115JC, 115JD, 115JE and 115JF]:

The Limited Liability Partnership Act, 2008 (LLP) has come into effect in 2009. The LLP has features of both a body corporate as well as a traditional partnership. The Income-tax Act provides for the same taxation regime for a limited liability partnership as is applicable to a partnership firm. It also provides tax neutrality (subject to fulfilment of certain conditions) to conversion of a private limited company or an unlisted public company into an LLP.

An LLP being treated as a firm for taxation has the following tax advantages over a company under the Income-tax Act:-

- i) it is not subject to Minimum Alternate Tax;
- ii) it is not subject to Dividend Distribution Tax (DDT); and
- iii) it is not subject to surcharge.

It is proposed to insert a new Chapter XII-BA consisting of new sections 115JC, 115JD, 115JE and 115JF in the Income-tax Act containing special provisions relating to Alternate Minimum Tax payable by limited liability partnerships.

Under the proposed amendment, where the regular income-tax payable for a previous year by a limited liability partnership is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of such limited liability partnership and it shall be liable to pay income-tax on such total income at the rate of eighteen and one-half per cent.

Every limited liability partnership to which this section applies shall obtain a report, in such form as may be prescribed, from an accountant certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of filing of return under sub-section (1) of section 139.

For the purpose of the above,

- (i) "adjusted total income" shall be the total income before giving effect to this newly inserted Chapter XII-BA as increased by the deductions claimed under any section included in Chapter VI-A under the heading "C - *Deductions in respect of certain incomes*" and deduction claimed under section 10AA;
- (ii) "alternate minimum tax" shall be the amount of tax computed on adjusted total income at a rate of eighteen and one-half per cent; and

- (iii) "regular income-tax" shall be the income-tax payable for a previous year by a limited liability partnership on its total income in accordance with the provisions of the Act other than the provisions of this newly inserted Chapter XII-BA.

It is further provided that the credit for tax (tax credit) paid by a limited liability partnership under this newly inserted Chapter XII-BA shall be allowed to the extent of the excess of the alternate minimum tax paid over the regular income-tax. This tax credit shall be allowed to be carried forward up to the tenth assessment year immediately succeeding the assessment year for which such credit becomes allowable. It shall be allowed to be set off for an assessment year in which the regular income-tax exceeds the alternate minimum tax to the extent of the excess of the regular income-tax over the alternate minimum tax.

No interest shall be payable on tax credit allowed under sub-section (1).

Thus, out of the three advantages a limited liability partnerships enjoys over a company, one is proposed to be taken away.

This amendment is proposed to take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

21. Provisions relating to Special Economic Zone (SEZ) [Sections 115JB and 115-O]:

Under the existing provisions of section 10AA of the Income-tax Act, a deduction of hundred per cent, is allowed in respect of profits and gains derived by a unit located in a Special Economic Zone (SEZ) from the export of articles or things or services for the first five consecutive assessment years; of fifty per cent, for further five assessment years; and thereafter, of fifty per cent, of the ploughed back export profit for the next five years.

Further, under section 80-IAB of the Income-tax Act, a deduction of hundred per cent, is allowed in respect of profits and gains derived by an undertaking from the business of development of an SEZ notified on or after 1st April, 2005 from the total income for any ten consecutive assessment years out of fifteen years beginning from the year in which the SEZ is notified by the Central Government.

Under the existing provisions of section 115JB(6), an exemption is allowed from payment of minimum alternate tax (MAT) on book profit in respect of the income accrued or arising on or after 1st April, 2005 from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone (SEZ), as the case may be.

Existing Provision	Proposed Amendment
The existing provisions contained in the aforesaid sub-section (6) provide that the provisions of section 115JB shall not apply to the income accrued or arising on or after the 1 st day of April, 2005	It is proposed to insert a proviso to the said sub-section (6) so as to provide that the provisions of that sub-section shall cease to have effect in respect of any previous year relevant to the assessment

from any business carried on, or services rendered, by an entrepreneur or a Developer, in a Unit or Special Economic Zone, as the case may be.	year commencing on or after the 1 st day of April, 2012.
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Presently, there is no sunset date provided for exemption from MAT in the case of a developer of SEZ or a unit located in SEZ. It is now proposed to sunset the availability of exemption from minimum alternate tax in the case of SEZ Developers and units in SEZs in the Income-tax Act as well as the SEZ Act.

This amendment to section 115JB of the Income-tax Act will take effect from 1st April, 2012 and will, accordingly, apply in relation to the assessment year 2012-13 and subsequent years.

Further, under the existing provisions of section 115-0(6), an exemption is allowed from payment of tax on distributed profits [Dividend Distribution Tax (DDT)] in respect of the total income of an undertaking or enterprise engaged in developing or developing and operating or developing, operating and maintaining a Special Economic Zone for any assessment year on any amount declared, distributed or paid by such Developer or enterprise, by way of dividends (whether interim or otherwise) on or after 1st April, 2005 out of its current income. Such distributed income is also exempt from tax under section 10(34) of the Act.

The above provisions were inserted in the Income-tax Act by the Special Economic Zones Act, 2005 (SEZ Act) with effect from 10th February, 2006.

Here also, there is no sunset date for exemption from DDT in the case of a developer of an SEZ.

It is proposed to insert a proviso to the said sub-section (6) to provide that the provisions of the said sub-section shall cease to have effect from the 1st day of June, 2011. Accordingly, tax on distributed profits shall be chargeable under this section on any amount declared, distributed or paid by way of dividends by the aforesaid undertaking or enterprise on or after the 1st day of June, 2011.

This amendment to section 115-O of the Income-tax Act will take effect from 1st June, 2011.

It is also proposed to make consequential amendments by omitting *Explanation* to section 10(34) of the Income-tax Act. This amendment to section 10 will take effect from 1st June, 2011.

Consequential amendments have also been proposed in the Second Schedule of the SEZ Act by omitting clause (C) of paragraph (a) [w.e.f. 01.06.2011], paragraph (h) [w.e.f. 01.04.2012] and paragraph (i) [w.e.f. 01.06.2011] of the Second Schedule.

22. Tax on Distributed Income to Unit Holders [Section 115R]:

Under the existing provisions contained in section 115R(2) of the Income-tax Act, a Mutual Fund is liable to pay additional income-tax on the amount of income distributed to its unit holders. For this purpose mutual fund is divided in three categories and unit holders are divided in two broad categories. It is proposed to increase rate of additional tax on such distributed income in respect of the income distributed to unit holders other than individual and HUF. The proposed rates are as under:

Type of Mutual Fund	Existing		Proposed	
	Individual & HUF	Others	Individual & HUF	Others
Money Market Mutual Fund or Liquid Fund	25.00%	25.00%	25.00%	30.00%
Other than Money Market Mutual Fund or Liquid Fund	12.50%	20.00%	12.50%	30.00%
Equity Oriented Fund	NIL	NIL	NIL	NIL

(Surcharge and Education Cess as applicable is required to be added to the above rates.)

There is no change proposed in the rate of income-tax in case of distribution to any individual or HUF. Distribution of income by an equity-oriented fund shall continue to be exempt from tax.

This amendment is proposed to take effect from 1st June, 2011.

23. Collection of information on requests received from tax authorities outside India [Sections 131 and 133]:

Under the existing provisions of section 131(1) of the Income-tax Act, certain income-tax authorities have been conferred the same powers as are available to a Civil Court while trying a suit in respect of discovery and inspection, enforcing the attendance of any person, including any officer of a banking company and examining him on oath, compelling production of books of account and other documents and issuing commissions.

It is proposed to facilitate prompt collection of information on requests received from tax authorities outside India in relation to an agreement for exchange of information under section 90 or section 90A of the Income-tax Act.

Accordingly, it is proposed to insert sub-section (2) in section 131. The new sub-section provides that for the purpose of making an enquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority, not below the rank of Assistant Commissioner of Income-tax, as notified by the Board in this behalf, to exercise the powers currently conferred on income-tax authorities referred to in section 131(1). The authority so notified by the Board shall be able to exercise the

powers under section 131(1) notwithstanding that no proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.

It is further proposed to amend section 131(3) so as to empower the aforesaid authority, as notified by the Board, to impound and retain any books of account and other documents produced before it in any proceeding under the Act.

Similar amendments have also been proposed in section 133 of the Income-tax Act.

These amendments will take effect from 1st June, 2011.

24. Return of Income [Section 139(1C)]:

Under the existing provisions contained in sub-section (1) of the aforesaid section, every person, if his total income or the total income of any other person in respect of which he is assessable under the Income-tax Act during the previous year exceeds the maximum amount which is not chargeable to income-tax, shall furnish a return of his income or the income of such other person during the previous year.

It is proposed to insert a new sub-section (1C) in the aforesaid section so as to empower the Central Government to exempt by notification in the Official Gazette any class or classes of persons from the requirement of furnishing a return of income having regard to such conditions as may be specified in that notification.

It is explained in the memorandum that in the case of salaried tax payer, entire tax liability is discharged by the employer through deduction of tax at source. Complete details of such tax payers are also reported by the employer through Tax Deduction at Source (TDS) statements. Therefore, in cases where there is no other source of income, filing of a return is a duplication of existing information. In order to reduce the compliance burden on small tax payer, it is proposed to insert sub-section (1C) in section 139. This provision empowers the Central Government to exempt, by notification in the Official Gazette, any class or classes of persons from the requirement of furnishing a return of income, having regard to such conditions as may be specified in that notification.



(Source: Business Line)

Consequential amendments are also proposed to be made to the provisions of section 296 to provide that any notification issued under section 139(1C) shall be laid before Parliament.

This amendment will take effect from 1st June, 2011.

25. Notification for processing of returns in Centralized Processing Centers [Section 143(1B)]:

Under the existing provisions of section 143(1B) of the Income-tax Act, the Central Government may, for the purpose of giving effect to the scheme made under section 143(1A), by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. However, no direction shall be issued after 31st March, 2011.

It is proposed to amend section 143(1B) to extend the existing time limit for issue of notification to 31st March, 2012.

This amendment will take effect retrospectively from 1st April, 2011.

26. Extension of time limit for assessments in case of exchange of information [Sections 153 and 153B]:

Section 153 of the Income-tax Act provides for the time limits for completion of assessments and reassessments. In *Explanation 1* to section 153 of the Income-tax Act, certain periods specified therein are to be excluded while computing the period of limitation for completion of assessments and reassessments.

It is proposed to exclude the time taken in obtaining information from the tax authorities in jurisdictions situated outside India, under an agreement referred to in section 90 or section 90A, from the statutory time limit prescribed for completion of assessment or reassessment.

Accordingly, it is proposed to insert a new clause (viii) in *Explanation 1* to section 153. It provides that the period commencing from the date on which a reference for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is received by the Commissioner, or a period of six months, whichever is less, shall be excluded.

Similar amendments are proposed to be made to section 153B of the Income-tax Act.

These amendments will take effect from 1st June, 2011.

27. Application before Settlement Commission [Section 245C]:

The existing provisions contained in the proviso to section 245C(1) allow an application to be made before the Settlement Commission if,—

- (i) the proceedings have been initiated against the applicant under section 153A or under section 153C as a result of search or a requisition of books of account, as the case may be, and the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees;

- (ii) in other cases, if the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.

It is proposed to expand the criteria for filing an application for settlement by a tax payer in whose case proceedings have been initiated as a result of search or requisition of books of account.

It is, therefore, proposed to insert a new clause (ia) in the proviso to section 245C(1). This stipulates that an application can also be made, where the applicant—

- (a) is related to the person [referred to in (i) above] in whose case proceedings have been initiated as a result of search and who has filed an application; and
- (b) is a person in whose case proceedings have also been initiated as a result of search, the additional amount of income-tax payable on the income disclosed in his application exceeds ten lakh rupees.

As a consequence, a tax payer who is the subject matter of a search would be allowed to file an application for settlement if additional income-tax payable on the income disclosed in the application exceeds fifty lakh rupees. Entities related to such a tax payer, who are also the subject matter of search, would now be allowed to file an application for settlement, if additional income-tax payable in their application exceeds ten lakh rupees.

The relationship between the person who makes an application under clause (ia) of the proviso to section 245C(1) and the person mentioned in clause (i) of the proviso is defined by inserting an Explanation in the section. The proposed Explanation reads as under:

“Explanation.— For the purposes of clause (ia),—

- (a) the applicant, in relation to the specified person referred to in clause (ia), means,—
 - (i) where the specified person is an individual, any relative of the specified person;
 - (ii) where the specified person is a company, firm, association of persons or Hindu undivided family, any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member;
 - (iii) any individual who has a substantial interest in the business or profession of the specified person, or any relative of such individual;
 - (iv) a company, firm, association of persons or Hindu undivided family having a substantial interest in the business or profession of the specified person or any director, partner or member of such company, firm, association or family, or any relative of such director, partner or member;

- (v) a company, firm, association of persons or Hindu undivided family of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the specified person; or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;
- (vi) any person who carries on a business or profession,—
 - (A) where the specified person being an individual, or any relative of such specified person, has a substantial interest in the business or profession of that person; or
 - (B) where the specified person being a company, firm, association of persons or Hindu undivided family, or any director of such company, partner of such firm or member of the association or family, or any relative of such director, partner or member, has a substantial interest in the business or profession of that person;
- (b) a person shall be deemed to have a substantial interest in a business or profession, if—
 - (A) in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits) carrying not less than twenty per cent, of the voting power; and
 - (B) in any other case, such person is, at any time during the previous year, beneficially entitled to not less than twenty per cent, of the profits of such business or profession.”.

This amendment will take effect from 1st June, 2011.

28. Power of the Settlement Commission to rectify its orders [Section 245D of Income Tax Act, 1961 and Section 22D of Wealth Tax Act, 1957]:

The existing provisions of section 245D(4) of the Income-tax Act provide that the Settlement Commission may pass an order, as it thinks fit, on the matters covered by the applications received by it, after giving an opportunity of being heard to the applicant and to the Commissioner. Further, under section 245F(1), the Settlement Commission has been conferred all the powers which are vested in an Income-tax Authority under the Act. An Income-tax Authority has the power (under section 154) to amend any order passed by it for the purpose of rectifying any mistake apparent from the record.

It is proposed to insert a new sub-section (6B) in section 245D so as to specifically provide that the Settlement Commission may, at any time within a period of six months from the date of its order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under section 245D(4).

It is further provided that a rectification which has the effect of modifying the liability of the applicant shall not be made unless the Settlement Commission has given notice to the applicant and the Commissioner of its intention to do so and has allowed the applicant and the Commissioner an opportunity of being heard.

Consequential amendments on similar lines are proposed to be made to section 22D of the Wealth Tax Act.

These amendments will take effect from 1st June, 2011.

29. Omission of the requirement of quoting of Document Identification Number [Section 282B]:

Under the existing provisions contained in section 282B of the Income-tax Act, every income-tax authority shall, on or after the 1st day of July, 2011, allot a computer-generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

It is explained in the memorandum that considering the practical difficulties due to non-availability of requisite infrastructure on an all India basis, it is proposed to omit the aforesaid section.

This amendment will take effect retrospectively from 1st April, 2011.

30. Reporting of activities of liaison offices [Section 285]:

Foreign companies or firms or associations of individuals operate in India through a branch or a liaison office after approval by Reserve Bank of India. The branch constitutes a permanent establishment of the foreign entity and is, therefore, required to file a return of income along with requisite details. A non-resident does not file a return of income with regard to its liaison office on the ground that no business activity is allowed to be carried out in India.

There have been recent judgements where under the garb of liaison office [Rolls Royce Plc v/s DDIT (19 SOT 42) (Del)], foreign companies were held to be carrying on business activities in India, and hence, the income from such activities were liable to be taxed in India.

It is proposed to seek regular information from non-residents regarding the activities of their liaison offices in India. A new section 285 is, therefore, proposed in the Income-tax Act mandating the filing of annual information, within sixty days from the end of the financial year, in the prescribed form and providing prescribed details by non-residents as regards their liaison offices.

This amendment is proposed to take effect from 1st June, 2011.

31. Recognition to Provident Funds – Extension of time limit for obtaining exemption from Employees Provident Fund Organization (EPFO) [Part A to IV Schedule]:

Rule 4 in Part A of the Fourth Schedule to the Income-tax Act provides for conditions which are required to be satisfied by a Provident Fund for receiving or retaining recognition under the Income-tax Act. One of the requirements of rule 4 [clause (ea)] is that the establishment shall obtain exemption under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act).

Rule 3 in Part A of the Fourth Schedule provides that the Chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions specified under the said rule 4 and the conditions which the Board may specify by rules.

The first proviso to sub-rule (1) of rule 3, *inter alia*, specifies that in a case where recognition has been accorded to any provident fund on or before 31st March, 2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31st December, 2010 and any other conditions which the Board may specify by rules in this behalf, the recognition to such fund shall be withdrawn.

In order to provide further time to the Employees' Provident Fund Organization (EPFO) to process the applications made by establishments seeking exemption under section 17 of the EPF & MP Act, it is proposed to amend the aforesaid proviso so as to extend the time limit from 31st December, 2010 to 31st March, 2012.

This amendment will take effect retrospectively from 1st January, 2011.

32. Other Proposals:

The Hon'ble Finance Minister has given other inputs/proposals in his Budget Speech as under:

“Black Money:

85. The generation and circulation of black money is an area of serious concern. To deal with this problem effectively, Government has put into operation a five-fold strategy which consists of Joining the global crusade against 'black money'; Creating an appropriate legislative framework; Setting up institutions for dealing with illicit funds; Developing systems for implementation; and Imparting skills to the manpower for effective action.

86. We secured Membership of the Financial Action Task Force (FATF) in June last year. This is an important initiative of G-20 for anti-money laundering. We have also joined the Task Force on Financial Integrity and Economic Development, Eurasian Group (EAG) and Global Forum on Transparency and Exchange of Information for Tax Purposes.

87. During the year, we have concluded discussions for 11 Tax Information Exchange Agreements (TIEAs) and 13 new Double Taxation Avoidance Agreements (DTAAs) along with revision of provisions of 10 existing DTAAs. To effectively handle the increase in tax information exchange and transfer pricing issues, Foreign Tax Division of CBDT has been strengthened. A dedicated Cell for exchange of information is being set up to work on this agenda.

88. The amendment in our Money Laundering Legislation in 2009 has significantly increased its scope and application. The number of cases registered under this law has increased from 50 between 2005 to 2008 to over 1200 by January this year. The strength of the Enforcement Directorate has been increased three-fold to deal effectively with the increased workload.

89. The Ministry of Finance has commissioned a study on unaccounted income and wealth held within and outside our country. It would suggest methods to tax and repatriate this illicit money.

90. Trafficking in narcotic drugs is also a contributor to the generation of black money. To strengthen controls over prevention of trafficking and improve the management of narcotic drugs and psychotropic substances, I propose to announce a comprehensive national policy in the near future.

IT Initiatives

121. The backbone of an efficient tax administration is a robust IT infrastructure and its deployment for enhanced taxpayer services. Towards this objective, both the Central Boards of Direct Taxes (CBDT) and Excise and Customs (CBEC) have put in place the following measures:

- The on-line preparation and e-filing of income tax returns, e-payment of taxes through 32 agency banks, ECS facility for electronic clearing of refunds directly in taxpayers' bank accounts and electronic filing of TDS returns are now available throughout the country. These measures have empowered taxpayers to meet their tax obligations without visiting an income tax office.
- The Centralized Processing Centre (CPC) at Bengaluru has increased its daily processing capacity from 20,000 to 1.5 lakh returns in 2010-11. This project has won a Gold Award for e-Governance in 2011. Two more CPCs will become operational in Manesar and Pune by May 2011 and a fourth CPC will come up in Kolkata in 2011-12.
- With the completion of its IT Consolidation Project, CBEC can now centrally host its key applications in Customs, Central Excise and Service Tax. The Customs EDI system now covers 92 locations across the country. CBEC's e-Commerce portal ICEGATE, has also been conferred a Gold Award for e-Governance.
- The 'Sevottam' concept has been adopted by both Boards. The three pilot projects of Aaykar Seva Kendras (ASKs) under CBDT have come of age. CBDT will commission eight more such centres this year. In 2011-12, another

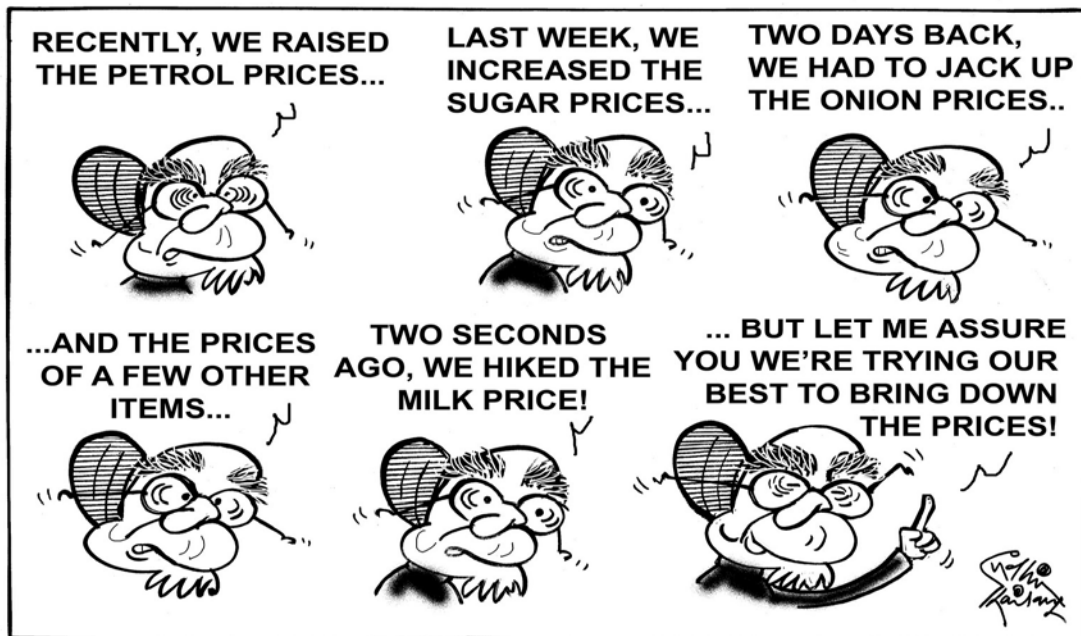
fifty ASKs will be set up across the country. CBEC has also launched a similar initiative and four of their pilot projects have been commissioned.

- The electronic filing of Tax Deduction at Source (TDS) statements has stabilized. The Board shall soon notify a category of salaried taxpayers who will not be required to file a return of income as their tax liability has been discharged by their employer through deduction at source.
- CBDT will provide a separate web-based facility to enable a direct, stand-alone interface for taxpayers with the Income Tax Department so that they can report and track the resolution of their refunds and credit for prepaid taxes.

125. I propose to introduce a new simplified return form 'Sugam' to reduce the compliance burden of small taxpayers who fall within the scope of presumptive taxation.

126. The increase in scope of cases admitted by the Settlement Commissions has provided relief to several taxpayers. This has also increased the workload of the Commission. To fast track the disposal of cases, three more Benches of the Commission are being set up.

127. Substantial amounts of revenue in both direct and indirect taxes, remain locked up in appeals at different levels. Both Boards also invest substantial effort and money in litigation with their employees. In keeping with the National Litigation Policy, several steps have been initiated in 2010-11 for reducing litigation and focusing attention on high revenue cases. Instructions have been issued raising limit of tax effects below which, tax disputes will not be pursued by Government in higher Courts of Appeal. These measures would enhance productivity of resources employed in raising revenue.”



SERVICE TAX

The finance minister has introduced only two new services in the Finance bill 2011. However, he has expanded the scope of existing activities to include more services in the tax net.

Rate of Tax:

There is no change in the rate of tax i.e. services will be continued to be charged at the rate of 10.3% including education cess and secondary and higher education cess.

New services introduced:

Service Tax is being imposed on the following specified services:

1. Services provided by air-conditioned restaurants having a license to serve alcoholic beverages in relation to serving of food and/or beverages.
2. Short-term accommodation provided by a hotel, inn, guesthouse, club or campsite, or any other similar establishment for a continuous period of less than three months.

The above services will come into effect from a date to be notified, after the enactment of Finance Bill, 2011.

Scope of certain existing services is being expanded or altered as follows:

1. The scope of the 'Life insurance service' is being widened to cover all services provided to a policyholder or any person, by an insurer, including re-insurer carrying on life insurance business. It is also being provided that tax shall be charged on the portion of the premium other than what is allocated for investment, when the break-up of premium is shown separately in any document given to the policy holder. The composition rate is also being increased from 1% to 1.5%.
2. The scope of the 'Club or association service' is being expanded to include service provided to non-members within its ambit.
3. The scope of 'Authorized service station service' is being expanded to:
 - (a) include services provided by any person;
 - (b) cover all motor vehicles other than those meant for goods carriage and three-wheeler scooter auto-rickshaws; and
 - (c) also cover the services of decoration and similar services in respect of vehicles along with the services already covered.
4. The definition of 'Business support services' is being amended to include the services provided by way of operational or administrative assistance in any manner.
5. The scope of Legal consultancy services is being expanded by bringing within its ambit the:

- (a) service provided by a business entity to individuals in relation to advice, consultancy or assistance in any branch of law, in any manner;
- (b) representational service provided by any person to any business entity (representational services, provided to individuals will continue to be exempt); and
- (c) service of 'arbitration' provided by an arbitral tribunal to any business entity.



(Source: Times of India)

6. In the Commercial Training or Coaching service, the definition of “Commercial training or coaching centre” is being amended to bring all unrecognized courses within the tax net, irrespective of the fact that such courses are conducted by an institute which also conducts courses which may lead to grant of a recognised degree or diploma.
7. The scope of Health services is being expanded by including:
 - (a) All services, including diagnostic services, provided, by a centrally air-conditioned (wholly or partially) clinical establishment having more than 25 beds for in-patient treatment during any part of the year;
 - (b) Diagnostic services being provided by a clinical establishment with the aid of laboratory or other medical equipment; and
 - (c) Services provided by a doctor, not being an employee of a clinical establishment, from the premises of such establishment.

In view of the comprehensive coverage of health services under (a), (b) and (c) above, the existing health services where payments are required to be made directly by the insurance company or business entities would no longer be operational.

The above changes will come into effect from a date to be notified, after the enactment of Finance Bill, 2011.

Certain exemptions are given in the Finance bill. They are as follows :

1. Exemption is being provided to services provided by an organizer of business exhibitions in relation to business exhibitions held outside India.
2. An abatement of 25% from the taxable value is being provided for the purpose of levy of service tax under ‘Transport of goods through coastal and inland shipping’.
3. Exemption is being provided to ‘Works contract’ service provided for construction or finishing of new residential complex under ‘Jawaharlal Nehru National Urban Renewal Mission’ and ‘Rajiv Awaas Yojana’.

4. Exemption is being provided to services provided within a port or other port or an airport under the 'Works contract' service for specified purposes.
5. Exemption is being provided to 'Rashtriya Swasthya Bima Yojana' under the 'General insurance' service.
6. Value of air freight included in the assessable value of goods for charging customs duties is being excluded from taxable value for the purpose of levy of service tax under the 'Transport of goods by air' service.
7. Services related to transportation of goods by road, rail or air when both the origin and the destination are located outside India is being exempted from service tax.
8. A modified scheme is being introduced to refund service tax to SEZ units and developers and notification No. 9/2009-ST is being superceded. In the modified scheme, 'wholly consumed' services are being defined in the notification in order to extend 'outright exemption' and to permit refund of all other services on a proportionate basis.

It is important to note that the above changes at S. No. (1) to (5) and (8) will come into effect immediately., where as Changes at S. No. (6) and (7) will be effective from 01.04.2011.

Withdrawal or Amendments of Exemptions:

1. The rates of service tax on travel by air are being revised as follows:
 - (a) Domestic travel (economy class): from Rs.100 to Rs.150
 - (b) International travel (economy class): from Rs.500 to Rs.750
 - (c) Domestic travel (other than economy class) 10% (Standard rate)

The above changes will come into effect from 01.04.2011.
2. Exemption from service tax on the membership fees under 'Club or association service' is being given to the associations or chambers representing industry or commerce for the period from 16.06.2005 to 31.03.2008.
3. Retrospective effect is being given to notification No.20/2009-ST dated 07.07.2009 exempting service tax on inter-State or intra-State transportation of passengers in a vehicle bearing Contract carriage permit or a tourist vehicle permit for the period from 01.04.2000 to 06.07.2009.

The changes at S. No. (2) & (3) are being given effect through the Finance Bill, 2011 and will come into effect from the date of enactment of the Bill.

Amendments in Rules and Notifications:

1. The monetary limit of Rs.1,00,000/- for adjustment under Rule 6(4B)(iii) of the Service Tax Rules, 1994 is being raised to Rs.2,00,000/-.

[The change will come into effect from 01.04.2011]
2. Rule 6(7A) of the Service Tax Rules, 1994 is being amended to provide that that an insurer carrying on life insurance business shall have the option to pay tax,—

- (a) on the amount of gross premium charged from a policy holder reduced by the amount allocated for investment, where the breakup of the amount allocated for investment is shown separately to the policy holder;
- (b) on an amount calculated @ 1.5% of the gross amount of premium charged from a policy holder in cases other than (i) above; towards the discharge of his service tax liability instead of paying service tax at the rate specified in section 66 of Finance Act, 1994. Such option shall not be available in cases where the entire premium paid by the policy holder is only towards risk cover in life insurance.

[The above change will come into effect from a date to be notified, after the enactment of Finance Bill, 2011]

3. Clause (B) of Rule 6(7) of the Service Tax Rules, 1994 pertaining to sale and purchase of foreign exchange is being amended to,—
 - (a) omit the proviso as well as the illustration; and
 - (b) reduce the composition rate from 0.25% to 0.1% of the gross amount of currency exchanged towards discharge of service tax liability.
 4. Rule 6(6A) is being inserted in Service Tax Rules, 1994, to provide that if any amount of service tax has been self-assessed and not paid, the same shall be recoverable with interest under section 87 of the Act. Thus, there shall be no need to resort to provisions of section 73.
 5. It is being defined in Service Tax (Determination of Value) Rules, 2006 that the value of the money changing service:
 - (i) for a currency exchanged either from or to Indian Rupees, shall be equal to the units of currency exchanged multiplied by the difference in the buying rate or the selling rate, as the case may be, and the RBI reference rate for that currency for that day;
 - (ii) for a currency where the RBI reference rate is not available, shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money;
 - (iii) where neither of the currencies exchanged is Indian Rupee, shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day.
 6. An explanation is being added to rule 5(1) of Service Tax (Determination of Value) Rules, 2006 to clarify that for the purpose of Telecommunication services, the value of the taxable service shall be gross amount charged by the telegraph authority from the service receiver.
 7. Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 are being amended so as to move some of the specified services from one category to another.
- [The changes at S. No. (3) to (7) will come into effect from 01.04.2011]***

8. A sub-rule (2A) is being inserted in rule 3 of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 to provide that the credit of tax on input services of 'Erection, commissioning or installation', 'Commercial or industrial construction' and 'Construction of complex' services as available to a person providing 'Works contract service' shall be restricted to 40% of tax paid, when such tax has been paid on full value of the service after availment of Cenvat credit on inputs.
[The change at S. No. (8) will come into effect from 01.03.2011]

AMENDMENTS IN ACT:

(Chapter V of Finance Act, 1994 is being amended to,—)

1. Omit sub-section (1A) of section 73 together with both the provisos to sub-section (2) of section. As a result, the benefit of reduction of penalty available in cases of fraud, collusion, etc. under proviso to section 73 (1A) shall not be available. Further, a new sub-section 4A is being inserted in section 73 to provide for reduced penalty in cases where during the course of audit, verification or investigation it is found that the transactions not reported to the department are available in the records or invoices. Moreover, penalty is being reduced to 1% per month of the tax amount upto a maximum of 25%.
2. Reduce the penalty for delayed payment under section 76 from 2% to 1% per month or Rs.100 per day, whichever is higher. Maximum penalty reduced to 50% of the tax amount.
3. Increase the maximum penalty under section 77 from Rs.5,000 to Rs.10,000.
4. Amend section 78 to revise the maximum penalty. Penalty will be hereafter mandatory and equal to tax evaded. Moreover, in situations covered under section 4A, the penalty shall be 50% of the tax amount. Further, the penalty is being reduced to 25% if the tax dues are paid within one month together with interest and reduced penalty. For assesseees having a turnover of upto Rs.60 lakh in any of the years covered in the show cause notice or in the preceding year, the period of one month shall be revised to 90 days.
5. Reduce interest rate by 3% for assesseees with a turnover of upto Rs.60 lakh, both under section 73B and section 75.
6. Increase the maximum penalty for delay in filing of return under section 70 from Rs.2000 to Rs.20000. However, the existing rate of penalty for the first 15 days and for the subsequent 15 days as well as the daily penalty of Rs.100 per day thereafter under rule 7C of the Service Tax Rules, 1994 are being retained without any change.
7. Amend the power to waive penalty under section 80. While penalties under section 76 and 77 are being retained, penalty under section 78 is being waived only in cases where the transactions are captured in the specified records.
8. Give power to issue search warrant under section 82 at the level of Joint

Commissioner and the execution of such warrant at the level of Superintendent.

9. Make section 9A, 9AA, 9B, 9E, 34A and new section 35R of the Central Excise Act, 1944 applicable to service tax under Section 83.
10. A new section 88 is being inserted so as to create first charge on the property of the defaulter for recovery of service tax dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
11. Reintroduce the provisions relating to prosecution under section 89 as follows:
 - (i) The prosecution shall apply in the following situations:
 - (a) Provision of service without invoice;
 - (b) Availment and utilization of Cenvat credit without receipt of inputs or input services;
 - (c) Submitting false information; and
 - (d) Non-payment of collected amount of service tax for a period of more than six months.
 - (ii) The sanction for the prosecution will be granted at the level of Chief Commissioner.

The above changes will come into effect from a date to be notified after the enactment of the Finance Bill, 2011.

POINT OF TAXATION RULES, 2011

These rules determine the point in time when the services shall be deemed to be provided. Point of Taxation Rules, 2011 have been framed **vide notification 18/2011-ST** and *made effective from 01.04.2011*

Notification No. 18 of 2011:

Table showing Taxability of Services

a) Determination of Point of Taxation

- | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------|
| <ol style="list-style-type: none">1. Provision of Services whether provided or to be provided2. Invoice issued3. Payment received (including advances received) | } | Whichever is earlier, |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------|

b) Determination of point of Taxation in case of change of Rate of Tax

		If Services provided	
		Before change of Rate of service tax	After change of Rate of service tax
Invoice Issued	Payment received		
After	After	Invoice/payment Whichever is Earlier	Invoice/payment Whichever is Earlier
Before	After	Date of Invoice	Date of Payment
After	Before	Date of Payment	Date of Invoice
Before	Before	Invoice/payment Whichever is Earlier	Invoice/payment Whichever is Earlier

c) Payment of Tax in case of New Services

(When the New Services become Taxable)

Invoice Issued	Payment received	Tax payable
After	Before	Nil
Before	Before	Nil

d) In case of continuous supply of service

In case of specified contract, where Date is specified for supply of services	Date on which payment is liable to be made as per contract
In any other cases, Date of invoice or Date of payment	Whichever is earlier

e) In case of ‘Associated Enterprise’

- Date on which payment is made or date of invoice or date of debit or credit in books of account – Whichever is earlier

f) In case of copyrights, etc.

Payment received or Date of Invoice issued – Whichever is earlier

CENTRAL EXCISE

Note: Changes come into effect immediately unless otherwise specified.

Major proposals about Central Excise duty are the following:

A. General :

The First Schedule to the Central Excise Tariff Act, 1985 is being amended vide clause 70 of the Finance Bill to give effect to Tariff changes relating to Union Excise duties.

B. Proposals involving changes in rates of duty whether by amendment of tariff rates or by notification

- 1) The concessional rate of excise duty of 4% is being increased to 5%. Accordingly, items such as prepared foodstuff like sugar confectionary, pastry and cakes; starches; paper and articles of paper; textile intermediates & textile goods; drugs; medical equipments etc would now be subject to the enhanced rate of duty of 5%.
- 2) An excise duty of 1% without Cenvat credit facility is being imposed on about 130 specified items, which were hitherto either fully exempt from excise duty or chargeable to nil rate of excise duty. General SSI exemption would be available to all products covered under this new levy.
- 3) A mandatory excise duty of 10% is being imposed on readymade garments and textile made ups bearing a brand name or sold under a brand name. General SSI scheme is also being extended to readymade garments and other textile made up articles. Duty shall be charged on the tariff value @ 60% of their retail sale price.
- 4) An excise duty of 5% is being imposed on automatic looms and projectile looms.
- 5) Exemption from excise duty available to clearances upto 3500 metric tonne of paper manufactured from non-conventional material is being withdrawn.
- 6) Full exemption from excise duty is being withdrawn on microprocessors for computer, other than motherboards; floppy disc drive; hard disc drive; CD-ROM drive; DVD drives/DVD writers; flash memory and combo drives meant for fitment inside the CPU or laptop. These goods will attract a concessional rate of excise duty of 5%.

C. SECTOR SPECIFIC RELIEF MEASURES:

I. FOOD/AGRO PROCESSING:

Full exemption from excise duty is being extended to,—

- (a) Air-conditioning equipment, panels and refrigeration panels for installation of

cold chain infrastructure for the preservation, storage, transport or processing of agricultural, horticultural, dairy, poultry, apiaries, aquatic and marine produce.

- (b) Conveyor belt systems for use in cold storage for the preservation, storage, transport or processing of agricultural, horticultural, dairy, poultry, apiary, aquatic and marine produce and in mandis & warehouses for storage of food grains and sugar.

II. CAPITAL GOODS:

- 1) Excise duty exemption is being extended to goods required for expansion of an existing mega/ultra mega power project under specified conditions at par with exemption from CVD on the import of goods for expansion of such projects.
- 2) Excise duty is being reduced from 10% to 5% on parts of specified textile machinery.
- 3) Full exemption from excise duty is being extended to specified part of sewing machines (other than those with in-built motors).

III. ENVIRONMENT FRIENDLY AND ENERGY SAVING GOODS:

- 1) A concessional rate of excise duty of 10% is being prescribed for hydrogen vehicles based on fuel cell technology.
- 2) Excise duty is being reduced from 10% to 5% on hybrid kits for conversion of fossil fuel vehicles to hybrid vehicles. Parts of such kits would also attract 5% duty.

IV. Cement:

The rates of duty on cement and cement clinker are being revised as follows:

Mini cement plant:

Cement Proposed Rate	Present Rate	Proposed Rate
1) Cleared in packaged form –		
i) of retail sale price not exceeding Rs. 190 per 50 kg bag or of per tonne equivalent retail sale price not exceeding Rs. 3800;	Rs. 185 per tonne	10% ad valorem
ii) of retail sale price exceeding Rs. 190 per 50 kg bag or of per tonne equivalent retail sale price exceeding Rs. 3800;	Rs. 315 per tonne	10% ad valorem + Rs. 30 per tonne
2) Cleared other than in packaged form	Rs. 215 per tonne	10% ad valorem

Other than mini cement plant:

Cement Proposed Rate	Present Rate	Proposed Rate
1) Cleared in packaged form –		
i) of retail sale price not exceeding Rs. 190 per 50 kg bag or of per tonne equivalent retail sale price not exceeding Rs. 3800;	Rs. 290 per tonne	10% ad valorem + Rs. 80 per tonne
ii) of retail sale price exceeding Rs. 190 per 50 kg bag or of per tonne equivalent retail sale price exceeding Rs. 3800;	10% of retail sale price	10% ad valorem + Rs. 160 per tonne
2) Cleared other than in packaged form	10% or Rs. 290 per tonne, whichever is higher	10% ad valorem
Cement Clinker	Rs. 375 per tonne	10% ad valorem + Rs. 200 per tonne

V. HEALTH:

Excise duty on sanitary napkins, baby & clinical diapers and adult diapers is being reduced from 10% to 1% with no Cenvat credit. Similar articles of textile wadding shall also get this concessional duty treatment.

VI. SUPPLY:

- 1) Full exemption from excise duty currently available to pipes required for delivery of drinking water from its source to the plant and from there to the first storage point is being extended to pipe fittings such as joints, elbows, couplings etc.
- 2) Concessional rate of excise duty of 1% is being extended to water filters using pressurized tap water but without use of electricity and their replaceable kits.

VII. AUTOMOBILE SECTOR:

- 1) Concessional rate of excise duty @10% is being extended to factory built ambulances. Other vehicles retrofitted as ambulances subsequent to their removal from the factory shall continue to be eligible for refund based concession.
- 2) The scope of the Taxi Refund Scheme is being extended to include vehicles carrying 13 persons including the driver.

- 3) concessional excise duty structure for taxis is being rationalized to provide refund of 20% of the excise duty paid on vehicles if they are registered as a taxi subsequent to removal.
- 4) Full exemption from excise duty is being extended to parts of power tillers when cleared to another factory of the same manufacturer for manufacturing power tillers.

VIII. PAPER & PAPER BOARD:

- 1) Cotton Stalk Particle boards are being fully exempted from excise duty.
- 2) Concessional rate of 5% excise duty is being extended to corrugated boxes whether or not pasted with Duplex sheet on their outer surface.
- 3) Excise duty is being reduced from 10% to 5% on greaseproof paper and glassine paper.

D. PRECIOUS METALS:

- 1) Excise duty is being reduced on serially numbered gold bars, other than tola bars, made starting from the ore/concentrate stage in the same factory from 'Rs.280 per 10 grams' to 'Rs.200 per 10 grams'.
- 2) Concessional excise duty rate of Rs.200 per 10 grams is being extended to serially numbered gold bars manufactured by refining of gold dore bar also.
- 3) Excise duty of 'Rs.300 per 10 gram' is being imposed on serially numbered gold bars, other than tola bars, manufactured during the process of copper smelting.
- 4) Excise duty of 'Rs.1500 per Kg.' is being imposed on silver manufactured during gold refining starting from ore/concentrate stage or from gold dore bar or during the process of copper smelting.
- 5) Excise duty of 1% is being imposed on branded jewellery and branded articles of precious metals.

E. TEXTILES:

A tariff rate of excise duty of 10% is being prescribed for jute yarn while it is being simultaneously exempted from excise duty.

F. MISCELLANEOUS:

- 1) Enzymatic preparations used in leather industry are being fully exempted from excise duty.
- 2) Full exemption from excise duty (and hence from CVD on imports) is being provided to colour, unexposed cinematographic film in jumbo rolls of 400 feet and 1000 feet.

G. AMENDMENTS IN CENTRAL EXCISE ACT, 1944:

- 1) Section 4A is being amended to substitute the reference to Standards of Weight & Measures Act, 1976 with Legal Metrology Act, 2009 with effect from 01.03.2011.
- 2) Provisions of Section 11A, 11AA, 11AB and 11AC are being redrafted so as to make them more lucid and coherent. A new category of cases is being carved out in respect of which the period of limitation would be five years but which would attract general penalty of 50% of the duty. Waiver of show cause notice and conclusion of proceedings would be available if the duty along with interest and specified penalty is paid before the issue of show cause notice in such cases.
- 3) A new section 11E is being inserted so as to create first charge on the property of the defaulter for recovery of central excise dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- 4) Section 12 is being amended to insert reference to section 3A with effect from the date of introduction of section 3A i.e. 10.05.2008.
- 5) Section 12F is being inserted to empower the Joint Commissioner or the Additional Commissioner of the Central Excise to himself search or authorize a central excise officer to carry out the search of any premises.
- 6) A new section 35R is being inserted retrospectively with effect from 20.10.2010 so as to empower the Board to issue instructions relating to non-filing of appeal in certain cases in line with National Litigation Policy.
- 7) Section 38(2) is being amended to make its provisions applicable to notifications issued under section 5B also.

[These legislative changes will come into effect on enactment of the Finance Bill]

H. AMENDMENTS IN THE SCHEDULES TO CENTRAL EXCISE TARIFF ACT, 1985

- 1) A tariff rate of 5% is being prescribed for specified items, which are being subjected to an effective rate of 1% excise duty without Cenvat credit facility.
- 2) Chapter Note 5 of Chapter 15 is being amended to insert heading 1501, 1502, 1503, 1504, 1505 and tariff item 1516 1000 therein.
- 3) A chapter note is being inserted in Chapter 22 so as to provide that in relation to products of this chapter, labelling or re-labelling of containers or packing or repacking from bulk packs to retail packs or the adoption of any treatment to

render the product marketable to the consumer, shall amount to manufacture.

- 4) A chapter note is being inserted in Chapter 26 so as to provide that in relation to products of this chapter, the process of converting ores into concentrates shall amount to manufacture.
- 5) Two chapter notes are being inserted in Chapter 63 so as to define the expression 'brand name' and to provide that affixing a brand name on the product, labelling or re-labelling of containers or packing or repacking from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer, shall amount to manufacture.
- 6) A chapter note is being inserted in Chapter 71 so as to provide that the process of refining of dore bar shall amount to manufacture.
- 7) Tariff rate of excise duty is being increased from Nil to 10% on silver powder, silver unwrought and semi-manufactured silver in specified forms.
- 8) A chapter note is being inserted in Chapter 72 so as to provide that in relation to products of this chapter, the process of galvanisation shall amount to manufacture.
- 9) The First Schedule is also being amended to include editorial changes in the Harmonized System of Nomenclature (HSN) in certain chapters, which would be *effective from 01.01.2012*.
- 10) The Third Schedule is being amended retrospectively to include certain specified goods, which were notified under section 4A.
This change will come into effect on enactment of the Finance Bill.

I. AMENDMENTS IN CENVAT CREDIT RULES, 2004:

- 1) Rule 2 is being amended to substitute the definitions of inputs, input services, capital goods, exempted goods and exempted services with a view to bringing greater clarity.
- 2) Rule 3 and 4 are being amended to disallow utilization of credit for paying duty on concessional goods (in respect of which an exemption, other than full exemption, is availed subject to the condition that no Cenvat credit of inputs and input services is taken).
- 3) Rule 3 is being amended retrospectively with effect from 18.04.2006 to provide that the credit of service tax paid under section 66A of the Finance Act, 1994 shall also be permissible. This change will come into effect on enactment of the Finance Bill.
- 4) The availment of Cenvat credit by ship breaking units is being restricted to 85% of the additional duty of customs (CVD) paid at the time of importation of ships for breaking.
- 5) Rule 4 (7) is being amended to provide for reversal of Cenvat credit in case

any payment made towards an invoice of input service is received back.

- 6) Rule 6 is being amended to,—
 - (a) reduce the requirement of payment of 6% of the value of exempted services to 5%;
 - (b) provide an option to maintain separate accounts for inputs alone and reverse the amount of input services credit as per the allocation formula in rule 6 (3A).
 - (c) provide that a payment made under this rule shall be treated as credit not availed for the purpose of an applicable exemption;
 - (d) clarify the value of services in cases where the same is not clearly defined and tax is collected on a compounding or specific principle;
 - (e) Rule 6(5) is being omitted.
- 7) Rule 6(3B) is being introduced to provide that only 50% of the Cenvat credit availed will be available for utilization towards payment of service tax under 'Banking and other financial services' by a banking company and financial institution.
- 8) Rule 6(3C) is being introduced to provide that only 80% of the Cenvat credit availed will be available for utilization towards payment of service tax by the providers of life insurance service and management of investment under ULIP.
- 9) A new rule 6(6A) is being inserted to provide that the provisions of sub-rule (1), (2), (3) and (4) of the said Rule shall not apply to taxable services provided to SEZ Unit or Developer without payment of service tax.

J. AMENDMENT IN MEDICINAL AND TOILET PREPARATIONS (EXCISE DUTIES) ACT, 1955:

Explanation III of the Schedule is being amended to substitute the reference to Standards of Weight & Measures Act, 1976 with Legal Metrology Act, 2009 *with effect from 01.03.2011*.

[The abovementioned legislative change will come into effect on enactment of the Finance Bill]

K. ADDITIONAL DUTIES OF EXCISE (GOODS OF SPECIAL IMPORTANCE) ACT, 1957:

Sugar and textile items are being omitted from the schedule of the Additional Duties of Excise (Goods of Special Importance) Act, 1957

[The abovementioned legislative change will come into effect on enactment of the Finance Bill]

CUSTOMS

- Note: (a) “Customs Duty” means the customs duty levied under the Customs Act, 1962.
- (b) “CVD” means the Additional Duty of Customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975.
- (c) “SAD” means the Special Additional Duty of Customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975.
Changes come into effect immediately unless otherwise specified.

Major proposals about customs duties are the following:

A. GENERAL

1. The First Schedule to the Customs Tariff Act, 1975 is being amended vide Clause 57 of the Bill to give effect to the tariff changes relating to the Union Customs Duties.
2. The basic customs duty rates of 2%, 2.5% and 3% are being unified at the median rate of 2.5%.

B. Proposals involving changes in rates of duty, whether by amendment of tariff rates or by notification

I. FOOD/AGRO PROCESSING/AGRICULTURE:

- 1) Basic customs duty is being reduced from 5% to 2.5% on specified agriculture machinery namely paddy transplanter, laser land leveler, cotton picker, reaper-cum-binder, straw or fodder balers, sugarcane harvesters and track used for manufacture of track-type combine harvester.
- 2) Basic customs duty is being reduced from 7.5% to 2.5% on parts and components required for the manufacture of equipment at (1) above.
- 3) Basic customs duty is being reduced from 7.5% to 5% on micro-irrigation equipment (tariff item 8424 8100).
- 4) Basic customs duty on raw pistachios is being reduced from 30% to 10%.
- 5) Basic customs duty on sun-dried dark seedless raisins is being reduced from 100% to 30%.
- 6) Basic customs duty on cranberry products is being reduced from 30% to 10%.
- 7) Full exemption from basic customs duty is being extended to de-oiled rice bran oil cake.
- 8) Export duty of 10% is being imposed on exports of de-oiled rice bran oil cake.

II. AUTOMOBILES:

- 1) Full exemption from basic customs duty and SAD and concessional CVD @5% (by way of a central excise duty exemption) is being extended to specified parts of the hybrid vehicles, namely, battery pack, battery chargers, AC/DC electric motors and motor controllers. The concession is subject to actual user condition and *will be available till 31.03.2013*.
- 2) The customs duty dispensation and concessional CVD @5% at (1) above is also being made available to import of spare battery packs for the electric vehicles by importers which are registered with the agencies notified for Central Financial Assistance (CFA) scheme of the Ministry of Non-conventional & Renewable Energy (MNRE).
- 3) A definition for “Completely Knocked Down (CKD) unit” of a vehicle including two wheelers, eligible for concessional import duty, is being inserted to exclude from its purview such units containing a pre-assembled engine or gearbox or transmission mechanism or a chassis where any of such parts or sub-assemblies is installed.

III. SPECIAL ECONOMIC ZONES:

- 1) All clearances from SEZ into DTA are being exempted from SAD provided they are not exempt from the levy of VAT/Sales Tax.
- 2) The CVD exemption currently available to Plastic materials reprocessed in India out of the scrap or the waste of goods falling under specified chapters is being extended to domestic tariff area clearances of such plastic materials manufactured in SEZ units also.

IV. SHIP REPAIRS:

The benefit of exemption currently available to ship repair units on imports of spares and consumables required for repair of ocean going vessels is being extended to such spares and consumables for repairs of ocean going vessels by owners of such vessels registered in India.

V. TEXTILES:

- 1) Basic customs duty is being reduced on raw silk (not thrown) of all grades from 30% to 5%.
- 2) Cotton waste is being fully exempted from basic customs duty.
- 3) Basic customs duty on Poly Tetra Methylene Ether Glycol (PTMEG) and iphenylmethane 4, 4-diisocyanate (MDI) is being reduced from 7.5% to 5% subject to actual user condition.
- 4) Basic customs duty is being reduced from 5% to 2.5% on Acrylonitrile.

- 5) Basic customs duty is being reduced from 7.5% to 5% on Sodium Polyacrylate.
- 6) Basic customs duty is being reduced from 10% to 7.5% on Caprolactum.
- 7) Basic customs duty is being reduced from 10% to 7.5% on Nylon chips, fibre & yarn.
- 8) Basic customs duty is being reduced from 5% to 2.5% on rayon grade wood pulp.

VI. CAPITAL GOODS/INFRASTRUCTURE:

- 1) The scope of full customs duty exemption to water supply projects for agricultural and industrial use is being expanded to the water pumping station and water reservoir of such projects.
- 2) The benefit of full exemption from basic customs duty and CVD currently available to 'Tunnel Boring machine' and parts thereof for hydro-electric power projects is being extended to such machines for highway development projects also.
- 3) Basic customs duty is being reduced from 7.5% to 5% for specified gems and jewellery machinery.
- 4) Full exemption from basic customs is being provided to cash dispensers. Parts required for the manufacturer of cash dispensers are also being exempted from basic customs duty on actual user basis.
- 5) The concessional import duty of 5% basic customs duty, 5% CVD & Nil SAD currently applicable to high-speed printing machinery is being extended to mailroom equipment compatible with such printing machinery imported by registered newspaper establishments.
- 6) A concessional rate of 5% basic customs duty , 5% CVD & Nil SAD is being extended to parts and components for manufacture of 23 specified high voltage transmission equipments.
- 7) Full exemption from basic customs duty is being extended on bio-based asphalt sealer and preservation agent, millings remover and crack filler, asphalt remover and corrosion protectant and sprayer system for bio-based asphalt applications.

VII. CONCESSIONS TO ENVIRONMENT-FRIENDLY ITEMS:

- 1) Concessional CVD @5% (by way of a central excise exemption) and full exemption from SAD is being provided to LEDs used for manufacture of LED lights and light fixtures.

- 2) Basic customs duty is being reduced from 10% to 5% on solar lantern or lamps.
- 3) Full exemption from customs duty is being extended to toughened glass and silver paste imported for manufacture of solar cells or solar modules on actual user basis.

VIII. HEALTH SECTOR:

- 1) Endovascular stents are being fully exempted from basic customs duty of 5%.
- 2) A concessional import duty regime of 5% Basic customs duty, 5% CVD & Nil SAD is being prescribed on specified raw material for the manufacture of syringes, needles, catheters, cannulae on actual user basis.
- 3) Exemption from SAD is being provided to P&P medicines imported for retail sale.
- 4) Customs duty on four specified life saving drugs and their bulk drugs is being reduced from 10% to 5% with Nil CVD (by way of excise duty exemption).
- 5) Basic customs duty on lactose for use in the manufacture of homoeopathic medicines is being reduced from 25% to 10%.

IX. ELECTRONICS HARDWARE:

- 1) A concessional import duty structure of 5% CVD and Nil SAD is being prescribed on parts of inkjet and laser-jet printers imported for manufacture of such printers.
- 2) Full exemption from basic customs duty is being extended to parts/components required for the manufacture of PC connectivity cable and sub-parts of parts & components of battery charger, hands-free head phones and PC connectivity cable of mobile handsets including cellular phones.
- 3) Full exemption from SAD presently available upto 31.03.2011 on parts, components and accessories for manufacture of mobile handsets including cellular phones is being extended upto 31.03.2012.
- 4) Full exemption from customs duty is being extended to additional specified capital goods and raw materials for the manufacture of electronic hardware.
- 5) A concessional import duty structure of 5% CVD and Nil SAD is being prescribed on parts for manufacture of DVD writers, Combo drives and CD Drives subject to actual user condition.

X. AIRCRAFTS:

- 1) A basic customs duty of 2.5% is being imposed on imports of aircrafts for non-scheduled operations. The exemption from additional duty of customs (CVD) and special additional duty of customs (SAD) would continue.
- 2) Exemption from education cess and secondary and higher education cess presently available to aircrafts is being withdrawn.

XI. EXPORT PROMOTION:

- 1) The list of specified goods, allowed to be imported duty free for use in the manufacture of leather goods, for export is being expanded.
- 2) The list of specified goods, allowed to be imported duty free for use in the manufacture of textile and leather garments, is being expanded by including anti-theft devices like labels, tags and sensors therein.
- 3) Description of some items is being changed in the list of items that are allowed to be imported duty free for manufacture of textile or leather garments and other leather goods for export.
- 4) Benefit of duty free import on trimmings, embellishments, components etc. for manufacture of leather goods, footwear and textile garments is being extended to merchant exporters subject to certain conditions.
- 5) Specified tools used in the handicrafts sector are being included in the list of specified goods, allowed to be imported duty free to Handicrafts exporters.
- 6) Full exemption from basic customs duty is being extended to fin fish feed.
- 7) Basic customs duty on vannamei broodstock is being reduced from 30% to 10%.
- 8) Basic customs duty on bamboo used for manufacture of agarbattis is being reduced from 30% to 10%.

XII. PAPER:

Basic customs duty on waste paper is being reduced from 5% to 2.5%.

XIII. METALS:

- 1) Full exemption from basic customs duty is being extended to stainless steel scrap.
- 2) Basic customs duty on ferro-nickel is being reduced from 5% to 2.5%
- 3) Statutory rate of export duty on iron ores is being increased from 20% to 30% while unifying the effective rate of export duty on iron ore fines and lumps at 20%.

- 4) Iron ore pellets are being fully exempted from the export duty.
- 5) Copper dross, copper residues, copper oxide mill scale, brass dross and zinc ash are being exempted from levy of SAD.
- 6) Basic customs duty on vanadium pentoxide and vanadium sludge is being reduced from 7.5% to 2.5%.
- 7) Exemption from basic customs duty is being provided on the value of gold and silver contained in the copper concentrate.

XIV. PRECIOUS METALS:

An import duty of Nil basic customs duty, CVD of Rs.140 per 10 gram and Nil SAD is being prescribed for gold dore bars of upto 80% gold purity imported for refining and manufacturing serially numbered gold bars in India.

XV. MISCELLANEOUS:

- 2) Basic customs duty is being reduced from 5% to 2.5% on carbon black feed stock.
- 3) Basic customs duty is being reduced from 5% to 2.5% on petroleum coke.
- 4) Basic customs duty is being reduced from 5% to 2.5% on mineral gypsum.
- 5) Crude palm stearin is being fully exempted from basic customs duty for use in the manufacture of laundry soap on actual user basis.
- 6) At present specified categories of works of art and antiquities are exempted from customs duty. The scope of the exemption is being expanded by including,—
 - (a) works or arts or antiquities for exhibition or display in private art galleries or similar premises that are open to general public;
 - (b) works of art created by an Indian artist abroad, irrespective of the fact whether such works are imported along with the artist or the sculptor on their return to India.
- 7) Special provision is being made in the Finance Bill imposing definitive safeguard duty retrospectively on imports of caustic soda lye imported into India during the period 04.12.2009 to 03.03.2010.
- 8) Special provision is being made in the Finance Bill to retrospectively provide a concessional basic customs duty of 30% to fresh garlic imported by National Consumer Cooperative Federation and Madhya Pradesh State Cooperative Marketing Federation under import licenses issued by the Central Government and cleared after 15.1.2003.

- 9) Certain notifications are being amended retrospectively to allow exports made under the EPCG scheme to simultaneously avail of benefits under Export Reward Schemes such as Served From India Scheme, Focus Market Scheme etc.

[The changes at S. No. 6, 7 and 8 will come into effect on enactment of the Finance Bill]

XVI. AMENDMENTS IN CUSTOMS ACT, 1962:

- 1) Section 2 is being amended to include 'self-assessment' within the definition of 'assessment'.
- 2) Section 17 is being amended to replace the existing system of assessment with 'self-assessment' of duty on imported and export goods by the importer or exporter. The revised provisions empower customs officers to verify the self assessment and if required, reassess duty on the imported or export goods. It is being further provided that the officers may conduct audit in certain situations either in their own office or at the premises of the importer or exporter.
- 3) Section 18 is being amended to make the provisions relating to provisional assessment of duty applicable in case an importer or exporter is unable to make self-assessment with the proposed scheme of 'self-assessment'.
- 4) Section 19 is being amended to align the provisions relating to determination of duty where goods consist of articles liable to different rates of duty with the proposed scheme of 'self-assessment' under section 17.
- 5) Sub-section (1) of section 27 is being substituted so as to enhance the time limit for claiming refund of duty and interest from six months to one year. This will bring uniformity for both demanding duty and claiming refund.
- 6) Section 28 is being substituted so as to make the provisions more coherent and clear as also to harmonize the demand period in normal cases to one year.
- 7) Section 28AA and 28AB are being substituted with a revised section 28AA so as to make the provisions relating to interest more coherent and clear.
- 8) Section 46 is being amended to provide that an entry of imported goods shall be presented electronically and to empower the Commissioner of Customs to allow filing of entry in any other manner when it is infeasible to present electronically.
- 9) Section 50 is being amended to provide that an entry of export goods shall be presented electronically and to empower the Commissioner of Customs to allow filing of entry in any other manner when it is infeasible to present electronically.
- 10) Section 75 is being amended to enable the Central Government to prescribe circumstances under which drawback would not be disallowed even though

the export remittances are not received within the period specified in the Foreign Exchange Management Act.

- 11) Section 110A is being amended to empower the adjudicating authority to allow release of seized goods.
- 12) Section 124 is being amended to provide for issuance of a show cause notice with prior approval of an officer not below the rank of an Assistant Commissioner of Customs.
- 13) Section 131D is being inserted retrospectively with effect from 20.10.2010 to empower the Board to issue instructions relating to non-filing of appeal in certain cases in line with National Litigation Policy.
- 14) A new section 142A is being inserted so as to create first charge on the property of the defaulter for recovery of the customs dues from such defaulter subject to provisions of section 529A of the Companies Act, the Recovery of Debt due to Bank and Financial Institution Act, 1993 and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- 15) Section 150 is being amended so as to provide that the balance of sale proceeds of unclaimed cargo sold in auction shall be paid to the Government when it cannot be paid to the owner within six months.
- 16) Section 151A is being amended so as to empower the Board to also issue instructions to customs authorities on any other matters under the Customs Act or any other Act for the time being in force so far as they relate to prohibition, restrictions or procedure relating to import or export of goods.
- 17) Section 157 is being amended to empower the Board to prescribe regulations for specifying the manner of conducting audit at the office of the proper officer of customs or at the premises of the importer.

[These legislative changes will come into effect on enactment of the Finance Bill]

XVII. AMENDMENTS IN CUSTOMS TARIFF ACT, 1975:

- 1) Section 3 is being amended to substitute the reference to Standards of Weight & Measures Act, 1976 with Legal Metrology Act, 2009 with effect from 1.3.2011.
- 2) Section 9AA is being amended so as to enable the Central Government to reduce the anti-dumping duty imposed under the provisions of sub-section (1) of section 9A on an article or an importer where such importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty in excess of his actual margin of dumping.

- 3) Customs Tariff (Identification, Assessment and Collection of Anti Dumping duty on Dumped Articles and for Determination of Injury) Rules, 1995 is being amended so as to revise provisions of rule 23 so as to align the same with Article 11 of the WTO Agreement on anti dumping and also to insert Annexure-III containing principles to determine the non-injurious price.

[These legislative changes will come into effect on enactment of the Finance Bill]

XVIII. AMENDMENTS IN THE SCHEDULES TO THE CUSTOMS TARIFF ACT, 1975:

- 1) The First Schedule is being amended to include editorial changes in the Harmonized System of Nomenclature (HSN) in certain chapters, which would be *effective from 01.01.2012*.
- 2) Description of heading 9804 in the First Schedule is being amended to cover all dutiable items intended for personal use, imported by post or air and to prescribe a tariff rate of 35% for tariff items under the heading.
- 3) The Second Schedule is being amended so as to align the entries with the Harmonized System of Nomenclature (HSN) and introduce a new entry for de-oiled rice bran cake. The effective rates of export duty on all items other than iron ores lumps, fines and pellets; and de-oiled rice bran cake are being maintained.

[These legislative changes at (1) will come into effect on enactment of the Finance Bill]

CENTRAL SALES TAX ACT

“Section 15 of the Central Sales Tax Act, 1956, in clause (a), for the words “four per cent.”, the section 15 of words “five per cent.” shall be substituted

The finance minister has increased the base rate of declared goods from 4% to 5%, so as enable to the state government to increase the rate of VAT on declared goods.

The above changes will come into effect from a date to be notified after the enactment of the Finance Bill, 2011.

CHALLENGES AHEAD.....

As we all know, we have to now gear ourselves to learn, understand and implement the following new Acts and Standards:

Sr. No.	Act / Standards	Probable Date of Implementation
A.	Direct Tax Code	1 st April, 2012
B.	Companies Bill, 2009	Any time in 2011
C.	Goods and Service Tax (GST)	April/June, 2012
D.	International Financial Reporting Standard (IFRS)	1 st April, 2012

We are committed to bring in these new enactments and the government's commitment is clearly brought out in Finance Minister's speech. The Hon'ble Finance Minister has stated as under:

- The introduction of the Direct Taxes Code (DTC) and the proposed Goods and Services Tax (GST) will mark a watershed. These reforms will result in moderation of rates, simplification of laws and better compliance.
- As Hon'ble Members are aware, the Direct Taxes Code Bill was introduced in Parliament in August, 2010. After receiving the report of the Standing Committee, we shall be able to finalise the Code for its enactment during 2011-12. This has been a pioneering effort in participative legislation. The Code is proposed to be effective from April 1, 2012 to allow taxpayers, practitioners and administrators to fully understand the legislation and adjust to the revised procedures.
- Unlike DTC, decisions on the GST have to be taken in concert with the States with whom our dialogue has made considerable progress in the last four years. Areas of divergence have been narrowed. As a step towards the roll-out of GST, I propose to introduce the Constitution Amendment Bill in this session of Parliament. Work is also underway on drafting of the model legislation for the Central and State GST.
- Among the other steps that are being taken for the introduction of GST is the establishment of a strong IT infrastructure. We have made significant progress on the GST Network (GSTN). The key business processes of registration, returns and payments are in advanced stages of finalisation. The National Securities Depository Limited (NSDL) has been selected as technology partner for incubating the National Information Utility that will establish and operate the IT backbone for GST. By June 2011, NSDL will set up a Pilot portal in collaboration with eleven States prior to its roll out across the country.

A. Direct Tax Code

Direct Tax Code (DTC) is envisaged to replace the existing direct tax legislations constituted by the Income-tax Act and the Wealth-tax Act with effect from 1 April 2012.

A draft DTC, along with a discussion paper, was first released on 12 August 2009 for public comments. Based on feedback from various stakeholders, a revised discussion paper was released on 15 June 2010 addressing following 11 major identified issues:

- i) Minimum Alternate Tax (MAT) – Gross assets vis-à-vis book profit.
- ii) Tax treatment of savings – Exempt Exempt Tax (EET) vis-à-vis Exempt Exempt Exempt (EEE) basis.
- iii) Taxation of income from employment – Retirement benefits and perquisites.
- iv) Taxation of income from house property.
- v) Taxation of capital gains.
- vi) Taxation of non-profit organizations.
- vii) Special Economic Zones – Taxation of existing units.
- viii) Concept of Residence in the case of a company incorporated outside India.
- ix) Double Taxation Avoidance Agreement (DTAA) vis-à-vis domestic law.
- x) Wealth Tax.
- xi) General Anti Avoidance Rule (GAAR).

A revised DTC was thereafter placed before the Indian Parliament on 30 August 2010 and has presently been referred to the Standing Committee on Finance of the Parliament for a detailed examination.

B. Companies Bill, 2009

“Improvement in corporate governance and regulation is an important part of the overall investment environment in the country. Government has introduced the Companies Bill, 2009 in the Parliament, which will replace the existing Companies Act, 1956. The proposed new bill will address issues related to regulation in corporate sector in the context of the changing business environment.” – Mr. Pranab Mukherjee in the Union Budget for 2010-11.

Introduction:

The Companies Bill, 2008 was introduced by the Government in the Lok Sabha on 23rd October, 2008. Due to the dissolution of the 14th Lok Sabha, the Bill lapsed. The Companies Bill, 2008 was reintroduced as Companies Bill, 2009 in the Lok Sabha on 3rd August 2009 by the then Minister of Corporate Affairs, Mr. Salman Khurshid.

Subsequently, in August 2010 the Parliamentary Standing Committee on Finance gave its report after examining the provisions of the law. "The Companies Bill introduced in Parliament in 2009 has been received by the Parliamentary Standing Committee. The proposed Bill will be introduced in Lok Sabha in current session," Mukherjee said, while unveiling his Budget proposals for 2011-12.

Focus of the Bill :

1. Revising and modifying the Act in consonance with changes in economy both national and international.
2. Retaining essential features of the existing frame work, while introducing new provisions which are useful and urgently required, keeping in view of good corporate governance and address the concerns of all stakeholders equitably.
3. Deleting certain provisions that have become reluctant and re-grouping the scattered provisions to specific subjects.
4. De-linking the procedural aspects from the substantive law and providing greater flexibility in rule making to enable adaptation to the changing economic and technical environment.
5. Introducing specific provisions in the Act relating to director's duties which have been ignored in the previous Act and its amendments.
6. Harmonizing company law with provisions of the Securities and Exchange Board of India governance norms.

Highlights of the Companies Bill, 2009 :

- ≈ The Bill has 426 clauses as against the existing 658 sections in the existing Companies Act, 1956. The entire Bill has been divided into 28 chapters.
- ≈ The Bill is forward looking in its approach which empowers the Central Government to make rules, etc. through delegated legislation and after having detailed consultative process (Clause 426 and others).
- ≈ The concept of class action suits, which would empower investors to sue a company for "oppression and mismanagement" and claim damages was introduced for the first time.

- ≈ The laws for raising money from the public is proposed to be made all the more stricter.
- ≈ The entire process of rehabilitation and liquidation has been made time bound.
- ≈ Small Companies have been defined (maximum paid-up share capital not exceeding Rs. 5 crores) and have been made subjected to a less stringent regulatory framework.
- ≈ Clause 2(zz) defines 'Issued Capital' as the capital subscribed by the public. Clause 37 defines equity share capital and preference share capital as being part of issued share capital, which means equity share capital and preference share capital can be subscribed only by the public.
- ≈ New clause has been introduced with respect to prohibition of insider trading by company directors or key managerial personnel by treating such activities as a criminal offence. The definition of price sensitive information has also been included.
- ≈ Concept of One Person Company (OPC) has been introduced.
- ≈ The bill will also make it mandatory for listed companies to have 33 per cent independent directors and provide for formation of a One Person Company.
- ≈ Equity shares with different voting rights have been abolished.
- ≈ For the first time, provision for entrenchment has been proposed in the Bill.
- ≈ Provision for re-registration of companies already registered, has been introduced.
- ≈ Stringent punishment is imposed for failure to distribute dividend within thirty days of its declaration.
- ≈ The tribunal may appoint Provisional Liquidator or the Company Liquidator from a panel maintained by the Central Government consisting of Company Secretaries, Chartered Accountants, Advocates and Cost and Works Accountants.
- ≈ A new chapter (Ch. 17) has been inserted in relation to registered valuers.
- ≈ A Company Secretary, Chartered Accountant, Cost and Works Accountants or other persons possessing prescribed qualifications may apply to the Central Government to be registered as valuers. No company or body corporate shall be eligible to apply as registered valuers.

- ≈ Key Managerial Personnel (KMP), in relation to a company, has been defined to include the Managing Director, the Chief Executive Officer or the Manager and where there is no Managing Director, 'a Whole-time Director or Directors; the Company Secretary; and the Chief Financial Officer.
- ≈ Every company shall have atleast one Director resident in India.
- ≈ The bill for the first time has been clearly defined and recognized the role of independent directors irrespective of the board chairman being executive or non-executive.
- ≈ Section 349 which deals with the basis for calculation of Net Profit for payment of managerial remuneration has been omitted. In the proposed bill, no limits have been laid down on the quantum of remuneration to be paid. Also, there is a comprehensive revision of the provisions relating to payment of managerial remuneration.
- ≈ Besides the Audit Committee, the constitution of the Remuneration Committee has also been made mandatory in the case of listed companies.
- ≈ Participation of Directors at the Board Meetings has been made permitted through video conferencing or other electronic means.
- ≈ To encourage wider participation of shareholders at General Meetings, the members have been permitted to exercise their votes at meetings by electronic means.
- ≈ Clause 103 contemplates about voting by postal ballot when it comes to an ordinary resolution; but in case of special resolution voting by ballot has been omitted.
- ≈ For first time, the concept of Secretarial Standards has been introduced which are required to be observed by every company with respect to General and Board Meetings. etc.
- ≈ Where the combined membership of Share holders, Debenture holders and other security holders is more than one thousand at any time during the financial year, the company shall constitute a Stakeholders' Relationship Committee.
- ≈ Clause 229 says that on demand by the secured creditors of a company representing 50% or more of its outstanding amount of debt, if the company fails to pay the debt within 30 days, such company can be declared as a sick company.
- ≈ Board's Report has been made more informative and includes extensive disclosures. Also, every contract or arrangement entered into with a related

party, shall be referred to in the Board's Report along with the justification for entering into such contract or arrangement.

- ≈ Annual Return being a public document is now required to have more disclosures especially on matters relating to certification of compliances, disclosures etc.
- ≈ As per the Bill, in respect of all the companies, whether private or public, listed or unlisted, if no Company Secretary is appointed by the company, the Annual Return is compulsorily required to be signed by the Company Secretary in practice.
- ≈ Clause 224 says that a company by a special resolution or with the consent of 75% members in terms of share capital may file an application for striking of the name.

Conclusion:

According to the Parliamentary Standing Committee's report, the MCA has accepted suggestions made by the panel in about 500 cases and even suggested revised formulations in about 125 cases.

The notable features of the Bill is the Government's intention to allow the Corporate sector to work independently with less restrictions and doing away with the requirements of Government approvals, but equally having the whip in their hand to regulate the affairs of the company especially on the erring directors.

The Bill has brought out for the first time new concepts including the recognition of the professionals as the key managerial personnel and also the risks they face in the event of them not functioning properly within the regulatory framework of law.

C. Goods and Service Tax (GST):

Finance Minister Pranab Mukherjee on Monday decided to go ahead with the rollout of Goods and Service Tax (GST) by committing to introduce the bill to amend the constitution in the current session of parliament.

However given the fractured consensus, with ten states to come on board, revenue secretary Sunil Mitra said that the rollout could still be 15-16 months away with June 2012 as likely date.

Contrary to expectations, Hon'ble Finance Minister Shri Mukherjee did not raise the excise duty to 12%. It stays as 10%. "I would like to see improved business margins translated into higher investment rates. I would also like to stay my course towards GST," Shri Mukherjee said.

In the same spirit, Shri Mukherjee brought under the tax net 130 items which enjoy exemption from excise duty but are taxed under VAT. These 130 items, are mostly consumer goods, will attract 1% excise duty. The other 240 items that enjoy central excise duty exemption will be brought under the tax net when GST is introduced. States and the Centre will have a common list of around 100 exempted items when GST is implemented.

The Hon'ble Finance Minister in his speech has said that –

“The actual collections of Service Tax do not reflect the full potential of this sector. While retaining the standard rate of service tax at 10 per cent, I seek to achieve a closer fit between the present service tax regime and its GST successor by:

- Bringing in a few new services into the tax net to expand the tax base while ensuring that the impact is predominantly on sections of society that have the ability to pay;
- Suitably expanding or rationalizing the scope of existing service categories;
- Rationalizing certain provisions relating to import of services and valuation;
- Modifying provisions of the Cenvat Credit scheme to achieve a more realistic balance between input credits and output tax and harmonising the provisions of the scheme across goods and services;
- Rationalizing penal provisions to reinforce the message that honest taxpayers would be facilitated and deviants would be dealt with severely; and
- Adoption of Point of Taxation rules for services which would shift the basis for tax collection from “cash” towards “accrual” basis as with Central Excise duty.

Many experts have argued that it will be desirable to tax services based on a small negative list, so that many untapped sectors are brought into the tax net. Such an approach will be very conducive for a nationwide GST. I propose to initiate an informed public debate on the subject to help us finalise the approach to GST.”



(Source: DNA)

D. International Financial Reporting Standard- IFRS

- India has chosen to 'converge' with IFRS, as opposed to 'adopting' IFRS. It means that the Indian regulators will issue new Indian Accounting Standards (referred to as Ind-AS), which are 'converged' with IFRS (have the same requirements as IFRS).
- On 22nd January, 2010, Ministry of Company Affairs (MCA), has announced phase-wise approach, in adoption of implementation of IFRS, based on the net worth & certain other specified criteria, which are as follows:

First phase	Listed Firms, including those on overseas exchanges, and those with a net worth of Rs. 1,000 crore.
Second phase	Companies with a net worth of Rs. 500-1,000 crore.
Third phase	Listed companies having a net worth of Rs. 500 crore or less.
Last phase	Applicable to all companies.

- MCA has now deferred the implementation of IFRS for one year. It means, adoption of IFRS may be applicable from the Financial Year 2012-13.
- MCA through a press release on 25th February 2011, notified the final Accounting Standards to be named as “Indian Accounting Standard” (Ind-AS). The comparative list of Accounting Standards which are presently in use and those Indian Accounting Standard” (Ind-AS) notified on 25/02/2011 are as under.

<u>Ind AS No</u>	<u>Particulars</u>	<u>Corresponding Current AS issued by ICAI</u>
<i>Ind AS 1</i>	<i>Presentation of Financial Statements.</i>	<i>AS 1</i>
<i>Ind AS 2</i>	<i>Inventories.</i>	<i>AS 2</i>
<i>Ind AS 7</i>	<i>Statement of Cash Flows.</i>	<i>AS 3</i>
<i>Ind AS 8</i>	<i>Accounting Policies, Changes in Accounting Estimates and Errors.</i>	<i>AS 5</i>
<i>Ind AS 10</i>	<i>Events after the Reporting Period.</i>	<i>AS 4</i>
<i>Ind AS 11</i>	<i>Construction Contracts.</i>	<i>AS 7</i>
<i>Ind AS 12</i>	<i>Income Taxes.</i>	<i>As 22</i>
<i>Ind AS 16</i>	<i>Property, Plant and Equipment.</i>	<i>AS 6 & 10</i>
<i>Ind AS 17</i>	<i>Leases.</i>	<i>AS 19</i>
<i>Ind AS 18</i>	<i>Revenue.</i>	<i>AS 9</i>
<i>Ind AS 19</i>	<i>Employee Benefits.</i>	<i>AS 15</i>
<i>Ind AS 20</i>	<i>Accounting for Government Grants and Disclosure of Government Assistance.</i>	<i>AS 12</i>
<i>Ind AS 21</i>	<i>The Effects of Changes in Foreign Exchange Rates.</i>	<i>AS 11</i>
<i>Ind AS 23</i>	<i>Borrowing Costs.</i>	<i>AS 16</i>

<i>Ind AS 24</i>	<u>Related Party Disclosures.</u>	<i>AS 18</i>
<i>Ind AS 27</i>	<u>Consolidated and Separate Financial Statements.</u>	<i>AS 21</i>
<i>Ind AS 28</i>	<u>Investments in Associates.</u>	<i>AS 23</i>
<i>Ind AS 29</i>	<u>Financial Reporting in Hyperinflationary Economies.</u>	-
<i>Ind AS 31</i>	<u>Interests in Joint Ventures.</u>	<i>AS 27</i>
<i>Ind AS 32</i>	<u>Financial Instruments: Presentation.</u>	<i>AS 31</i>
<i>Ind AS 33</i>	<u>Earnings per Share.</u>	<i>AS 20</i>
<i>Ind AS 34</i>	<u>Interim Financial Reporting.</u>	<i>AS 25</i>
<i>Ind AS 36</i>	<u>Impairment of Assets.</u>	<i>AS 28</i>
<i>Ind AS 37</i>	<u>Provisions, Contingent Liabilities and Contingent Assets.</u>	<i>AS 29</i>
<i>Ind AS 38</i>	<u>Intangible Assets.</u>	<i>AS 26</i>
<i>Ind AS 39</i>	<u>Financial Instruments: Recognition and Measurement.</u>	<i>AS 30</i>
<i>Ind AS 40</i>	<u>Investment Property.</u>	-
<i>Ind AS 101</i>	<u>First-time Adoption of Indian Accounting Standards.</u>	-
<i>Ind AS 102</i>	<u>Share-based Payment.</u>	-
<i>Ind AS 103</i>	<u>Business Combinations.</u>	-
<i>Ind AS 104</i>	<u>Insurance Contracts.</u>	-
<i>Ind AS 105</i>	<u>Non-current Assets Held for Sale and Discontinued Operations.</u>	<i>AS 24</i>
<i>Ind AS 106</i>	<u>Exploration for and Evaluation of Mineral Resources.</u>	-
<i>Ind AS 107</i>	<u>Financial Instruments: Disclosures.</u>	<i>AS 32</i>
<i>Ind AS 108</i>	<u>Operating Segments.</u>	<i>AS 17</i>

- MCA has also notified new Schedule VI in the Companies Act, 1956 i.e format of Balance sheet and statement of Profit and Loss account, on 28th February 2011. The disclosure requirements as specified in the format of Balance sheet and statement of Profit and Loss account are almost similar to the requirements under IFRS. It has made compulsory for all the corporates to prepare accounts as per new schedule VI from the financial year 2010-11.

With the issuance of Ind-AS and new format of schedule VI, the government has put the first step forward towards its commitment to converge with IFRS.

GUP SHUP

In this chapter, we have compiled some of the development in tax laws in last 12 months and also other points, which one may like to know about. It includes notes from journal published by BCAS.

A. Income Tax:

1. **CBDT Circular No. 03/2010 [F. No. 275/66/2007-IT (B)], dated 2-3-2010 regarding tax deduction at source u/s.194A on payment of interest on time deposits by banks.**

The CBDT has clarified that tax should not be deducted at source on interest provided by banks on time deposits on daily or monthly basis. Tax should be deducted at source on accrual of interest at the end of the financial year or at periodic intervals as per practice of the bank or as per depositors' requirement or on maturity or encashment of time deposits, whichever is earlier.

2. **CBDT Instruction No. 3/2010, dated 23-3-2010 - Allowing losses on account of forex derivatives under the Income-tax Act, 1961-reg-F.No. 225/143/2009-ITA.II.**

Foreign exchange derivative transactions entered into by the corporate sector in India have witnessed a substantial growth in recent years. This combined with extreme volatility in the foreign exchange market in the last financial year is reported to have resulted in substantial losses to an assessee on account of trading in forex derivatives. A large number of assessees are said to be reporting such losses on 'marked to market' basis either suo motu or in compliance of the Accounting Standard or advisory Circular issued by the Institute of Chartered Accountants. The issue whether such losses on account of forex derivatives can be allowed against the taxable income of an assessee has been considered by the Board. In this connection, I am directed to say that the Assessing Officers may follow the guidelines given below:

'Marked to Market Losses':

'Marked to Market' is in substance a methodology of assigning value to a position held in a financial instrument based on its market price on the closing day of the accounting or reporting record. Essentially, 'Marked to Market' is a concept under which financial instruments are valued at market rate so as to report their actual value on the reporting date. This is required from the point of view of transparent accounting practices for the benefit of the shareholders of the company and its other stakeholders. Where companies make such an adjustment through their Trading or Profit/Loss Account, they book a corresponding loss (i.e. the difference between the purchase price and the value as on the valuation date) in their accounts. This loss is a notional loss as no sale/conclusion/settlement of contract has taken place and the asset continues to be owned by the company.

A 'Marked to Market' loss may be given different accounting treatment by different assessees. Some may reflect such loss as a balance sheet item without making any corresponding adjustment in the Profit and Loss Account. Other may book the loss in

the Profit and Loss which may result in the reduction of book profit. In cases where no sale or settlement has actually taken place and the loss on Marked to Market basis has resulted in reduction of book profits, such a notional loss would be contingent in nature and cannot be allowed to be set off against the taxable income. The same should therefore be added back for the purpose of computing the taxable income of an assessee.

Treatment of loss from actual transactions in forex derivatives:

In a case where a loss on a forex derivative transaction arises on actual settlement/conclusion of contract and is not a notional or Marked to Market book entry, a further question will arise as to whether such a loss is on account of a speculative transaction as contemplated in S. 43(5) of the Income-tax Act. For determining whether loss from a transaction in respect of a forex derivative is a speculation loss or not, the Assessing Officers may refer to proviso (d) below Ss.(5) of S. 43 inserted by the Finance Act, 2005, with effect from 1-4-2006. It lays down that any 'eligible transaction' in respect of trading in derivatives referred to in clause (ac) of S. 2 of the securities Contracts (Regulation) Act, 1956, that has been carried out in a recognized stock exchange shall not be treated as a speculative transaction. Further, an 'eligible transaction' for this purpose would be one that fulfils the conditions laid down in explanation to S. 43(5)(d). Any loss in a speculative transaction can be set off only against profit from speculative transactions.

As the revenue implications of such transaction are large, the Assessing Officers need to examine the statements of accounts and the notes to accounts with a view to find out any reference to any loss on account of forex derivatives. In some cases, these losses may be camouflaged under the 'financial charges', 'foreign exchange loss' or some similar head which may make it difficult to detect them. In such cases, the Assessing Officers should make a specific query asking the assessee to give a break-up of any 'Marked to Market' loss on forex derivatives included in the Profit and Loss Account and examine whether such transactions are 'eligible transaction' in terms of S. 43(5)(d). An adjustment to the taxable income may therefore be made, if necessary, keeping in view the provisions of law referred to above.

3. **Income tax (Second amendment) Rules, 2010 - Notification No. 23/2010, dated 8.4.2010 - Valuation Rules.**

Rules 11U and 11UA have been inserted, which provide for determination of fair market value of the property other than immovable property for the purpose of valuation u/s. 56 of the Act. The said rules shall come into force from 1st October, 2009. These Rules define the valuation of Jewellery, artistic work, quoted shares and securities as well unquoted instruments for the purpose of computation of income u/s. 56(2)(vii) of the Act.

4. **Clarification regarding eligibility of expenditure pertaining to widening of roads eligible for deduction u/s.80-IA(4)(i) of the Act - Circular No.4/2010, dated 18.05.2010**

It has been clarified by the Board that widening of an existing road by constructing additional lanes as a part of highway project by an undertaking would be regarded as

a new infrastructure facility for the purpose of S. 80IA(4)(i). However, simply relying on an existing road would not be classifiable as a new infrastructure facility for this purpose.

5. **Income-tax (6th Amendment) Rules, 2010- Notification No. 41/2010, dated 31/05/2010.**

Rules 30, 31, 31A, 31AA, 37CA and 37D have been substituted, which provide for time and mode of payment of TDS/TCS to the Government account, issue of certificate of TDS/TCS and filing of quarterly statements thereof. The said rules shall apply in respect of tax deducted/collected on or after 1st April, 2010. The major amendments include:

- Revised forms of TDS certificates to include the receipt number of TDS return filed by the tax deductor which along with the PAN of the deductee and the TAN of the deductor would form the unique identification, based on which credit for TDS would be available.
- Even the Government authorities are now required to furnish a monthly return electronically in new Form 24G.
- The due date of filing the TDS return for the last quarter of the financial year has been pre-poned from 15th June to 15th May and the due dates for furnishing the TDS certificates have also been modified to 15th May for Form 16 to be furnished annually and fifteen days from the date of submitting TDS Return for other non-salary TDS certificates to be issued quarterly.

6. **Gratuity Exemption Limit Enhanced – Notification No. 43, dated 11-6-2010.**

The exemption limit under Section 10(10)(iii) is increased to ten lakh rupees in relation to gratuity received by employees who retire or become incapacitated prior to such retirement or die on or after the 24th May, 2010 or whose employment is terminated on or after the said date.

7. **Income-tax (5th Amendment) Rules, 2010-Notification No. 38, dated 21-05-2010.**

The date by which an industrial undertaking, claiming deduction under section 80IA(4)(iii) develops, develops and operates or maintains and operates an industrial park has been extended from 31st March 2009 to 31st March 2011.

8. **Industrial Park Scheme, 2008 amended – Notification No. 37, dated 21-05-2010.**

Industrial Park Scheme, 2008 is amended to extend the last date of commencement of the industrial park to claim deduction under clause (iii) of Section (4) of section 80-IA from 31st of March 2009 to 31st March, 2011.

9. **Mandatory digitally signed e-return for companies --- Notification No.49/2010, dated 9-7-2010.**

The CBDT vide income tax (Seventh Amendments) Rules, 2010 has amended Rule 12 which prescribes the manner of filing the income-tax return for A.Y 2010-2011. It is now provided that companies need to file their income tax e-return digitally signed

and hence the process of filing the e-return without digital signature and sending acknowledgement in form ITR V has been done away with. Further individuals and HUFs liable to tax audit u/s 44AB of the Act are mandatorily required to file the returns electronically with or without digital signature. The Rule does not change for the firms subjected to tax audit.

10. **Bonds u/s 80CCF specified –Notification No.48/2010, dated 9-7-2010.**

The CBDT has mandated IFCI, LIC, IDFC and any NBFC classified as an Infrastructure company by the RBI to issue bonds u/s 80CCF for A.Y 2011-12. The Nature, yield, tenure and other specifications have been mentioned in this Notification. Deduction up to Rs. 20,000 is available to assesseees in addition to deduction u/s 80C of The Act on investments in such bonds. The bonds would have a lock-in period of minimum five years.

11. **Press Release for extension of due date of filing the tax returns of individual taxpayers**

The Central Board of Direct Taxes has extended the due date of filing of income tax return from 31st July 2010 to 4th August, 2010 in view of technical snags in the e-filing computer systems and inclement weather at various locations causing difficulties in filing or uploading income tax returns.

12. **Slum rehabilitation scheme recognized u/s. 80IB- Notification No. 67/2010 dated 03-08-2010.**

As per the proviso to Ss.(a) & (b) of S. 80IB(10), Slum Rehabilitation Scheme needs to be notified to be eligible to the benefits of the deductions as stipulated therein. The CBDT issued this long pending Notification under the said Proviso wherein any scheme of Slum Rehabilitation as contained in Regulation 33(10) of Development Control Regulation for Greater Mumbai 1991 read with the relevant notifications under these regulations and stipulated conditions would be eligible for claiming deductions u/s. 80IB of the Act provided all the other conditions are fulfilled.

13. **Processing of returns of A.Y. 2009-10 – Steps to clear backlog – Instruction No. 7/2010 dated 16-08-2010**

In supersession and modification of Instruction No. 5/2010 dated 21-07-2010, CBDT has taken the following decisions:

- (i) In all the returns filed in ITR -1, and ITR – 2, for the Asst. Year 2009-10, where the aggregate TDS claim does not exceed Rs. Three lakh (3 Lacs) and where the refund computed does not exceed Rs. 25,000/-; the TDS claim of the tax payer shall be accepted at the time of processing of the return provided that the TDS payment reported in 26AS is more than Rs. zero.
- (ii) In all the returns filed in forms other than ITR-1 and ITR-2, for the Asst. Year 2009-10, where the aggregate TDS claim does not exceed Rs. Three Lakh(3 Lacs) and the refund computed does not exceed Rs. 25,000 and there is at least

10% matching of TDS amount claimed, the TDS claim shall be accepted at the time of processing of the return.

(iii) In all remaining cases, TDS credit shall be given after due verification.

14. **PAN based DSC for companies filing tax returns and exemption thereof: News flash on www.Incometaxindia.gov.in**

Post the mandatory filing of tax return for companies with the digital signature, the CBDT has notified a procedure for registration of digital signature and uploading of income tax returns using such digital signatures, where in the difficulty in uploading returns in case of following situations is dealt with:

- i) Non-resident companies where the directors are the foreign nationals.
- ii) Companies where the IT return is being filed for the 1st time.
- iii) Companies where the managing director has changed and other directors are either unavailable or also have changed.

In all cases, PAN-encrypted DSC needs to be obtained and returns are to be filed with such DSCs.

Recently relaxation has been announced wherein for a foreign company filing tax return in India the signatory may register with DSC without PAN encryption from the Chief Certifying Authority (CCA), India and use the same DSC while uploading the return. However, it is important to note that this facility is available only for all foreign companies under the jurisdiction of respective International Taxation wards or circles of the Income-tax Department.

15. **Clarification regarding period of validity of approvals issued u/s 23(c)(vi) or (via) and u/s. 80G (5) of the Act - Circular No. 7/2010 dated 3/10/2010.**

CBDT has clarified vide the above Circular that:

- Approvals u/s. 10(23C) (vi) and (via) granted on or after 1-12.2006 shall be valid until withdrawn.
- Approvals u/s. 80G(5)(vi) granted on or after 1-10-2009 shall be valid until withdrawn.

These approvals will be one-time approvals unless withdrawn by the Income Tax Authority empowered to grant them.

16. **Clarification on Instruction No. 49 on FTWZ issues - Instruction No. 71, dated 12th November, 2010 (reproduced)**

I am directed to refer to Instruction No. 49 dated 12 March 2010 of this Department and to amend the point no. (iv) of the above-mentioned instruction to the extent that

instead there being no limitation on units set up in FTWZ located in section specific SEZ to carry out trading and warehousing activities in respect of any products, it has been decided units in Free Trade Warehousing Zones (FTWZ) in sector Specific SEZ can store goods required for development of zone or setting up of units or for manufacturing and export/DTA sale of goods and services or finished products of the units in that particular sector-specific zone.

17. Cost inflation index for calculation of capital gains notified at “711” for financial year 2010-11.

B. Taxation of Cross Border Transactions:

1. **Notification No. 22 of 2010; F. No. 142/5/2010-SO (TPL), dated 13.04.2010 - Specified Territories for S.90**

The Central Government has approved Notification of (i) Bermuda, (ii) British Virgin Islands, (iii) Cayman Islands, (iv) Gibraltar, (all British Overseas Territories); Guernsey, (vi) Isle of Man, (vii) Jersey, (All British Crown dependencies); (vii) Netherlands Antilles (an Autonomous Part of the Kingdom of Netherlands); and (ix) Macau (a Special Administrative Region of the People’s Republic of China) as ‘specified territory’ for the purpose of Explanation 2 to S. 90 of the Income tax Act, 1961. S. 90 of the Income tax Act was amended by the Finance Act, 2009 to enable the Central Government to enter into an agreement with any specified territory outside India, in addition to the already existing provision of agreement with the government of any country. Now the Central Government can initiate and negotiate agreements for exchange of information for the prevention of evasion or avoidance of income tax and assistance in collection of income tax with these nine specified territories.

2. The Double Tax Avoidance Treaty and protocol signed between Mexico and India on 10th September 2007 has been notified to be entered into force on 1st February, 2010. The Treaty shall apply from 1st January 2011 for Mexico and from 1st April, 2011 for India.

3. **New Foreign asset disclosure rules enacted.**

On March 18, 2010, President Obama signed H.R. 2847, the Hiring Incentives to Restore Employment (HIRE) Act, into law. There are a number of international tax provisions in the Act.

One of the provisions is new Code § 6038D. This section, titled ‘Information with Respect to Foreign Financial Assets,’ is effective for taxable years beginning after March 18, 2010 (2011 for calendar year taxpayers).

Code § 6038D.applied to individuals who hold one or more interests in “specified foreign financial assets,’ if the aggregate value of all such assets exceeds \$ 50,000. If the section applies, the individual must attach to his/her tax return for that year certain basic information about the foreign financial assets. The rule also applies to domestic entities formed or availed of to hold specified foreign financial assets.

The penalty for failure to disclose is the (standard) \$ 10,000 with a reasonable cause exception. The penalty can increase where the taxpayer has been notified of the failure to file and the taxpayer continues to not file.

(Source: intltax.typepad.com/intltax, dated 18.3.2010)

4. **Trip to tax havens in government crosshairs**

The income-tax department is keeping a tight vigil on Indians, notably the ones suspected of owning bank accounts, visiting tax paradises, such as Switzerland, Cayman Islands, Mauritius and the Bahamas, as it amplifies efforts to trace tax evasion and slush funds tucked away abroad.

India is part of long lineup of countries, including the US, pursuing tax transparency across the globe. The government is in talks with 20 tax havens including the Bahamas, Monaco, panama, Seychelles, St. Kitts & Nevis and the Maldives for new treaties that promise to exchange information more openly.

The Governments also recently posted two senior Indian Revenue Service officers as first secretaries at its mission in Singapore and Mauritius, which are hotbeds of investments into India.

Agents and officials of foreign banks that offer services and facilitated the opening of banks accounts are also on the Government's radar.

The tax departments also plans to create divisions and post officers at the Indian missions in the US , the UK, the Netherlands, Japan, Cyprus, Germany, France and the UAE for raising the vigil on evaders and greater exchange of information.

(Source: The Economic Times , dated 28-4-2010)

5. **Tax Information Exchange Agreement with Bermuda**

India has signed first Tax Information Exchange Agreement with Bermuda.

6. India and Norway have signed a social security treaty on 29 October 2010

C. Other Bullet Points

1. **Compulsory e-payment of service tax and filing of Notification No. 01/2010 – dated 19-2-2010**

By this notification, service tax rules have been amended w.e.f.1-4-2010 to provide that a service tax assessee who has in the preceding financial year, paid total service tax, including amount paid by utilization of CENVAT credit, of Rs. 10 lakhs or more, shall deposit service tax electronically through Internet banking and shall also file the return electronically.

2. **FM asks IRS officers to collect taxes with human touch.**

Finance Minister Pranab Mukherjee has asked Indian Revenue service Officials to consider taxpayers as important stakeholders in nation-building and to administer

taxes with a human approach. He was addressing the 63rd batch of IRS trainees last evening.

Mr. Mukherjee pointed out that the shift in policy whereby taxpayers are not seen as adversaries has resulted in a significant growth in tax collection during the past decade. He asked the trainee officers to imbibe this approach in their daily working.

The Finance Minister said that direct taxes collection has increased by ten times during the past decade. He also pointed out that the share of direct taxes is now more than 55%.

(Source: www.taxindiaonline.com dated 12.3.2010)

3. **CBDT - ICAI group: Convergence with IFRS - Addressing tax issues**

The Central Board of Direct Taxes (CBDT) and accounting rule-maker Institute of Chartered Accountants of India (ICAI) have jointly constituted a study group to identify and address direct tax issues that will affect convergence of India's accounting standards with International Financial Reporting Standards (IFRS)

According to reports, the Finance Ministry is looking to introduce the DTC in the forthcoming budget session. Apart from many aspects that are being discussed, one aspect that will particularly come as a hurdle for IFRS convergence is towards tax treatment of mark-to-market (MTM) provisioning on derivative transactions. MTM or fair value accounting assigns to a position held in a financial instrument based on the current fair market price for the financial instrument.

(Source: *The Economic Times*, dated 9-1-2010)

4. **India giving us stiff competition: Obama**

US President Barack Obama has said the US is facing stiff competition from India and cannot succeed if the country continues to produce more scientists and engineers than America.

“Why is it that every other country was promoting its tourists industry and America was not doing enough for its own?” Obama asked. “That’s just one example of the competition that we’re facing on everything,” he said. “If China’s producing 40 high speed rail lines and we’re producing one, we’re not going to have the infrastructure of the future,” Obama said. “If India or South Korea are producing more scientists and engineers than we are, we will not succeed,” said the US President in his Las Vegas speech.

The President said there was a need to bring people together and build consensus around reforms. “Because we know that the country that out-educates us today is going to out-compete us tomorrow. And we don’t want that future for our young people. We’re not going to sentence them to a lifetime of lower wages and unfulfilled dreams.”

(Source: *The Times of India*, dated 21-2-2010)

5. **Ancestral Property cannot be gifted away, says Bombay HC.**
No part of an ancestral family property can be 'gifted' away, the Bombay High Court has held in a significant order while resolving the dispute over a 69-year - old gift deed. Justice C.L. Pangarkar declared as void the document dating back to 1941, which said that Miraj resident Mallapa had gifted a portion of his ancestral property to his second wife Chandrabai 'out of love'.

Referring to Hindu laws, Justice Pangarkar held that the 'coparcener' or co-heir had no power to gift a joint family property, unless he is the sole surviving legal heir.

Justice Pangarkar pointed out that as per Mitakshara, a person can gift a portion of the family property only during certain eventualities - "during distress for the sake of the family and especially for pious purpose".

(Source: the Times of India, dated 18.03.2010)

6. **Section 4 of Payment of Gratuity Act, 1972 is amended.**
Section 4 of the Payment of Gratuity Act, 1972 is amended for increasing the maximum amount of gratuity payable to employees from 3.5 lakh to 10lakh. The amendment is notified on 24th May, 2010.

7. **FEMA violations --- India inc breathes easy as RBI ready to forgive**
Even a few months ago, businessmen and corporate honchos shuddered to visit Mint Street whenever they found themselves on the wrong side of foreign currency regulations. Frosty conversations with hard -nosed officials of RBI inevitably ended with grim penalties—at times stiff enough to cripple business for some time. Not any longer.

The same officials are more willing to listen and quick to forgive the violations as 'technical' errors. What's more interesting is the drop in the amount of fines. Earlier, these could be anything from Rs.20 lakh to as high as Rs. 3crore, today the figures have plummeted to Rs. 25,000 -40,000.

(Source: The Economics times, dated 6-7-2010)

8. **Desi lawyers teach English to US attorneys**
Many top US law firms are hiring Indian lawyers to edit and make grammatical and syntax corrections in legal drafts/contracts prepared by their lawyers. A Fortune 100 client of a US law firm, Smith Dehn LLP, has specifically requested that legal research, analysis, writing, editing exercises that cost millions of dollars in the US be done by Indian attorneys.

A recent American bar council journal article compared the scenario to a man bites dog story. It says highly trained LPO (Legal process outsourcing) attorneys in India have been assigned the task of correcting grammatical and other mistakes of partners and associates at some of the top 100 law firms in the US. It further said, high-quality and effective English writing has been out of fashion in the US for several decades.

Till some time ago, Indian lawyers were seen to use lofty English British-style pomposity, a vestige of colonial rule. Their sentences were long and winding. There were too many usages of passive and indirect speech. Today, they are good with plain, crispy, clear and clean English writing. In fact, LPO has made them think global and grow global. American lawyers are liking it, a high-quality second look at the draft, said Russell.

(Source: The Times Of India, dated 26-07-2010)

9. **SC Notices by E-mail**

With the pendency of cases refusing to come down, the Supreme Court decided to experiment with email notices to respondents to cut the delay in traditional method of serving notices.

The traditional method – registered post with acknowledgement due – usually takes a long time and mostly results in adjournment of hearings because of non-service of the notices on the respondents. Chief Justice of India Shri S. H. Kapadia, sitting with Justices Shri K.S. Radhakrishnan and Shri Swataner Kumar, realized the difficulty and took immediate action by asking all the lawyers present in the Court about putting in practice the serving of notice through emails, at least to start with in commercial matters. When Attorney General G. E. Vahanvati and senior advocate Harish Salve welcomed the idea, it took Justice Kapadia no time to dictate an order to that effect - sending notices through email in commercial cases.

(Source: The Times of India, dated 27-7-2010.)

10. **With Rs.75K crore stuck in disputes, Tax department proposes e-solutions.**

The Income Tax department has proposed a national e-management system for quick disposal of tax disputes, with more than Rs.75000 crore, an amount close to a fifth of the Government's annual direct tax collections, locked in litigations.

The new system will allow the Tax Department to make optimum use of its workforce, reduce painful wait for the disposal of tax appeals and free up resources quickly.

The system would track the entire life cycle of appeals to ensure expeditious settlement through a more equitable distribution.

More than 1.78 lakh appeals were pending with the Commissioner Appeals (Income Tax), the first level of litigation, as on February 1, 2010, with amounts locked-up running into several thousands of crores.

(Source: The Economic Times, dated 30-8-2010)

11. **IT Dept. worried with 50% TDS data mismatch cases**

Tax deducted at source (TDS) has become a problematic issue with the Income-tax Department, as in more than 50% TDS refund cases, it is facing an uphill task in matching the data provided in the assessee's income-tax returns with the TDS deductor's information available with the NSDL.

And the mismatch is resulting in the assessee running from pillar to post to get back the refund due to him from the Department.

“It’s a pan-India problem; the Government wants the system to be fully computerized so that things are streamlined,” said Jamshedpur Commissariat DCIT (TDS) S.M.S. Tauheed recently.

(Source: The Financial Express, dated 10-8-2010)

12. **Profession Tax - E-services Enrolment/Registration.**

Procedure and instructions for E-Services Enrolment/Registration for Profession Tax RC holders (PTRC) display on sales tax website.

The Department through this instruction has specified the procedure and has required all the employees paying profession tax, to register/enroll for PTRC e-services immediately and latest by 31st December, 2010. This enrolment process is not meant for PTEC holders.

Facility of e-return filing would be extended to PTRC holders and thereafter e-payment facility.

13. **Eight Overseas Income Tax Offices Soon**

The government will soon operationalise income tax offices in eight nations the US, the UK and the UAE, Netherlands, Cyprus, Germany, France and Japan to obtain classified financial data and the officers to man these units will be chosen by January-end. The units will start functioning in less than two months in the US, UK, and UAE as finance minister Pranab Mukherjee has approved the posting policy of the officials who will be appointed by month-end, sources familiar with the development said. The minister has asked the Central Board of Direct Taxes to expedite the process. The I-T officers will be designated as first secretaries at the Indian Mission or Embassy at these foreign locations.

14. **The MCA has revised Form 1 and Form 32 vide Notification GSR 848(E) dated 15-10-2010.**

- In Form 1, the following has been inserted “Whether the subscriber has been convicted by any Court for any offence involving moral turpitude or economic or criminal offence or for any offences in connection with the promotion, formation or management of a Company Yes/No, if Yes provide Details.
- In Form 32, the following verification is inserted “4. it is also confirmed that the appointed Director(s) whose particulars are given above, has given a declaration to the Company that he/she has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court.

15. **The MCA has revised Form DIN 1 and Form DIN 3 vide Notification GSR 849(E) dated 15-10-2010.**

- In Form DIN 1, the following declaration is inserted “I also confirmed that I am not restrained/disqualified/removed of, for being appointed as Director of a Company under the provisions of the Companies Act, 1956 including S. 203, S. 274 and S. 388E of the said Act. I further confirm that I have not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other Court” and
- In Form DIN 3, a verification as follows has been inserted “It is hereby confirmed that the appointed Director(s) whose particulars are given above has given a declaration to the Company that he/she is not restrained/disqualified/removed of, for being appointed as Director of a Company under the provisions of the Companies Act, 1956 including S. 203, S. 274 and S. 388E of the said Act. It is also confirmed that the given above, has not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or any other Court.

16. **Reopening/revision of annual accounts after their adoption in the annual general meeting – General Circular No. 5/2010, dated 2-11-2010**

The Ministry, vide General Circular Number 1/2003 (F. No. 17/75/2002), dated 13-1-2003 had directed the grounds and manner in which accounts can be reopened/revise by companies and thereafter adopted by shareholders.

It has now come to the notice of the Ministry that few companies have been filing their annual accounts u/s.220 more than once resulting into filing/availability of more than one such accounts in the Registry for a particulars financial year.

The matter has been examined in the Ministry in detail and it has been concluded that keeping in view the provisions of S. 220 of the Act read with the Ministry’s General Circular 1/2003, a Company cannot lay more than one set of annual accounts for a particular financial year, unless it has reopened/revise such annual accounts after their adoption in the Annual General Meeting on the grounds specified in Ministry’s Circular No. 1/2003.

Accordingly, it is hereby directed that ROCs should keep a watch on such kinds of repeat filings of annual accounts and such accounts should not be accepted except in accordance with provisions of S. 220 read with Ministry’s General Circular 1/2003.

17. **New versions of Form 21A, Form 23AC and Form 23ACA**

New versions of Form 21A, Form 23AC and Form 23ACA are available on the MCA portal, effective December 5, 2010 and the same are required to be used for filing after December 5, 2010.

18. **Easy Exit Scheme, 2011 of MCA extended upto 30th April, 2011**

19. Disclosure requirements in respect of subsidiary companies relax in certain cases. Press release dated 8th February, 2011.
20. The revised Schedule VI has been framed as per the existing non-converged Indian Accounting Standards notified under the Companies (Accounting Standards), Rules, 2006 and has nothing to do with the converged Indian Accounting Standards. This will apply to all the companies uniformly for the financial statements to be prepared for the financial year 2010-11 and onwards.
21. **Only CSR Disclosure to be Mandatory in Cos Bill, Says MCA**
Bill to retain original provision which asks companies to earmark 2% of profit for CSR activities.

Amid sharp differences over making CSR mandatory, the government may ask corporates to only disclose to shareholders whether they have made a contribution of 2% of net profit toward corporate social responsibility activities. The Companies Bill, 2009, will retain the original provision which asks companies to earmark 2% of the average profit of the preceding three years for corporate social responsibility (CSR) activities, amid strong opposition from industry to the clause. However, only disclosure will be mandatory and not implementation, said a senior official of the corporate affairs ministry, adding, They will only have to disclose to the shareholders what their CSR policy has been and if they have not been able to fulfill the target, why have they not done so.





**Coin of Rs. 150/- released by Hon'ble
Finance Minister in 150th year of
functioning of Income Tax Department.**

CHALTE – CHALTE – Impact of overdose of IT Initiatives

Syllabus for Nursery :

A: APPLE



B: BLUETOOTH



C: CHAT



D: DOWNLOAD



E: E-MAIL



F: FACEBOOK



G: GOOGLE



H: HEWLETT PACKARD



I: iPHONE



J: JAVA



K: KINGSTON



L: LAPTOP



M: MESSENGER



N: NERO



O: ORKUT



P: PICASSA



Q: QUICK HEAL



R: RAM



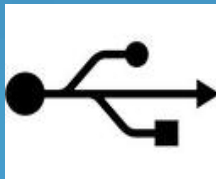
S: SERVER



T: TWITTER



U: USB



V: VISTA



W: WiFi



X: Xp



Y: YOU TUBE



Z: ZORPIA



Thank God ... A is still Apple