TAXATION

AMENDMENTS AT A GLANCE – FINANCE ACT, 2010

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TAXATION

AMENDMENTS BY THE FINANCE ACT, 2010

PART – I : INCOME-TAX

1. RATES OF TAX

Section 2 of the Finance Act, 2010 read with Part I of the First Schedule to the Finance Act, 2010, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2010-11. Part II lays down the rate at which tax is to be deducted at source during the financial year 2010-11 i.e., A.Y. 2011-12 from income subject to such deduction under the Income-tax Act; Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-tax from income chargeable under the head "salaries" and the rates for computing advance tax for the financial year 2010-11 i.e. A.Y.2011-12. Part III of the First Schedule to the Finance Act, 2010 will become Part I of the First Schedule to the Finance Act, 2011 and so on.

Rates for deduction of tax at source for the F.Y.2010-11 from income other than salaries

Part II of the First Schedule to the Act specifies the rates at which income-tax is to be deducted at source during the financial year 2010-11 i.e. A.Y. 2011-12 from income other than "salaries". These rates of tax deduction at source are the same as were applicable for the F.Y.2009-10.

Further, no surcharge would be levied on income-tax deducted except in the case of foreign companies. If the recipient is a foreign company, surcharge@2½% would be levied on such income-tax if the income or aggregate of income paid or likely to be paid and subject to deduction exceeds Rs.1 crore. Levy of surcharge has been withdrawn on deductions in all other cases. Also, education cess and secondary and higher education cess would not be added to tax deducted or collected at source in the case of a domestic company or a resident non-corporate assessee. However, education cess @2% and secondary and higher education cess @ 1% of income tax including surcharge, wherever applicable, would be leviable in cases of persons not resident in India and foreign companies.

Rates for deduction of tax at source from "salaries", computation of "advance tax" and charging of income-tax in certain cases during the financial year 2010-11

Part III of the First Schedule to the Act specifies the rate at which income-tax is to be deducted at source from "salaries" and also the rate at which "advance tax" is to be computed and income-tax is to be calculated or charged in certain cases for the financial

year 2010-11 i.e. A.Y. 2011-12.

It may be noted that education cess @2% and secondary and higher education cess @ 1% would continue to apply on tax deducted at source in respect of salary payments.

The tax slab margins under the different tax brackets have been considerably widened though the basic exemption limit continues to remain the same in the case of individuals, HUFs, AOPs, BOIs and artificial juridical persons. The revised tax slabs are shown hereunder -

(i) (a) Individual/ HUF/ AOP / BOI and every artificial juridical person

Level of total income	Rate of income-tax
Where the total income does not exceed Rs.1,60,000	Nil
Where the total income exceeds Rs.1,60,000 but does not exceed Rs.5,00,000	10% of the amount by which the total income exceeds Rs.1,60,000
Where the total income exceeds Rs.5,00,000 but does not exceed Rs.8,00,000	Rs.34,000 plus 20% of the amount by which the total income exceeds Rs.5,00,000
Where the total income exceeds Rs.8,00,000	Rs.94,000 plus 30% of the amount by which the total income exceeds Rs.8,00,000

The threshold exemption level continues to remain at Rs.1,90,000 for resident women and at Rs.2,40,000 for resident individuals of the age of 65 years or more at any time during the previous year. The slab rates for these assessees are as given in (b) and (c) below.

(b) For resident women below the age of 65 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed Rs.1,90,000	Nil
Where the total income exceeds Rs.1,90,000 but does not exceed Rs.5,00,000	10% of the amount by which the total income exceeds Rs.1,90,000
Where the total income exceeds Rs.5,00,000 but does not exceed Rs.8,00,000	Rs.31,000 plus 20% of the amount by which the total income exceeds Rs.5,00,000

Where the total income exceeds Rs.8,00,000	Rs.91,000 plus 30% of the amount by which the total income exceeds Rs.8,00,000

(c) For resident individuals of the age of 65 years or more at any time during the previous year

Level of total income	Rate of income-tax
Where the total income does not exceed Rs.2,40,000	Nil
Where the total income exceeds Rs.2,40,000 but does not exceed Rs.5,00,000	10% of the amount by which the total income exceeds Rs.2,40,000
Where the total income exceeds Rs.5,00,000 but does not exceed Rs.8,00,000	Rs.26,000 plus 20% of the amount by which the total income exceeds Rs.5,00,000
Where the total income exceeds Rs.8,00,000	Rs.86,000 plus 30% of the amount by which the total income exceeds Rs.8,00,000

(ii) Co-operative society

There is no change in the rate structure as compared to A.Y.2010-11.

	Level of total income	Rate of income-tax
(1)	Where the total income does not exceed Rs.10,000	10% of the total income
(2)	Where the total income exceeds Rs.10,000 but does not exceed Rs.20,000	Rs.1,000 plus 20% of the amount by which the total income exceeds Rs.10,000
(3)	Where the total income exceeds Rs.20,000	Rs.3,000 plus 30% of the amount by which the total income exceeds Rs.20,000

(iii) Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm for A.Y.2011-12 is the same as that for A.Y.2010-11 i.e. 30% on the whole of the total income of the firm. This rate would apply to an LLP also.

(iv) Local authority

The rate of tax for A.Y.2011-12 is the same as that for A.Y.2010-11 i.e. 30% on the whole of the total income of the local authority.

(v) Company

The rates of tax for A.Y.2011-12 are the same as that for A.Y.2010-11.

(1)	In the case of a domestic company	30% of the total income
(2)	In the case of a company other than a domestic company	50% of specified royalties and fees for rendering technical services and 40% on the balance of the total income

Surcharge

The rates of surcharge applicable for A.Y.2011-12 are as follows -

(i) Individual/HUF/AOP/BOI/Artificial juridical person

No surcharge would be leviable in case of such persons.

(ii) Co-operative societies/Local authorities

No surcharge would be leviable on co-operative societies and local authorities.

(iii) Firms/LLPs

No surcharge would be leviable on firms and LLPs.

(iv) Domestic company

Where the total income exceeds Rs.1 crore, surcharge is payable at the rate of 7½% of income-tax computed in accordance with the provisions of para (v)(1) above or section 111A or section 112. Marginal relief is available in case of such companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

(v) Foreign company

Where the total income exceeds Rs.1 crore, surcharge is payable at the rate of 2½% of income-tax computed in accordance with the provisions of paragraph (v)(2) above or section 111A or section 112. Marginal relief is available in case of such companies having a total income exceeding Rs.1 crore i.e. the additional amount of income-tax payable (together with surcharge) on the excess of income over Rs.1 crore should not be more than the amount of income exceeding Rs.1 crore.

Education cess / Secondary and higher education cess on income-tax

The amount of income-tax as increased by the union surcharge, if applicable, should be further increased by an additional surcharge called the "Education cess on income-tax", calculated at the rate of 2% of such income-tax and surcharge. Education cess is

leviable in the case of all assessees i.e. individuals, HUFs, AOP/BOIs, co-operative societies, firms, LLPs, local authorities and companies. Further, "Secondary and higher education cess on income-tax" @1% of income-tax and surcharge is leviable to fulfill the commitment of the Government to provide and finance secondary and higher education. No marginal relief would be available in respect of such cess.

2. BASIC CONCEPTS

Scope of definition of charitable purpose [Section 2(15)]

(i) Section 2(15) defines "charitable purpose" to include relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility. However, the "advancement of any other object of general public utility" shall not be 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.

(ii) Organisations existing for charitable purpose can obtain exemption under the Income-tax Act, 1961. However, the institutions which were engaged in charitable activities and having the object of general public utility were denied exemption, if they were engaged in any activity of trade, commerce or business or activity of rendering any service in relation to any trade, commerce or business for a cess or fees. This amendment denying the benefit of exemption was brought about by the Finance Act, 2008 w.e.f. 1.4.2009.

(iii) In order to provide relief to the genuine hardship faced by charitable organizations which receive marginal consideration from such activities, the Finance Act, 2010 has provided that such benefit of exemption will not be denied to the institutions having object of advancement of general public utility, even where they are engaged in the activity of trade, commerce or business or rendering any service for a cess or fee, provided the aggregate value of receipts from such activities does not exceed Rs.10 lakh in the year under consideration.

(iv) Therefore, in effect, "advancement of any other object of general public utility" would continue to be a "charitable purpose", if the total receipts from 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 does not exceed Rs.10 lakh in the previous year.

(v) This amendment may have the effect of changing the "charitable" status of the trust/institution every year depending on whether or not the total receipts from such activities exceed Rs.10 lakh in that year.

(Effective retrospectively from A.Y. 2009-10)

3. RESIDENCE AND SCOPE OF TOTAL INCOME

Income by way of fees for technical services, interest and royalty, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India [Section 9]

(i) The Supreme Court had, in *Ishikawajima-Harima Heavy Industries Ltd. v. Director of Income-tax (2007) 288 ITR 408*, observed that in order to tax the income of a non-resident assessee under section 9(1)(vii), relating to fee for technical services, the income sought to be taxed must have sufficient territorial nexus with India i.e., the fees paid for technical services provided by a non-resident cannot be taxed in India unless the services were utilized in India and rendered in India. Since this observation was not in consonance with the source rule spelt out in the law and stand taken by India in the bilateral treaties with different countries, the Finance Act, 2007 had clarified, by insertion of an *Explanation* below section 9(2) with retrospective effect from 1.6.1976, that such income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of a non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

(ii) However, even after insertion of the *Explanation* giving the clarification, the issue has not been resolved. Recently, the Karnataka High Court, in *Jindal Thermal Company Ltd. v. DCIT (TDS) 182 Taxman 252*, observed that the criteria of rendering services in India and utilizing the services in India, as laid down by the above Supreme Court judgment would continue to hold good even after insertion of the *Explanation*.

(iii) Therefore, the *Explanation* below section 9(2) is proposed to be substituted with retrospective effect from 1.6.1976 to clarify that income by way of fees for technical services, interest and royalty, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

(Effective retrospectively from 1st June, 1976)

4. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

(a) Exempted profits in the case of units in Special Economic Zones (SEZs) to be computed as a percentage of total turnover of the *business carried on by the undertaking* and not the total turnover of the business carried on by the assessee and this amendment is to apply retrospectively from A.Y.2006-07 [Section 10AA(7)]

(i) As per section 10AA(7), prior to amendment by the Finance (No.2) Act, 2009, the exempted profit of a SEZ unit was the profit derived from the export of articles or things or services. The profit derived from the export of articles or things or services (including computer software) had to be computed in the following manner -

Profits of the business of the undertaking being the unit ×

$$\left(\frac{\text{Export turnover in respect of such articles or things or computer software}}{\text{Total turnover of the business carried on by the assessee}}\right)$$

(ii) This mode of computation of the profits of business with reference to the **total turnover of the business carried on by the assessee** was inequitable to those assessees who were having units in both the SEZ and the domestic tariff area (DTA) as compared to those assessees who were having units only in the SEZ. In order to remove this inequity, section 10AA(7) had been amended by the Finance (No.2) Act, 2009 to provide that the deduction under section 10AA shall be computed with reference to the total turnover of the business carried on by the undertaking.

(iii) Therefore, the deduction would be computed in the following manner –

Profits of the business of the undertaking being the unit ×

$$\left(\frac{\text{Export turnover in respect of such articles or things or computer software}}{\text{Total turnover of the business carried on by the undertaking}}\right)$$

(iv) However, the Finance (No.2) Act, 2009 had made this amendment effective only from A.Y.2010-11, even though section 10AA was inserted with effect from 10.2.2006 by the Special Economic Zone Act, 2005. Therefore, the benefit of the amendment was not available for the assessment years between A.Y.2006-07 and A.Y.2009-10, which did not seem to be the legislative intention, since the amendment was clarificatory in nature.

Let us take the example of Mr.X, who has an undertaking in SEZ (Unit A) and an undertaking in the DTA (Unit B). For the previous year 2008-09, the total turnover of Unit A is Rs.60 lakh and Unit B is Rs.40 lakh. The export turnover of Unit A in respect of computer software is Rs.50 lakh and the profits of Unit A is Rs.20 lakh. Assuming that the above figures of turnover and profit remain the same for P.Y. 2009-10 also, the deduction under section 10AA for the P.Y.2008-09 and P.Y.2009-10 is computed as hereunder -

Deduction under section 10AA for -

P.Y.2008-09 (A.Y.2009-10) = $20 \times \frac{50}{100} = 10$ lakh

P.Y.2009-10 (A.Y.2010-11) = $20 \times \frac{50}{60} =$ 16.67 lakh

Thus, we can see that consequent to the amendment by the Finance (No.2) Act, 2009, the deduction under section 10AA would be different in both these years, even though the turnover and profits are taken to be the same.

(v) In order to remove this inconsistency and reflect the true legislative intention, the Finance Act, 2010 has now made this amendment effective retrospectively from A.Y.2006-07. Consequently, in the above example, the deduction under section 10AA for the P.Y.2008-09 would also be Rs.16.67 lakh.

(b) Commissioner of Income-tax also empowered to cancel registration obtained under section 12A [Section 12AA(3)]

(i) Registration of trust was governed by section 12A prior to introduction of section 12AA by the Finance (No.2) Act, 1996 with effect from 1.4.1997.

(ii) Under section 12AA(3), the Commissioner is empowered to cancel the registration of trust granted under section 12AA, if the activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust or institution. However, since there is no specific provision empowering the Commissioner to cancel the registration which was granted under section 12A, the Courts have ruled that the Commissioner's power does not extend to cancellation of registration granted under section 12A.

(iii) Since the legislative intent was to empower the Commissioner to cancel the registration granted under both section 12A and section 12AA, it has now been specifically provided that the Commissioner is also empowered to cancel registration obtained under section 12A (as it stood before its amendment by the Finance (No.2) Act, 1996).

(Effective from 1st June, 2010)

5. PROFITS AND GAINS OF BUSINESS OR PROFESSION

(a) Weighted deduction under section 35(1)(iii) extended to payments made to associations engaged in research in social science or statistical research

Related amendment in sections: 10(21), 80GGA, 139(4C)

(i) Under section 35, deduction is allowed in respect of research and development expenditure. Under section 35(1)(ii), a weighted deduction of 125% of any sum paid to an approved and notified research association or to a university, college or other institution to be used for scientific research is allowed. Similarly, under section 35(1)(iii), a weighted deduction of 125% of the sum

paid to an approved and notified university, college or other institution to be used to carry on research in social science or statistical research.

(ii) Under section 80GGA, deduction is allowed for donations made to such associations, universities, colleges or institutions for the time being approved under section 35(1)(ii) or section 35(1)(iii).

(iii) Section 10(21) grants exemption in respect of the income of a research association which is approved and notified under section 35(1)(ii). The university, college or other institutions which are approved either under section 35(1)(ii) or under section 35(1)(iii) also qualify for exemption of their income under section 10(23C), provided they fulfill the conditions mentioned therein.

(iv) At present, section 35(1)(iii) does not include within its scope, the associations which are engaged in undertaking research in social science or statistical research. Further, such associations are also not entitled to exemption in respect of their income.

(v) Therefore, in order to provide parity in treatment to these associations, the Finance Act, 2010 has amended -

(a) section 35(1)(iii) to include an approved research association which has as its object undertaking research in social science or statistical research.

(b) section 10(21) to provide exemption to such associations in respect of their income. However, the exemption will be available only on fulfillment of the conditions which are required to be complied with by an approved association undertaking scientific research for claiming such exemption.

(c) section 80GGA to include within its scope, deduction for donations made to such associations .

(vi) Consequently, such associations would be required to file their return of income under section 139(4C), if their total income before giving effect to the provisions of section 10, exceeds the basic exemption limit. The provisions of the Act would apply as if it were a return required to be furnished under section 139(1).

(Effective from A.Y.2011-12)

(b) Substantial increase in percentage of weighted deduction under section 35

The Finance Act, 2010 has made a substantial increase in the percentage of weighted deduction under section 35(1)(ii), 35(2AA) and 35(2AB), as detailed hereunder –

Section	Dealing with	Increase in % of weighted deduction
35(1)(ii)	Amount paid to an approved research association or to an approved university, college or other institution to be used for undertaking scientific research.	from 125% to 175%
35(2AA)	Amount paid to National Laboratory, or a University or an IIT or specified person for the purpose of an approved scientific research programme.	from 125% to 175%
35(2AB)	Expenditure on scientific research (other than expenditure on land and building) on in-house research and development facility incurred by a company.	from 150% to 200%

Example

X Ltd. furnishes the following particulars for the P.Y.2010-11. Compute the deduction allowable under section 35 for A.Y.2011-12, while computing its income under the head "Profits and gains of business or profession".

	Particulars	Rs.
1.	Amount paid to Indian Institute of Science, Bangalore, for scientific research	1,00,000
2.	Amount paid to IIT, Delhi for an approved scientific research programme	2,50,000
3.	Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	4,00,000
4.	Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
(a)	Revenue expenditure on scientific research	3,00,000
(b)	Capital expenditure (including cost of acquisition of land Rs.5,00,000) on scientific research	7,50,000

Computation of deduction under section 35 for the A.Y.2011-12

Particulars	Rs.	Section	% of weighted deduction	Amount of deduction (Rs.)
Payment for scientific research				
Indian Institute of Science	1,00,000	35(1)(ii)	175%	1,75,000
IIT, Delhi	2,50,000	35(2AA)	175%	4,37,500
X Ltd.	4,00,000	35(1)(iia)	125%	5,00,000
Expenditure incurred on in-house research and development facility				
Revenue expenditure	3,00,000	35(2AB)	200%	6,00,000
Capital expenditure (excluding cost of acquisition of land Rs.5,00,000)	2,50,000	35(2AB)	200%	5,00,000
Deduction allowable under section 35				**22,12,500**

(Effective from A.Y.2011-12)

(c) Expansion of scope of "specified business" for provision of "investment-linked tax incentives" [Section 35AD]

Related amendment in section: 80A

(i) Last year, investment-linked tax incentives were introduced for specified businesses, namely, –

- setting-up and operating 'cold chain' facilities for specified products;
- setting-up and operating warehousing facilities for storing agricultural produce;
- 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.

(ii) The Finance Act, 2010 has expanded the scope of "specified business" to include the following businesses -

(1) building and operating a new hotel of two-star or above category, anywhere in India;

(2) building and operating a new hospital, anywhere in India, with at least 100 beds for patients;

(3) developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the CBDT in accordance with the prescribed guidelines.

In respect of these three businesses, the deduction under this section would apply if the operations are commenced on or after 1st April, 2010.

(iii) 100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income. However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

(iv) Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business. A condition has been inserted that such amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

(v) Sub-section (3) of section 35AD has been substituted to provide that where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction under the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" is permissible in relation to such specified business for the same or any other assessment year.

(vi) Correspondingly, section 80A has been amended to provide that where a deduction under any provision of this Chapter under the heading "C – Deductions in respect of certain incomes" is claimed and allowed in respect of the profits of such specified business for any assessment year, no deduction under section 35AD is permissible in relation to such specified business for the same or any other assessment year.

(vii) In short, once the assessee has claimed the benefit of deduction under section 35AD for a particular year in respect of a specified business, he cannot claim benefit under Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" for the same or any other year and vice versa.

(viii) **Example**

XYZ Ltd. commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on 1.4.2010. The company incurred capital expenditure of Rs.50 lakh during the period January, 2010 to March, 2010 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2010. Further, during the P.Y.2010-11, it incurred capital expenditure of Rs.2 crore (out of which Rs.1.50 crore was for acquisition of land) exclusively for the above business. Compute the deduction under section 35AD for the A.Y.2011-12, assuming that XYZ Ltd. has fulfilled all the conditions specified in section 35AD and has not claimed any deduction under Chapter VI-A under the heading "C. – Deductions in respect of certain incomes".

The amount of deduction allowable under section 35AD for A.Y.2011-12 would be –

Particulars	**Rs.**
Capital expenditure incurred during the P.Y.2010-11 (excluding the expenditure incurred on acquisition of land) = Rs.200 lakh – Rs.150 lakh (See point no. (iii) above)	50 lakh
Capital expenditure incurred prior to 1.4.2010 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2010 (See point no. (iv) above)	50 lakh
Total deduction under section 35AD for A.Y.2011-12	**100 lakh**

(Effective from A.Y.2011-12)

(ix) In respect of the business of 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, such business should fulfill the following conditions to be eligible to claim the benefit under section 35AD -

(a) should be owned by a company formed and registered in India under the Companies Act, 1956 or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;

(b) should have been approved by the Petroleum and Natural Gas Regulatory Board and notified by the Central Government in the Official Gazette.

(c) **should have made not less than one-third of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person;** and

(d) should fulfill any other prescribed condition.

(x) However, the common carrier capacity condition prescribed by the regulations of the Petroleum & Natural Gas Regulatory Board is –

(1) "one-third" for natural gas pipeline network; and

(2) "one-fourth" for petroleum product pipeline network.

(xi) Therefore, section 35AD(2) has been amended to bring the condition specified therein in line with the regulations of the Petroleum & Natural Gas Regulatory Board. Accordingly, the condition required to be fulfilled is that the proportion of the total pipeline capacity to be made available for use on common carrier basis should be as prescribed by the said regulations.

(Effective from A.Y.2010-11)

(d) Time limit for depositing tax deducted during the entire year extended upto the due date of filing return of income to ensure compliance with the statutory requirement to avoid disallowance of expenditure under section 40(a)(ia)

Related amendment in section: 201(1A)

(i) The scheme of disallowance under section 40(a)(ia) was modified by the Finance Act, 2008, with retrospective effect from 1.4.2005.

As per the scheme, interest, commission, brokerage, rent, royalty, fees for technical/professional services payable to a resident or amounts payable (for carrying out any work contract) to a resident contractor/sub-contractor, on which tax is deductible at source was disallowed if –

(1) such tax has not been deducted; or

(2) such tax, after deduction, had not been paid –

(a) on or before the due date specified in section 139(1), in a case where the tax was deductible and was so deducted during the last month (i.e., March) of the previous year;

(b) on or before the last day of the previous year, in any other case.

In case the tax is deducted in any subsequent year or has been deducted

(a) during the last month (i.e., March) of the previous year but paid after the due date specified in section 139(1); or

(b) during any other month (i.e., April to February) of the previous year but paid after the end of the previous year,

such sum shall be allowed as deduction in computing the income of the previous year in which such tax has been paid.

(ii) If, for instance, tax on royalty paid to Mr.A, a resident, has been deducted during the period between April, 2008 to February, 2009, the same has to be paid by 31st March, 2009. If the deduction has been made in March 2009, the same has to be paid by 31st July/30th September 2009, as the case may be. Otherwise, the expenditure would be disallowed in computing the income for A.Y.2009-10.

If such tax deducted between April 2008 and February 2009 is paid after 31st March 2009, the same would be allowed as deduction in the year of payment. If the tax deducted in March 2009 has been paid after 31st July/30th September, 2009, the same would be allowed as deduction in the year of payment.

(iii) This scheme has now been amended to extend the time limit for depositing tax deducted during the entire year up to the due date of filing return of income to ensure compliance with the statutory requirement to avoid disallowance of expenditure under section 40(a)(ia). This amendment would take effect from A.Y.2010-11.

(iv) However, even under the new scheme, tax is required to be deducted during the relevant previous year. The tax, so deducted, has to be deposited on or before the due date of filing of return to claim deduction of the expenditure in the relevant previous year to which it relates.

(v) For instance, if tax has been deducted on royalty paid to Mr.X, a resident, during the P.Y.2010-11 at any time between April, 2010 to March, 2011, and the same is paid by 31st July/30th September 2011, as the case may be, such expenditure would be allowed as deduction during the P.Y.2010-11 (A.Y.2011-12).

(Effective from A.Y.2010-11)

(vi) A person deemed to be an assessee-in-default under section 201(1), for failure to deduct tax or to pay the tax after deduction, is liable to pay simple interest @ 1% for every month or part of month on the amount of such tax from the date on which tax was deductible to the date on which such tax was actually paid. This is provided for in section 201(1A).

(vii) In order to prevent the practice of deferring the deposit of tax after deduction and ensure timely deposit of tax after deduction, the rate of interest for non-payment of tax after deduction has been increased from 1% to 1½% for every month or part of month from the date on which tax was deducted to the date on which such tax is actually paid. However, the rate of interest for non-deduction of tax would continue to remain@1% for every month or part of a month from the date on which tax was deductible to the date on which such tax was deducted. This amendment has been effected by substituting sub-section (1A) of section 201.

(viii) **Example**

An amount of Rs.40,000 was paid to Mr.X on 1.7.2010 towards fees for professional services without deduction of tax at source. Subsequently, another payment of Rs.50,000 was due to Mr. X on 28.2.2011, from which tax@10% (amounting to Rs.9,000) on the entire amount of Rs.90,000 was deducted. However, this tax of Rs.9,000 was deposited only on 22.6.2011. Compute the interest chargeable under section 201(1A).

Interest under section 201(1A) would be computed as follows –

1% on tax deductible but not deducted i.e., 1% on Rs.4,000 for 8 months	320
1½% on tax deducted but not deposited i.e. 1½% on Rs.9,000 for 4 months	540
	860

(Effective from 1st July, 2010)

(e) Increase in threshold limits of turnover/gross receipts for applicability of tax audit under section 44AB

Related amendment in section: 44AD

(i) With a view to reducing the compliance burden of small businesses and professionals, the limits of turnover and gross receipts for tax audit under section 44AB has been increased from Rs.40 lakh to Rs.60 lakh and from Rs.10 lakh to Rs.15 lakh, respectively, for business and profession.

(ii) Accordingly, every person carrying on business would now be required to get his accounts audited if the total sales, turnover or gross receipts in business exceed Rs.60 lakh in the previous year. Similarly, a person carrying on a profession would be required to get his accounts audited if the gross receipts in profession exceed Rs.15 lakh in the previous year.

(iii) Consequently, the threshold limit of turnover/gross receipts for the purpose of applicability of presumptive taxation scheme under section 44AD has been increased from Rs.40 lakh to Rs.60 lakh. This scheme would now include within its scope, all businesses with total turnover/gross receipts up to Rs.60 lakh. 8% of total turnover/gross receipts would be deemed to be the business income of the assessee.

(Effective from A.Y.2011-12)

(f) Tax treatment of income of a non-resident providing services or facilities in connection with prospecting for, or extraction or production of, mineral oil [Section 44BB & section 44DA]

(i) As per section 44BB(1), the income of a non-resident who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils is computed at 10% of the aggregate of the amounts specified in section 44BB(2).

(ii) Under section 44DA, the procedure is prescribed for computing income of a non-resident, including a foreign company, by way of royalty or fee for technical services, in case the right, property or contract giving rise to such income are effectively connected with the permanent establishment of the said non-resident. This income is computed as per the books of account maintained by the assessee in accordance with section 44AA.

(iii) Section 115A prescribes the rate of taxation in respect of income of a non-resident, including a foreign company, in the nature of royalty or fee for technical services, other than the income referred to in section 44DA i.e., income in the nature of royalty and fee for technical services which is not connected with the permanent establishment of the non-resident.

(iv) There have been legal decisions which have expressed contradictory views regarding the scope and applicability of section 44BB vis-à-vis section 44DA on the issue of taxability of fee for technical services relating to the exploration sector.

(v) In order to reflect the correct legislative intention regarding taxation of income by way of fee for technical services, section 44BB has been amended to exclude the applicability of section 44BB to the income which is covered under section 44DA. A similar amendment has been made in section 44DA to provide that provisions of section 44BB would not be applicable in respect of the income covered under section 44DA.

(vi) Therefore, if the income of a non-resident is in the nature of fees for technical services, it shall be taxable under the provisions of either section 44DA or section 115A irrespective of the business to which it relates. Section 44BB would apply only in a case where consideration is for services and other facilities relating to exploration activity which are not in the nature of technical services.

(Effective from A.Y.2011-12)

6. CAPITAL GAINS

Conversion of small private companies and unlisted public companies into LLPs to be exempt from capital gains tax subject to fulfillment of certain conditions [Clause (xiiib) inserted in section 47]

Related amendment in sections: 47A(4), 72A, 32(1), 43(6), 49(1), 49(2AAA), 43(1) and 35DDA

(i) Consequent to the Limited Liability Partnership Act, 2008 coming into effect in 2009 and notification of the Limited Liability Partnership Rules w.e.f. 1st April, 2009, the Finance (No.2) Act, 2009 had incorporated the taxation scheme of LLPs in the Income-tax Act on the same lines as applicable for general partnerships, i.e. tax liability would be attracted in the hands of the LLP and tax exemption would be available to the partners. Therefore, the same tax treatment would be applicable for both general partnerships and LLPs.

(ii) Under section 56 and section 57 of the Limited Liability Partnership Act, 2008, conversion of a private company or an unlisted public company into an LLP is permitted. However, under the Income-tax Act, no exemption is available on conversion of a company into an LLP. As a result, transfer of assets on conversion would attract capital gains tax. Further, there is no specific provision enabling the LLP to carry forward the unabsorbed losses and unabsorbed depreciation of the predecessor company.

(iii) Therefore, clause (xiiib) has been inserted in section 47 to provide that -

(1) any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP; or

(2) any transfer of a share or shares held in a company by a shareholder

on conversion of a company into a LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008, shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45, subject to fulfillment of certain conditions. This clause has been introduced to facilitate conversion of small private and unlisted public companies into LLPs. These conditions are as follows:

(1) the total sales, turnover or gross receipts in business of the company should not exceed Rs.60 lakh in any of the three preceding previous years;

(2) the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;

(3) no consideration other than share in profit and capital contribution in the LLP arises to the shareholders;

(4) the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion;

(5) all assets and liabilities of the company become the assets and liabilities of the LLP; and

(6) no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

(iv) However, if subsequent to the transfer, any of the above conditions are not complied with, the capital gains not charged under section 45 would be deemed to be chargeable to tax in the previous year in which the conditions are not complied with, in the hands of the LLP or the shareholder of the predecessor company, as the case may be [Section 47A(4)].

(v) Further, the successor LLP would be allowed to carry forward and set-off the business loss and unabsorbed depreciation of the predecessor company [Sub-section (6A) of section 72A].

(vi) However, if the entity fails to fulfill any of the conditions mentioned in (iii) above, the benefit of set-off of business loss/unabsorbed depreciation availed by the LLP would be deemed to be the profits and gains of the LLP chargeable to tax in the previous year in which the LLP fails to fulfill any of the conditions listed above.

(vii) The actual cost of the block of assets in the case of the successor LLP shall be the written down value of the block of assets as in the case of the predecessor company on the date of conversion [Explanation 2C to section 43(6)].

(viii) The aggregate depreciation allowable to the predecessor company and successor LLP shall not exceed, in any previous year, the depreciation calculated at the prescribed rates as if the conversion had not taken place. Such depreciation shall be apportioned between the predecessor company and the successor LLP in the ratio of the number of days for which the assets were used by them [Section 32(1)].

(ix) The cost of acquisition of the capital asset for the successor LLP shall be deemed to be the cost for which the predecessor company acquired it. It would be further increased by the cost of improvement of the asset incurred by the predecessor company or the successor LLP [Section 49(1)].

(x) If the capital asset became the property of the LLP as a result of conversion of a company into an LLP, and deduction has been allowed or is allowable in respect of such asset under section 35AD, the actual cost would be taken as Nil [Explanation 13 to section 43(1)].

(xi) If a company eligible for deduction under section 35DDA in respect of expenditure incurred under Voluntary Retirement Scheme (one-fifth of such expenditure allowable over a period of five years) is converted into a LLP and such conversion satisfies the conditions laid down in section 47(xiiib), then, the LLP would be eligible for such deduction from the year in which the transfer took place.

(xii) If a shareholder of a company receives rights in a partnership firm as consideration for transfer of shares on conversion of a company into a LLP, then the cost of acquisition of the capital asset being rights of a partner referred to in section 42 of the LLP Act, 2008 shall be deemed to be the cost of acquisition to him of the shares in the predecessor company, immediately before its conversion [Section 49(2AAA)].

(xiii) **Example**

A Pvt. Ltd. has converted into a LLP on 1.4.2010. The following are the particulars of A Pvt. Ltd. as on 31.3.2010 –

(1) Unabsorbed depreciation Rs.13.32 lakh

Business loss Rs.27.05 lakh

(2) WDV of assets

Plant & Machinery (15%)	Rs.60 lakh
Building (10%)	Rs.90 lakh
Furniture (10%)	Rs.10 lakh

(3) Cost of land (acquired in the year 2000) Rs.50 lakh

(4) VRS expenditure incurred by the company during the previous year 2008-09 is Rs.50 lakh. The company has been allowed deduction of Rs.10 lakh each for the P.Y.2008-09 and P.Y.2009-10 under section 35DDA.

Assuming that the conversion fulfills all the conditions specified in section 47(xiiib), explain the tax treatment of the above in the hands of the LLP.

Answer

(1) As per section 72A(6A), the LLP would be able to carry forward and set-off the unabsorbed depreciation and business loss of A Pvt. Ltd. as on 31.3.2010. However, if in any subsequent year, say previous year 2011-12, the LLP fails to fulfill any of the conditions mentioned in section 47(xiiib), the set-off of loss or depreciation so made in the previous year 2010-11 would be deemed to be the income chargeable to tax of P.Y.2011-12.

(2) The aggregate depreciation for the P.Y.2010-11 would be –

Plant & Machinery	Rs.9 lakh (15% of Rs.60 lakh)

Building	Rs.9 lakh (10% of Rs.90 lakh)
Furniture	Rs.1 lakh (10% of Rs.10 lakh)

In this case, since the conversion took place on 1.4.2010, the entire depreciation is allowable in the hands of the LLP. Had the conversion taken place on any other date, say 1.7.2010, the depreciation shall be apportioned between the company and the LLP in proportion to the number of days the assets were used by them. In such a case, the depreciation allowable in the hands of A Pvt. Ltd. and the LLP would be calculated as given below -

In the hands of A Ltd. (for 91 days)

Plant and machinery	$\frac{91}{365} \times 900000$	2,24,384
Building	$\frac{91}{365} \times 900000$	2,24,384
Furniture	$\frac{91}{365} \times 100000$	24,932

In the hands of the LLP (274 days)

Plant and machinery	$\frac{274}{365} \times 900000$	6,75,616
Building	$\frac{274}{365} \times 900000$	6,75,616
Furniture	$\frac{274}{365} \times 100000$	75,068

(3) The cost of acquisition of land in the hands of the LLP would be the cost for which A Pvt. Ltd. acquired it, i.e., Rs.50 lakh.

(4) The LLP would be eligible for deduction of Rs.10 lakh each for the P.Y.2010-11, P.Y.2011-12 and P.Y.2012-13 under section 35DDA.

(Effective from A.Y.2011-12)

7. INCOME FROM OTHER SOURCES

(a) Transfer of immovable property for inadequate consideration to be outside the ambit of section 56(2)

(i) Last year, transfer of property without consideration or for inadequate

consideration was brought within the ambit of section 56(2) by the Finance (No.2) Act, 2009.

(ii) This amendment has resulted in genuine problems in case of certain immovable property transactions like builders' contracts, where there is a time gap of few years between the booking of property and its actual registration. The price of the property generally appreciates over these intermittent years. Consequently, there may be considerable difference between the price at which the property was initially booked and the value of property at the time of possession. The provisions of section 56(2)(vii) were attracted in respect of such transactions also. This resulted in undue hardship even in genuine cases of transfer of immovable property.

(iii) In order to mitigate this hardship, transfer of immovable property for inadequate consideration has been removed from the scope of applicability of section 56(2)(vii), from the date of introduction of this provision i.e., from 1st October, 2009. In effect, transfer of immovable property for inadequate consideration would always be outside the ambit of section 56(2)(vii).

(iv) However, transfer of immovable property without consideration would continue to attract the provisions of section 56(2)(vii), if the stamp duty value of such property exceeds Rs.50,000.

(v) Further, in respect of property other than immovable property, section 56(2)(vii) would apply to transfer without consideration as well as transfer for inadequate consideration. The provisions of this section would apply in case of transfer without consideration, where the aggregate fair market value of such property exceeds Rs.50,000, and in case of transfer for inadequate consideration, where the difference between the aggregate fair market value and the sale consideration exceeds Rs.50,000.

(Effective from 1st October, 2009)

(b) Scope of definition of property, for the purpose of section 56(2)(vii), amended

(i) Last year, clause (vii) was inserted in section 56(2) to bring within its scope, the value of any property received without consideration or for inadequte consideration. For this purpose, "property" was defined to mean immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.

(ii) If property, other than immovable property, is received without consideration, the aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient if it exceeds Rs.50,000. In case such property is received for inadequate consideration, and the difference between

the aggregate fair market value and such consideration exceeds Rs.50,000, such difference would be taxed as the income of the recipient. The fair market value of such property means the value determined in accordance with the method as may be prescribed ***[See Notification No.23/2010 dated 8.4.2010].***

(iii) It has now been clarified that section 56(2)(vii) would apply only to property which is the nature of a capital asset of the recipient and not stock-in-trade, raw material or consumable stores of any business of the recipient. Therefore, only transfer of a capital asset, without consideration and transfer of a capital asset, other than immovable property, for inadequate consideration would attract the provisions of section 56(2)(vii). This provision would take effect retrospectively from 1st October, 2009.

(iv) Further, with effect from 1st June, 2010, "bullion" has also been included in the definition of property. Therefore, transfer of bullion would also fall within the scope of section 56(2)(vii), if its aggregate fair market value exceeds Rs.50,000 or in case of transfer for inadequate consideration, if the difference between the aggregate fair market value and the sale consideration exceeds Rs.50,000.

Example

Mr. A, a dealer in shares, received the following without consideration during the P.Y.2010-11 from his friend Mr. B, -

(1) Cash gift of Rs.75,000 on his anniversary, 15th April, 2010.

(2) Bullion, the fair market value of which was Rs.60,000, on his birthday, 19th June, 2010.

(3) A plot of land at Faridabad on 1st July, 2010, the stamp value of which is Rs.5 lakh on that date. Mr.B had purchased the land in April, 2005.

Mr.A purchased from his friend C, who is also a dealer in shares, 1000 shares of X Ltd. @ Rs.400 each on 19th June, 2010, the fair market value of which was Rs.600 each on that date. Mr.A sold these shares in the course of his business on 23rd June, 2010.

Further, on 1st November, 2010, Mr. A took possession of property (building) booked by him two years back at Rs.20 lakh. The stamp duty value of the property as on 1st November, 2010 is Rs.32 lakh.

On 1st March, 2011, he sold the plot of land at Faridabad for Rs.7 lakh.

Compute the income of Mr. A chargeable under the head "Income from other sources" and "Capital Gains" for A.Y.2011-12.

Computation of "Income from other sources" of Mr.A for the A.Y.2011-12

	Particulars	Rs.
(1)	Cash gift is taxable under section 56(2)(vii), since it exceeds Rs.50,000	75,000
(2)	Bullion has been included in the definition of property w.e.f. 1.6.2010. Therefore, when bullion is received without consideration after 1.6.2010, the same is taxable, since the aggregate fair market value exceeds Rs.50,000	60,000
(3)	Stamp value of plot of land at Faridabad, received without consideration, is taxable under section 56(2)(vii)	5,00,000
(4)	Difference of Rs.2 lakh in the value of shares of X Ltd. purchased from Mr. C, a dealer in shares, is not taxable as it represents the stock-in-trade of Mr. A. Since Mr. A is a dealer in shares and it has been mentioned that the shares were subsequently sold in the course of his business, such shares represent the stock-in-trade of Mr. A.	-
(5)	Appreciation in the value of immovable property between the time of its booking and its actual registration is outside the scope of section 56(2)(vii).	-
Income from Other Sources		**6,35,000**

Computation of "Capital Gains" of Mr.A for the A.Y.2011-12

Sale Consideration	7,00,000
Less: Cost of acquisition [deemed to be the stamp value charged to tax under section 56(2)(vii) as per section 49(4)]	5,00,000
Short-term capital gains	**2,00,000**

Note *– The resultant capital gains will be short-term capital gains since for calculating the period of holding, the period of holding of previous owner is not to be considered*.

(c) Transfer of shares without consideration or for inadequate consideration to attract the provisions of section 56(2) in case of recipient firms and companies also [Section 56(2)(viia)]

Related amendment in sections: 2(24) & 49

(i) New clause (viia) has been inserted in section 56(2) to provide that the transfer of shares of a company without consideration or for inadequate consideration would attract the provisions of section 56(2), if the recipient is a firm or a company. The purpose is to prevent the practice of transferring unlisted shares at prices much below their fair market value.

(ii) If such shares are received without consideration, the aggregate fair market value on the date of transfer would be taxed as the income of the recipient firm or company, if it exceeds Rs.50,000. If such shares are received for inadequate consideration, the difference between the aggregate fair market value and the consideration would be taxed as the income of the recipient firm or company, if such difference exceeds Rs.50,000.

(iii) However, the provisions of section 56(2)(viia) would not apply in the case of transfer of shares -

(1) of a company in which the public are substantially interested; or

(2) to a company in which the public are substantially interested.

(iv) Certain transactions are exempted from the application of the provisions of this clause, namely, transactions covered under the following sections:

Section	Transaction
47(via)	Transfer of shares held in an Indian company, in a scheme of amalgamation, by the amalgamating foreign company to an amalgamated foreign company.
47(vic)	Transfer of shares held in an Indian company, in a scheme of demerger, by the demerged foreign company to a resulting foreign company.
47(vicb)	Transfer by a shareholder, in a business reorganization, of shares held in the predecessor co-operative bank, in consideration of the allotment of shares in the successor co-operative bank.
47(vid)	Transfer or issue of shares by the resulting company, in a scheme of demerger, to the shareholders of the demerged company in consideration of demerger of the undertaking.
47(vii)	Transfer by a shareholder, in a scheme of amalgamation, of shares in the amalgamating company in consideration of allotment to him of shares in the amalgamated Indian company.

(v) The definition of income under section 2(24) would now include any sum of money or value of property referred to in section 56(2)(vii) *or section 56(2)(viia)*.

(vi) Section 49(4) has been amended to provide that where the capital gain arises from the transfer of such property which has been subject to tax under section 56(2)(vii) *or section 56(2)(viia)*, the cost of acquisition of the property shall be deemed to be the value taken into account for the purpose of section 56(2)(vii) *or section 56(2)(viia)*.

(Effective from 1st June, 2010)

8. DEDUCTIONS FROM GROSS TOTAL INCOME

(a) Deduction for investment in long-term infrastructure bonds [Section 80CCF]

(i) At present, there is cap of Rs.1 lakh on the savings qualifying for deduction from gross total income, and this embraces all forms of eligible savings through different instruments, whether it be contribution to provident fund, public provident fund, pension fund, subscription to ELSS, NSC or payment of life insurance premium. This ceiling is provided in section 80CCE for the investments/contributions covered under section 80C, 80CCC & 80CCD.

(ii) In order to give a fillip to the infrastructure sector, the investment in this sector is to be encouraged by providing an additional deduction of up to Rs.20,000 under new section 80CCF to individuals and HUFs exclusively for subscription to notified long-term infrastructure bonds during the financial year 2010-11.

(iii) **Example**

The gross total income of Mr.X for the A.Y.2011-12 is Rs.7,00,000. He has made the following investments/payments during the F.Y.2010-11 -

	Particulars	Rs.
(1)	Contribution to PPF	50,000
(2)	Payment of tuition fees to Cambridge School, Noida, for education of his daughter studying in Class V	36,000
(3)	Repayment of housing loan taken from HDFC	40,000
(4)	Contribution to approved pension fund of LIC	10,000
(5)	Subscription to notified long-term infrastructure bonds	25,000

Compute the eligible deduction under Chapter VI-A for the A.Y.2011-12.

Computation of deduction under Chapter VI-A for the A.Y.2011-12

	Particulars	Rs.
Deduction under section 80C		
(1)	Contribution to PPF	50,000
(2)	Payment of tuition fees to Cambridge School, Noida, for education of his daughter studying in Class V	36,000
(3)	Repayment of housing loan taken from HDFC	40,000
		1,26,000

Deduction under section 80CCC

(4)	Contribution to approved pension fund of LIC	10,000
		1,36,000
	As per section 80CCE, the aggregate deduction under section 80C, 80CCC and 80CCD has to be restricted to Rs.1 lakh	1,00,000

Deduction under section 80CCF

(5)	Subscription to notified long-term infrastructure bonds, Rs.25,000, but restricted to Rs.20,000, being the maximum deduction allowable under section 80CCF	20,000
Deduction allowable under Chapter VIA for the A.Y.2011-12		**1,20,000**

(Effective for A.Y.2011-12)

(b) Deduction in respect of contribution to Central Government Health Scheme [Section 80D]

(i) Section 80D provides for deduction of upto Rs.15,000 for mediclaim premium paid by an individual to insure the health of self, spouse and dependent children. If any of the persons mentioned above are senior citizens, the maximum deduction would be Rs.20,000 instead of Rs.15,000.

(ii) A further deduction of upto Rs.15,000 is provided for mediclaim premium paid by him to insure the health of his parents, whether or not they are dependent on him. If either of the parents are senior citizens, the maximum deduction would be Rs.20,000 instead of Rs.15,000.

(iii) Government employees, including retired employees of the Government, and employees of certain autonomous bodies contribute every month to the Central Government Health Scheme (CGHS) to avail of medical benefits under such scheme.

(iv) It has now been provided that contribution to CGHS by such persons would be eligible for deduction section 80D, however, subject to the overall limit specified in (i) above.

(v) Example

Mr. Y, aged 40 years, paid medical insurance premium of Rs.12,000 during the P.Y.2010-11 to insure his health as well as the health of his spouse and dependent children. He also paid medical insurance premium of Rs.21,000 during the year to insure the health of his father, aged 67 years, who is not

dependent on him. He contributed Rs.2,400 to Central Government Health Scheme during the year. Compute the deduction allowable under section 80D for the A.Y.2011-12.

Deduction allowable under section 80D for the A.Y.2011-12

	Particulars	Rs.
(i)	Medical insurance premium paid for self, spouse and dependent children	12,000
(ii)	Contribution to CGHS	2,400
(iii)	Mediclaim premium paid for father, who is over 65 years of age (Rs.21,000 but restricted to Rs.20,000, being the maximum allowable)	20,000
		34,400

Note – The total deduction under (i) and (ii) above should not exceed Rs.15,000. In this case, since the total of (i) and (ii) (i.e., Rs.14,400) does not exceed Rs.15,000, the same is fully allowable under section 80D.

However, had the medical insurance premium paid for self, spouse and children been Rs.14,000 instead of Rs.12,000, then, the total of Rs.16,400 (i.e., Rs.14,000 + Rs.2,400) under (i) and (ii) above would be restricted to Rs.15,000. In such a case, the total deduction allowable under section 80D would be Rs.35,000 [i.e., Rs.15,000 [(i) & (ii)] + Rs.20,000 (iii)].

(Effective from A.Y.2011-12)

(c) Relaxation of conditions for housing projects approved on or after 1.4.2005 [Section 80-IB(10)]

(i) An undertaking developing and building housing projects approved by a local authority before 31.3.2008 is eligible for deduction of 100% of the profits from such project under section 80-IB(10), if it fulfills certain conditions.

(ii) One of the conditions is that the project has to be completed within 4 years from the end of the financial year in which the project is approved by the local authority. Further, the built-up area of the shops and other commercial establishments included in the housing project should not exceed 5% of the total built-up area of the housing project or 2,000 sq.ft., whichever is less.

(iii) On account of the large scale widespread downturn and the consequent slump in the housing sector, the period for completion of housing projects to qualify for tax benefit under section 80-IB has been extended from 4 years to 5 years from the end of the financial year in which the housing project is approved by the local authority, in case of housing projects approved on or after 1.4.2005.

(iv) Further, the present restrictions regarding built-up area of shops and other commercial establishments have been relaxed in respect of housing projects approved on or after 1.4.2005. The permissible built-up area of shops and other commercial establishments included in the housing project has been increased from 5% of the aggregate built-up area or 2,000 sq. feet, whichever is lower, to 3% of the aggregate built-up area of the housing project or 5,000 sq. ft., whichever is higher.

(v) However, these benefits are not available in respect of a housing project approved by the local authority before 1st April, 2005.

(Effective from A.Y.2010-11)

(d) Extension of terminal date for functioning of hotels and construction of convention centres from 31.3.2010 to 31.7.2010 [Section 80-ID]

(i) Section 80-ID provides a five-year tax holiday to new two, three and four star hotels and convention centres set up in the National Capital Region in view of the upcoming commonwealth games.

(ii) For availing this benefit, such hotel should start functioning or convention centre should be constructed at any time during the period from 1.4.2007 to 31.3.2010.

(iii) The terminal date has been extended from 31.3.2010 to 31.7.2010 in order to give more time for the facilities to be set up in view of the upcoming Commonwealth Games in October, 2010.

(Effective from A.Y.2011-12)

9. PROVISIONS CONCERNING ADVANCE TAX AND TDS

(a) Increase in threshold limits for attracting TDS provisions [Sections 194B, 194BB, 194C, 194D, 194H, 194-I & 194J]

The threshold limits for attracting TDS provisions under the different sections in Chapter XVII have been increased with effect from 1st July, 2010, in order to reduce compliance burden and provide for inflation adjustment. In effect, if the payments of the nature specified in column (2) of the table below do not exceed the threshold limits specified in column (3) (up to 30.6.2010) and column (4) (from 1.7.2010), no deduction of tax is required to be made.

Section	Nature	Threshold limit (Rs.)	
		Existing (upto 30.6.2010)	New (w.e.f. 1.7.2010)
194B	Winnings from lottery, crossword puzzle, card game and other game of any sort	5,000	10,000
194BB	Winnings from horse race	2,500	5,000
194C	Payment to contractor for a single transaction [**See Note (1) below**]	20,000	30,000
194D	Insurance commission	5,000	20,000
194H	Commission or brokerage	2,500	5,000
194I	Rent	1,20,000	1,80,000
194J	Fees for professional or technical services, royalty or non-compete fees referred to in section 28(va) [**See Note (2) below**]	20,000	30,000

Notes

(1) With effect from 1.7.2010, even if a single payment to a contractor does not exceed Rs.30,000, TDS provisions under section 194C would be attracted where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid to the contractor during the financial year exceeds Rs.75,000. The aggregate limit has been raised from Rs.50,000 to Rs.75,000.

Example

ABC Ltd. makes the following payments to Mr.X, a contractor, for contract work during the P.Y.2010-11 –

Rs.15,000 on 1.5.2010

Rs.25,000 on 1.8.2010

Rs.30,000 on 1.12.2010

On 1.3.2011, a payment of Rs.28,000 is due to Mr.X on account of a contract work.

Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr.X.

In this case, the individual contract payments made to Mr.X up to 30.6.2010

does not exceed Rs.20,000 and after 1.7.2010 does not exceed Rs.30,000. However, since the aggregate amount paid to Mr.X during the P.Y.2010-11 exceeds Rs.75,000 (on account of the last payment of Rs.28,000, due on 1.3.2011, taking the total from Rs.70,000 to Rs.98,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted@1% on the entire amount of 98,000 from the last payment of Rs.28,000 and the balance of Rs.27,020 (i.e. Rs.28,000 – 980) has to be paid to Mr. X.

(2) The limit of Rs.30,000 under section 194J is applicable separately for fees for professional services, fees for technical services, royalty and non-compete fees referred to in section 28(va). It implies that if the payment to a person towards each of the above is less than Rs.30,000, no tax is required to be deducted at source, even though the aggregate payment or credit exceeds Rs.30,000.

Example

If XYZ Ltd. makes a payment of Rs.28,000 to Mr.Ganesh on 2.8.2010 towards fees for professional services and another payment of Rs.25,000 to him on the same date towards fees for technical services, TDS under section 194J would not get attracted, since the limit of Rs.30,000 is applicable for fees for professional services and fees for technical services, separately. It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the P.Y.2010-11.

(Effective from 1st July, 2010)

(b) TDS Certificates to be furnished even after 1st April, 2010 [Section 203]

(i) The scheme for dematerialisation of TDS certificates was to be implemented with effect from 1.4.2010. Accordingly, section 203(3) was introduced earlier which provided for waiving the requirement of furnishing TDS certificate in respect of tax deducted or paid on or after 1.4.2010.

(ii) Now, considering the importance of the document, i.e., TDS certificate, it has been provided that the deductor would continue to furnish TDS certificates to the deductee even after 1.4.2010. Accordingly, sub-section (3) of section 203 has been deleted.

(Effective from 1st April, 2010)

IMPORTANT NOTIFICATIONS / CIRCULARS ISSUED BETWEEN 1.5.2009 AND 30.4.2010

I CIRCULARS

1. Circular No. 7/2009 dated 22.10.2009

The CBDT has, through this circular, withdrawn the following circulars:

(a) Circular No. 23 issued on 23rd July 1969 regarding taxability of income accruing or arising through, or from, business connection in India to a non-resident, under section 9 of the Income-tax Act, 1961.

(b) Circulars No. 163 dated 29th May, 1975 and No.786 dated 7th February, 2000 which provided clarification in respect of certain provisions of Circular No.23 dated 23rd July, 1969.

2. Circular No. 8/2009, dated 24.11.2009

The CBDT has, through this circular, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

Consequently, all such past transactions between TPAs and hospitals would fall within the provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee in default in respect of such tax and also liable for charging of interest under section 201(1A) and penalty under section 271C.

However, no proceedings under section 201 may be initiated after the expiry of six years from the end of the financial year in which payments have been made without deducting tax at source etc. by the TPA's. Further, the tax demand arising out of section 201(1) in situations arising above, may not be enforced if the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee-assessee (hospitals etc.). A certificate from the auditor of the deductee-assessee stating that the tax and interest due from deductee-assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under section 201(1A) till payment of taxes by the deductee-assessee or liability for penalty under section 271C, as the case may be.

3. Circular No. 3/2010, dated 2.3.2010

The CBDT has, vide this circular, given a clarification regarding deduction of tax at source on payment of interest on time deposits under section 194A by banks following Core-branch Banking Solutions (CBS) software. It has been clarified that *Explanation* to section 194A (See Note below) is not meant to apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software. It has been further clarified that since no constructive credit to the depositor's / payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only. In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's / payee's requirement or on maturity or on encashment of time deposits, whichever event takes place earlier, whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

Note – The Explanation to section 194A provides that, for the purposes of this section, where any income by way of interest other than interest on securities is credited to any account, whether called 'Interest payable account' or 'Suspense Account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly".

II NOTIFICATIONS

1. Notification No. 67/2009 dated 9.9.2009

The Central Government has, vide notification no.67/2009 dated 9.9.2009, specified the cost inflation index (CII) for the financial year 2009-10. The CII for F.Y. 2009-10 is 632.

S. No.	Financial Year	Cost Inflation Index
1.	1981-82	100
2.	1982-83	109
3.	1983-84	116
4.	1984-85	125
5.	1985-86	133
6.	1986-87	140
7.	1987-88	150
8.	1988-89	161

9.	1989-90	172
10.	1990-91	182
11.	1991-92	199
12.	1992-93	223
13.	1993-94	244
14.	1994-95	259
15.	1995-96	281
16.	1996-97	305
17.	1997-98	331
18.	1998-99	351
19.	1999-2000	389
20.	2000-01	406
21.	2001-02	426
22.	2002-03	447
23.	2003-04	463
24.	2004-05	480
25.	2005-06	497
26.	2006-07	519
27.	2007-08	551
28.	2008-09	582
29.	2009-10	632

2. Notification No. 70/2009, dated 22.9.2009

The CBDT has, in exercise of the powers conferred by section 139(1B), made an amendment in the notification of the Government of India relating to qualifications of an e-Return intermediary. The qualifications of an e-Return Intermediary, as amended, are detailed hereunder -

(1) An e-Return Intermediary shall have the following qualifications, namely:-

(a) it must be a public sector company as defined in section 2(36A) of the Act or any other company in which public are substantially interested within the meaning of section 2(18) of the Act and any subsidiary of those companies; or

(b) a company incorporated in India, including a bank, having a net worth of rupees one crore or more; or

(c) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or

(d) a Chartered Accountants or Company Secretaries or Advocates or Tax Return Preparers, if he has been allotted a permanent account number; or

(e) a Drawing or Disbursing Officer (DDO) of a Government Department.

(2) The e-intermediary shall have at least class II digital signature certificate from any of the Certifying authorities authorized to issue such certificates by the Controller of Certifying authorities appointed under section 17 of the Information Technology Act, 2002.

(3) The e-intermediary shall have in place security procedure to the satisfaction of e-Return Administrator to ensure that confidentiality of the assessees information is properly secured.

(4) The e-intermediary shall have necessary archival, retrieval and, security policy for the e-Returns which will be filed through him, as decided by e-Return Administrator from time to time.

(5) The e-intermediary or its Principal Officer must not have been convicted for any professional misconduct, fraud, embezzlement or any criminal offence.

3. Notification No. 94/2009, dated 18.12.2009

In exercise of the powers conferred by section 295 read with section 17(2), the CBDT has, consequent to removal of FBT, substituted Rule 3 of the Income-tax Rules, 1962. The new perquisite valuation rules shall be deemed to have come into force on 1st April, 2009.

For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the employee or to any member of his household by reason of his employment shall be determined in accordance with new Rule 3.

Valuation of residential accommodation [Sub-rule (1)]

The value of residential accommodation provided by the employer during the previous year shall be determined in the following manner -

Sl. No.	Circumstances	In case of unfurnished accomodation	In case of furnished accomodation
(1)	(2)	(3)	(4)
(1)	Where the accommodation is provided by the	License fee determined by the Central Government or any State Government in	The value of perquisite as determined under column (3) and increased by 10%

	Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State.	respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee.	per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment). If such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year should be added to the value of the perquisite determined under column (3).
(2)	Where the accommodation is provided by any other employer (a) where the accommodation is owned by the employer	(i) 15% of salary in cities having population exceeding 25 lakhs as per 2001 census; (ii) 10% of salary in cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census; (iii) 7.5% of salary in other areas,	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets). If such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges

		in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.	paid or payable for the same by the employee during the previous year, should be added to the value of perquisite determined under column (3).
	(b) where the accommodation is taken on lease or rent by the employer.	Actual amount of lease rental paid or payable by the employer or 15% of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee.	The value of perquisite as determined under column (3) and increased by 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets). If such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year should be added to the value of perquisite determined under column (3).
(3)	Where the accommodation is provided by any employer, whether Government or any other employer, in a hotel.	Not applicable	24% of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, which is lower, for the period during which such accommodation is provided as reduced by

			the rent, if any, actually paid or payable by the employee. However, where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another, there would be no perquisite.

Notes:

(1) If an employee is provided with accommodation, on account of his transfer from one place to another, at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower perquisite value, as calculated above, for a period not exceeding 90 days and thereafter, the value of perquisite shall be charged for both such accommodations.

(2) Any accommodation provided to an employee working at a mining site or an on-shore oil exploration site or a project execution site, or a dam site or a power generation site or an off-shore site would not be treated as a perquisite, provided it satisfies either of the following conditions -

(i) the accommodation is of temporary nature, has plinth area not exceeding 800 square feet and is located not less than eight kilometers away from the local limits of any municipality or a cantonment board; or

(ii) the accommodation is located in a remote area i.e. an area that is located at least 40 kms away from a town having a population not exceeding 20,000 based on latest published all-India census.

(3) Where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government,-

(i) the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and

(ii) the value of perquisite of such an accommodation shall be the amount calculated in accordance with Sl. No.(2)(a) of the above table, as if the accommodation is owned by the employer.

(4) "Accommodation" includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure.

(5) "Hotel" includes licensed accommodation in the nature of motel, service apartment or guest house.

Motor Car [Sub-rule (2)]

The value of perquisite by way of use of motor car to an employee by an employer shall be determined in the following manner -

VALUE OF PERQUISITE PER CALENDAR MONTH

Sl. No.	**Circumstances**	**Where cubic capacity of engine does not exceed 1.6 litres**	**Where cubic capacity of engine exceeds 1.6 litres**
(1)	**(2)**	**(3)**	**(4)**
(1) (a)	Where the motor car is owned or hired by the employer and – is used wholly and exclusively in the performance of his official duties	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.
(b)	is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer;	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged form the employee for such use.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged form the employee for such use.

(c)	is used partly in the performance of duties and partly for private or personal purposes of his own or any member of his household and- (i) the expenses on maintenance and running are met or reimbursed by the employer	Rs.1,800 (plus Rs.900, if chauffeur is also provided to run the motor car)	Rs.2,400 (plus Rs.900, if chauffeur is also provided to run the motor car)
	(ii) the expenses on running and maintenance for private or personal use are fully met by the assessee.	Rs.600 (plus Rs.900, if chauffeur is also provided by the employer to run the motor car)	Rs.900 (plus Rs.900, if chauffeur is also provided by the employer to run the motor car)
(2)	Where the employee owns a motor car but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and –		
(i)	such reimbursement is for the use of the vehicle wholly and exclusively for official purposes	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.

(ii)	such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.	The actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above (Also see note (2) below this table).	The actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above (Also see note (2) below this table).
(3)	Where the employee owns any other automotive conveyance but the actual running and maintenance charges are met or reimbursed to him by the employer and		
(i)	such reimbursement is for the use of the vehicle wholly and exclusively for official purposes	Not a perquisite, provided the documents specified in the note (2) below the table are maintained by the employer.	Not applicable.
(ii)	such reimbursement is for the use of vehicle partly for official purposes and partly for personal or private purposes of the employee	The actual amount of expenditure incurred by the employer as reduced by the amount of Rs.900. (Also see note (2) below the table)	

Notes:

(1) Where one or more motor-cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all of any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car as if the employee had been provided one motor-car for use partly in the performance of his duties and partly for his private or personal

purposes and the amount calculated in respect of the other car or cars as if he had been provided with such car or cars exclusively for his private or personal purposes.

(2) Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty or that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(ii) or 3(ii) of the above table, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount of charges met or reimbursed by the employer as reduced by such higher amount attributable to official use of the vehicle provided that the following conditions are fulfilled :-

(a) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon;

(b) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

(3) For computing the perquisite value of motor car, the normal wear and tear of a motor-car shall be taken at 10% per annum of the actual cost of the motor-car or cars.

Valuation of benefit of provision of domestic servants [Sub-rule (3) of Rule 3]

(i) The value of benefit to the employee or any member of his household resulting from the provision by the employer of the services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer.

(ii) The actual cost in such a case shall be the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services.

Valuation of gas, electricity or water supplied by employer [Sub-rule (4) of Rule 3]

(i) The value of the benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water.

(ii) Where such supply is made from resources owned by the employer, without purchasing them from any other outside agency, the value of perquisite would be the manufacturing cost per unit incurred by the employer.

(iii) Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.

Valuation of free or concessional educational facilities [Sub-rule (5) of Rule 3]

(i) The value of benefit to the employee resulting from the provision of free or concessional educational facilities for any member of his household shall be determined as the sum equal to the amount of expenditure incurred by the employer in that behalf or where the educational institution is itself maintained and owned by the employer or where free educational facilities for such member of employees' household are allowed in any other educational institution by reason of his being in employment of that employer, the value of the perquisite to the employee shall be determined with reference to the cost of such education in a similar institution in or near the locality.

(ii) Where any amount is paid or recovered from the employee on that account, the value of benefit shall be reduced by the amount so paid or recovered.

(iii) However, where the educational institution itself is maintained and owned by the employer and free educational facilities are provided to the children of the employee or where such free educational facilities are provided in any institution by reason of his being in employment of that employer, there would be no perquisite if the cost of such education or the value of such benefit per child does not exceed Rs.1,000 p.m.

Free or concessional tickets [Sub-rule (6) of Rule 3]

The value of any benefit or amenity resulting from the provision by an employer who is engaged in the carriage of passengers or goods, to any employee or to any member of his household for personal or private journey free of cost or at concessional fare, in any conveyance owned, leased or made available by any other arrangement by such employer for the purpose of transport of passengers or goods shall be taken to be the value at which such benefit or amenity is offered by such employer to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit or amenity.

However, there would be no such perquisite to the employees of an airline or the railways.

Valuation of other fringe benefits and amenities [Sub-rule (7) of Rule 3]

Section 17(2)(viii) provides that the value of any other fringe benefit or amenity as may be prescribed would be included in the definition of perquisite. Accordingly, the following other fringe benefits or amenities are prescribed and the value thereof shall be determined in the manner provided hereunder :-

(i) Interest-free or concessional loan [Sub-rule 7(i) of Rule 3]

(a) The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to the

employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate charged per annum by the State Bank of India, as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household. "Maximum outstanding monthly balance" means the aggregate outstanding balance for each loan as on the last day of each month.

(b) However, no value would be charged if such loans are made available for medical treatment in respect of prescribed diseases (like cancer, tuberculosis, etc.) or where the amount of loans are petty not exceeding in the aggregate Rs.20,000.

(c) Further, where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.

(ii) Travelling, touring and accommodation [Sub-rule 7(ii) of Rule 3]

(a) The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household, other than leave travel concession or assistance, shall be determined as the sum equal to the amount of the expenditure incurred by such employer in that behalf.

(b) Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public.

(c) Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity.

(d) However, where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

(iii) Free or concessional food and non-alcoholic beverages [Sub-rule 7(iii) of Rule 3]

(a) The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer.

The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity:

(b) However, the following would not be treated as a perquisite -

(1) free food and non-alcoholic beverages provided by such employer during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof either case does not exceed fifty rupees per meal or

(2) tea or snacks provided during working hours or

(3) free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.

(iv) Value of gift, voucher or token in lieu of such gift [Sub-rule 7(iv) of Rule 3]

(a) The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift:

(b) However, if the value of such gift, voucher or token, as the case may be, is below Rs.5,000 in the aggregate during the previous year, the value of perquisite shall be taken as 'nil'.

(v) Credit card expenses [Sub-rule 7(v) of Rule 3]

(a) The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card) provided by the employer, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax as reduced by the amount, if any paid or recovered from the employee for such benefit or amenity:

(b) However, such expenses incurred wholly and exclusively for official purposes would not be treated as a perquisite if the following conditions are fulfilled.

(1) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure and the nature of expenditure;

(2) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(vi) Club expenditure [Sub-rule 7(vi) of Rule 3]

(a) The value of benefit to the employee resulting from the payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by a member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

However, where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

(b) Further, if such expenditure is incurred wholly and exclusively for business purposes, it would not be treated as a perquisite provided the following conditions are fulfilled:-

(1) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure, the nature of expenditure and its business expediency;

(2) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(c) There would be no perquisite for use of health club, sports and similar facilities provided uniformly to all employees by the employer.

(vii) Use of moveable assets [Sub-rule 7(vii) of Rule 3]

The value of benefit to the employee resulting from the use by the employee or any member of his household of any movable asset (other than assets already specified in this rule and other than laptops and computers) belonging to the employer or hired by him shall be determined at 10% per annum of the actual cost of such asset or the amount of rent or charge paid or payable by the employer, as the case may be, as reduced by the amount, if any, paid or recovered from the employee for such use.

(viii) Transfer of moveable assets [Sub-rule 7(viii) of Rule 3]

The value of benefit to the employee arising from the transfer of any movable asset belonging to the employer, directly or indirectly, to the employee or any member of his household shall be determined to be the amount representing the actual cost of such assets to the employer as reduced by the cost of normal wear and tear and as

further reduced by the amount, if any, paid or recovered from the employee being the consideration for such transfer.

The cost of normal wear and tear has to be calculated at the rate of 10% of the actual cost for each completed year during which such asset was put to use by the employer. However, in the case of computers and electronic items, the normal wear and tear would be calculated at the rate of 50% and in the case of motor cars at the rate of 20% by the reducing balance method.

(ix) Other benefit or amenity [Sub-rule 7(ix) of Rule 3]

The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any. However, the expenses on telephones including a mobile phone actually incurred on behalf of the employee by the employer, would not be a taxable perquisite.

Valuation of specified security or sweat equity share for the purpose of section 17(2)(vi) [Sub-rule (8)]

The fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined in the following manner -

(1) In a case where, on the date of the exercising of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange.

However, where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share.

Further, where on the date of exercising of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be—

(a) the closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or

(b) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

"Closing price" of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange. However, where the stock

exchange quotes both "buy" and "sell" prices, the closing price shall be the "sell" price of the last settlement.

"Opening price" of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange. However, where the stock exchange quotes both "buy" and "sell" prices, the opening price shall be the "sell" price of the first settlement.

(2) In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

For this purpose, "specified date" means,—

(i) the date of exercising of the option; or

(ii) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

Valuation of specified security not being an equity share in a company for the purpose of section 17(2)(vi) [Sub-rule (9)]

The fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

For this purpose, "specified date" means,—

(i) the date of exercising of the option; or

(ii) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

Definitions for the purpose of perquisite rules

The following definitions are relevant for applying the perquisite valuation rules -

(i) "member of household" shall include-

(a) spouse(s),

(b) children and their spouses,

(c) parents, and

(d) servants and dependants;

(ii) "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely:-

(a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;

(b) employer's contribution to the provident fund account of the employee;

(c) allowances which are exempted from payment of tax;

(d) the value of perquisites specified in clause (2) of section 17 of the Income-tax Act;

(e) any payment or expenditure specifically excluded under proviso to sub-clause (iii) of clause (2) or proviso to clause (2) of section 17;

(f) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

4. Notification No. 07/2010, dated 3.2.2010

Section 10(15)(iv)(h) exempts interest on bonds/debentures issued by any public sector company and notified by the Central Government in the Official Gazette. Accordingly, the Central Government has notified the tax free secured, redeemable, non-convertible Railway Bonds issued by the Indian Railway Finance Corporation (IRFC), interest from which would be exempt under section 10(15)(iv)(h).

5. Notification No. 08/2010 dated 3.2.2010 & Notification No.24/2010 dated 8.4.2010

Section 2(48) defining zero coupon bonds requires that such bonds should be notified by the Central Government. Accordingly, the Central Government has specified the following bonds as zero coupon bonds for the purpose of section 2(48) –

(i) Bhavishya Nirman Bond, a ten year zero coupon bond of National Bank of Agriculture and Rural Development (NABARD), to be issued on or before 31.3.2011

(ii) ten year Deep Discount Bond (Zero Coupon Bond) of Rural Electrification Corporation Limited (REC) to be issued on or before 31.3.2011.

6. Notification No 23/2010 dated 8.4.2010

The Finance (No. 2) Act, 2009 had inserted clause (vii) in section 56(2) to bring within its scope, the value of any property received without consideration or for inadequate consideration. The said clause provides that, if a property other than immovable property is received without consideration, the aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient if it exceeds Rs.50,000. In case the property other than immovable property is received for inadequate consideration, and the difference between the aggregate fair market value and such consideration exceeds Rs.50,000, such difference would be taxed as the income of the recipient. For this purpose, "fair market value" of a property, other than immovable

property, means the value determined in accordance with the method as may be prescribed.

Accordingly, the CBDT has, vide this notification, made rules for determination of fair market value of the property other than immovable property, which would be effective from 1st October, 2009.

(a) Valuation of jewellery

(i) the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;

(ii) in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;

(iii) In case the jewellery is received by any other mode and the value of the jewellery exceeds Rs.50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.

(b) Valuation of archeological collections, drawings, paintings, sculptures or any work of art

(i) the fair market value of archeological collections, drawings, paintings, sculptures or any work of art (artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;

(ii) in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;

(iii) in case the artistic work is received by any other mode and the value of the artistic work exceeds Rs.50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.

(c) Valuation of shares and securities

(a) the fair market value of quoted shares and securities shall be determined in the following manner, namely;-

(i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

(ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,-

(1) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and

(2) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date, there is no trading in such shares and securities on any recognized stock exchange.

(b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner namely;-

The fair market value of unquoted equity shares = $\frac{(A-L)}{PE} \times (PV)$

Where,

A= Book value of the assets in Balance Sheet drawn up on the valuation date as reduced by any amount paid as advance tax under the Income-tax Act and any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset.

L = Book value of liabilities shown in the Balance Sheet drawn up on the valuation date but not including the following amounts:-

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves, by whatever name called, other than those set apart towards depreciation;

(iv) credit balance of the profit and loss account;

(v) any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(vi) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vii) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares.

PE = Total amount of paid up equity share capital as shown in Balance Sheet drawn up on the valuation date.

PV = the paid up value of such equity shares.

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

Note – "Valuation date" means the date on which the respective property is received by the assessee.

PART – II : SERVICE TAX

AMENDMENTS BY THE FINANCE ACT, 2010

Amendments in Chapter V and VA of the Finance Act, 1994

1. 8 new services brought under the service tax net - Section 65

(a) Games of chance service [Section 65(105)(zzzzn)]

1. Service provider

Any person

2. Service receiver

Any person

3. Date from which such service is taxable

1st July, 2010

4. Scope of taxable service

It includes services provided to any person by any person for:-

- promotion
- marketing
- organizing
- in any other manner assisting in organizing

games of chance including, lottery, bingo or lotto in whatever form or whatever name called,

whether or not conducted through internet or other electronic networks.

Thus, the **games conducted online** are also liable to service tax.

5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 further explains:-

Lotteries are conducted by various State Governments and are regulated by a Central legislation, i.e. the Lotteries (Regulation) Act, 1998. The said Act provides the conditions, restrictions and prohibitions pertaining to organization of lotteries conducted by the State Governments. Section 4 of the said Act enjoins upon the State Governments to print lottery tickets bearing the imprint and the logo to ensure authenticity of the lottery ticket. It also provides that 'the State Government shall sell tickets either itself or through distributors or selling agents'.

The State Governments appoint distributors to advertise, promote and sell lottery tickets. Besides the State Governments organizing lotteries, some other games of chance are also being organized. The services provided for promotion or marketing or organizing such games of chance have now been covered by introducing a separate taxable service to cover the services in connection with games of chance, organized, conducted or promoted by the client, in whatever form or by whatever name called (such as lottery, lotto) under the 'games of chance' service. Consequently, the Explanation appearing under 'business auxiliary service' has been deleted.

(b) Health care services [Section 65(105)(zzzzo)]

Corporate health check up scheme

Corporate health check up scheme is a facility provided by employer to employees wherein a routine health check up of the employees is undertaken by designated hospitals so as to ensure timely diagnosis of any disease. Hospitals charge the employer for such services. The basic philosophy behind providing these facilities is that the organizations believe that investing in employees' health would assure a return of investment, which might not be measurable on an immediate basis but offers a high rate of return in the long-term. Both as part of their corporate social responsibility and to boost their profits, a number of firms are offering preventive health care facilities to their employees. Service tax has been levied on such health check up schemes.

Health Insurance Scheme

Under such scheme, insurance company pays for the charges for hospitalization, surgery, post surgical nursing etc. of the insured, to the hospitals. Now, the service tax has been imposed on such medical charges. As such, the insurance company would be the service receiver and the tax paid by the hospital would be available to the insurance companies as credit.

1. **Service provider**

   Hospital, nursing home or multi-specialty clinic

2. **Service receiver**

   Either:-

   - employer of any business entity, or
   - insurance company providing the health insurance scheme

3. **Date from which such service is taxable**

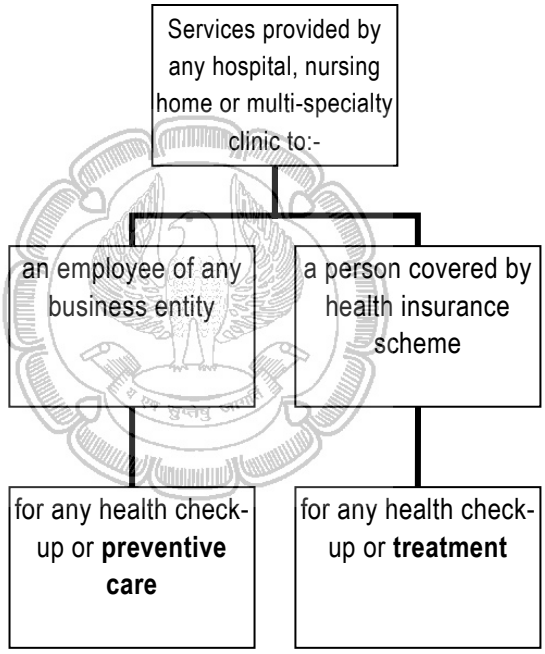
   1st July, 2010

4. Scope of taxable service

It includes services provided by any hospital, nursing home or multi-specialty clinic—

(i) to an employee of any business entity, in relation to health check-up or preventive care, where the payment for such check-up or preventive care is made by such business entity directly to such hospital, nursing home or multi-specialty clinic; or

(ii) to a person covered by health insurance scheme, for any health check-up or treatment, where the payment for such health check-up or treatment is made by the insurance company directly to such hospital, nursing home or multi-specialty clinic.



5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 provides following clarification:-

Payment to be made directly by the business entity or insurance company

However, it may be noted that the tax on the above mentioned health services would be payable only if and to the extent the payment for such medical check up or treatment etc. is made directly by the business entity or the insurance company to the hospital or medical establishment. Any additional amount paid by the individual (i.e. the employee or the insured, as the case may be) to the hospital would not be subjected to service tax. This is to ensure that an individual is not required to pay a tax for which he cannot take credit.

(c) Services provided for maintenance of medical records of employees of a business entity [Section 65(105)(zzzzp)]

1. Service provider

Any person

2. Service receiver

Any business entity

3. Date from which such service is taxable

1st July, 2010

4. Scope of taxable service

It includes services provided to any business entity by any other person, in relation to,

- storing
- keeping, or
- maintaining

of medical records of employees of a business entity.

5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies:-

Business organizations outsource the activity of maintaining medical histories of their employees to the designated hospitals or independent record keepers who in-turn charge for it. This activity has now been brought under service tax.

(d) Service of promoting a 'brand' of goods, events, business entity etc. [Section 65(105)(zzzzq)]

The crescendo of celebrities endorsing brands of goods, services, events, business houses bearing a particular brand name or house name has been steadily increasing over past few years. The use of celebrity for endorsements create a very favorable impact on the consumer and it creates a connect which forces a consumer to purchase a brand. In return, the celebrities get substantial amount as remuneration for promoting these brands including launching thereof.

1. Service provider

Any person

2. Service receiver

Any person

3. Date from which such service is taxable

1st July, 2010

4. Scope of taxable service

It includes services provided to any person, by any other person, through a business entity or otherwise, under a contract for promotion or marketing of a brand of goods, service, event or endorsement of name, including a trade name, logo or house mark of a business entity by appearing in advertisement and promotional event or carrying out any promotional activity for such goods, service or event.

Meaning of brand

For the purposes of this sub-clause, "brand" includes:-

- Symbol
- Monogram
- Label
- Signature or
- Invented words

which indicate connection with the said goods, service, event or business entity.

5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies:-

Brand promotion includes:-

- advertising the goods or service in different media.
- attending promotional, product launching events.
- making appearances in public activities related to the brand or the brand holder or use such goods or services in public.

The brand ambassador has to enter into a contract of a reasonably long period and in turn they are paid huge amounts.

Difference between promotion services classifiable under 'business auxiliary services' and the newly introduced service

It may be noted that promotion or marketing of sale of goods produced, provided or belonging to a client and promotion or marketing of services provided by the client are already covered under 'business auxiliary services'. Such activities would continue to remain classified under 'business auxiliary services'. The difference between the services classifiable under business auxiliary services and the newly introduced service is as follows:-

S.No.	Promotion services classifiable under 'business auxiliary services'	Newly introduced service
1.	It has a narrow coverage.	It has a wider coverage.
2.	Promotion or marketing of goods needs to be directly linked with the particular product or service of the client.	Promotion of a brand needs not necessarily be linked to promotion of a particular product or service. Many companies/corporate houses (for example Sahara, ITC or Tatas) are associated with a range of activities including production/marketing/sale of goods, provision of services, holding of events, undertaking social activities etc.
3.	There is no mandate that there should be a contractual obligation for promotion of product or service of the client.	Service must be provided under a contract, ie, there should be a contractual obligation for promotion of brand.

If the brand name / house mark etc. is promoted by a celebrity without reference to any specific product or services etc., it is difficult to classify it under 'business auxiliary services'. Such activities, like mere establishing goodwill or adding value to a brand would fall under this newly introduced service.

(e) Services of permitting commercial use or exploitation of any event organized by a person or an organization [Section 65(105)(zzzzr)]

1. Service provider

Any person providing services through a business entity or otherwise.

2. Service receiver

Any person

3. Date from which such service is taxable

1st July, 2010

4. Scope of taxable service

It includes services provided to any person, by any other person, by granting the right or by permitting commercial use or exploitation of any event including an event relating to art, entertainment, business, sports or marriage organized

by such other person.

5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies:-

Like intellectual property rights there are certain personal rights such as, right to privacy, easement right, right to secrecy etc. With expansion in the field of information technology and broadcasting sector, many individuals or organizations offer to share/part with these rights for a consideration. A corporate sponsored cricket match or company sponsored music concert; film award events; celebrities' marriages; beauty contests are some of such private functions, which a large number of viewers like to see on TV or media. In such cases, companies, broadcasting agencies and video producers are given right to capture these events or programmes for their commercial exploitation in future. Often such commercial exploitation results in provision of another taxable service such as broadcasting service or programme production service. The newly introduced service taxes the amount received by the person or organization, who permits the recording and broadcasting of the event from the broadcaster, or any other person, who seeks to commercially exploit the event. In many cases, the credit of the tax paid would be available to the receiver of the service.

(f) Services provided by Electricity Exchanges [Section 65(105)(zzzzs)]

Electricity exchanges

An electricity exchange is a common platform on which electricity is traded. This is a new concept of electricity trading introduced in India under the approved guidelines of CERC.

In a market driven economy, market forces are contradictory. Buyer wants low price, seller wants otherwise. These conflicting forces determine the correct price of a commodity at a given time. It is thus important that market forces must remain faceless and anonymous. Facelessness and anonymity creates a level field for all players. In today's scenario electricity is no more a service, it is a commodity. On an electricity exchange, buyers and sellers of electricity from the length and breadth of the country can converge without revealing their identity.

Indian Energy Exchange (IEX) was the first power exchange of India.

1. Service provider

An electricity exchange duly approved by the Central Electricity Regulatory Commission (CERC)

2. Service receiver

Any person

3. Date from which such service is taxable

1st July, 2010

4. Scope of taxable service

It includes services provided to any person, by an electricity exchange, by whatever name called, approved by the Central Electricity Regulatory Commission constituted under section 76 of the Electricity Act, 2003, in relation to trading, processing, clearing or settlement of spot contracts, term ahead contracts, seasonal contracts, derivatives or any other electricity related contract.

5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies:-

Under 'forward contract service', tax is payable by exchanges who offer assistance in sale of goods or forward contracts in commodities. However, only forward contracts covered by the Forward Contract (Regulation) Act, 1952 are covered in the scope of taxation. In the recent past, exchanges have been set up for transactions in electricity. The Central Electricity Regulatory Commission authorizes such exchanges. Since electricity exchanges are not covered by Forward Market Regulations, such transactions are not covered under the commodity exchange taxation. The new service seeks to tax the charges recovered for services in relation to assisting, regulating, controlling the business of trading, processing and settlement pertaining to sale or purchase of electricity by the associations authorized by Central Electricity Regulatory Commission.

(g) Services related to copyrights on cinematographic films and sound recording [Section 65(105)(zzzzt)]

1. Service provider

Any person

2. Service receiver

Any person

3. Date from which such service is taxable

1st July, 2010

4. Scope of taxable service

It includes services provided to any person, by any other person, for—

(a) transferring temporarily; or

(b) permitting the use or enjoyment of,

any copyright defined in the Copyright Act, 1957,

except the rights covered under sub-clause (a) of clause (1) of section 13 of the said Act.

The provisions relating to copyrights are governed by the Indian Copyright Act, 1957. Section 13(1)(a) of the Indian Copyrights Act, 1957 provides that the copyright subsists in the following classes of works:-

(a) Original literary, dramatic, musical and artistic works;

(b) Recording of cinematographic films;

(c) Sound recordings.

Category (a) above has been kept out of the tax net while Category (b) and (c) have been made taxable under this service.

Following activities have been brought under the service tax net:-

- transferring the right of recording of the cinematographic film and recording of sound track or
- permitting the use of cinematographic film and sound track by another person (say distributor) for consideration.

Cinematograph film and sound recording as per the Indian Copyrights Act, 1957:

1. **Cinematograph film** means any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording. Thus, copyright, in relation to cinematograph film, means the exclusive right to do or authorise the doing of any of the following acts:-

   (i) to make a copy of the film, including a photograph of any image forming part thereof;

   (ii) to sell or give on hire, or offer for sale or hire, any copy of the film, regardless of whether such copy has been sold or given on hire on earlier occasions;

   (iii) to communicate the film to the public.

2. **Sound recording** means a recording of sounds from which such sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced.

   Thus, copyright, in relation to sound recording, means the exclusive right to do or authorise the doing of any of the following acts:-

   (i) to make any other sound recording embodying it;

   (ii) to sell or give on hire, or offer for sale or hire, any copy of the sound recording regardless of whether such copy has been sold or given on hire on earlier occasions;

(iii) to communicate the sound recording to the public.

5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies:-

Song, its music, lyrics and composition enjoy the copyright protection to its owner who can commercially exploit it in the manner stated above. Normally, the copyright of music vests in the composer and the copyright of music recorded vests in the producer of the sound recording. It is possible that a lyricist or a singer may hold copyright for the words of a song or the song itself. Merely allowing that song to be recorded is a copyright, which would fall under category (a) of section 13 of the Copyright Act and thus would not be subject to service tax.

However, after the performer has transferred his rights to a sound recording company, the sound recording company acquires the copyright mentioned in category (c) of section 13 supra. It is the transfer or allowing use of this right, which would be subjected to tax under the new service.

As such, depending upon the nature and conditions of the contract, companies distributing music, owners of copyright of cinematographic films etc. would be liable to pay tax. It may be noted that this taxable service does not cover individual artists, composers, performers etc. as their copyrights fall under clause (a) of section 13 of the Copyright Act.

(h) Special services provided by builder etc. to the prospective buyers [Section 65(105)(zzzzu)]

1. Service provider

- A builder of a residential complex/commercial complex, or
- any other person authorised by such builder,

2. Service receiver

A buyer

3. Date from which such service is taxable

1st July, 2010

4. Scope of taxable service

It **includes** services provided to a buyer by:-

- a builder of a residential complex/commercial complex, or
- any other person authorised by such builder,

for providing preferential location or development of such complex

This service **does not include** the following service/charges :-

(a) services provided to any person, by any person in relation to:-

- management, maintenance or repair [Section 65(105)(zzg)]
- commercial or industrial construction [Section 65(105)(zzq)]
- construction of complex [Section 65(105)(zzh)]

(b) charges for providing parking space

Meaning of preferential location

For the purposes of this sub-clause, ''**preferential location**'' means any location having extra advantage which attracts extra payment over and above the basic sale price.

5. Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 clarifies:-

Charges included under the said service:-

(a) Prime/preferential location charges

Charges for allotting a flat/commercial space according to the choice of the buyer (i.e. Direction- sea facing, park facing, corner flat; Floor- first floor, top floor; Vastu- having the bed room in a particular direction; Number- lucky numbers);

(b) Internal or external development charges

Charges which are collected for developing/maintaining parks, laying of sewerage and water pipelines, providing access roads and common lighting etc.

(c) Fire-fighting installation charges

(d) Power back up charges etc.

Following charges/services have been **excluded** from the purview of said service:-

(a) Development charges, to the extent they are paid to State Government or local bodies.

(b) Service provided by RWA/CGHS (Resident Welfare Associations/Cooperative Group Housing Societies) consisting of residents/owners as their members would not be taxable under this service.

2. Amendment in the scope of existing taxable services - Section 65

(i) Business auxiliary service [Section 65(19)]

Prior to amendment

Any service provided in relation to promotion or marketing of games of chance, organized, conducted or promoted by the client, in whatever form or by whatever

name called, whether or not conducted online, including lottery, lotto, bingo was taxable under the category of 'business auxiliary services'.

Amendment made by Finance Act, 2010

Aforementioned services have been made taxable under a separate category under section 65(105)(zzzzn).

Therefore, the definition of business auxiliary service under section 65(19) of the Finance Act, 1994 has been suitably amended to omit the explanation to clause (ii) to section 65(19).

(Effective from 1st July, 2010)

(ii) Construction services

A. Commercial or industrial construction [Section 65(25b)/65(105)(zzq)]

The word 'service' has been omitted from the definition of 'commercial or industrial construction service' under section 65(25b).

Similarly, the word 'service' has also been omitted from the definition of taxable service under section 65(105)(zzq). Further, following explanation has been added to the said section:-

The construction of a **new building** which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or the person authorised by the builder before grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) is deemed to be service provided by the builder to the buyer.

B. Construction of residential complex service [Section 65(105)(zzzh)]

Following explanation has been added to section 65(105)(zzzh):-

The construction of a **complex** which is intended for sale, wholly or partly, by a builder or any person authorised by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorised by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) is deemed to be service provided by the builder to the buyer.

Implication of the Amendment:

Unless the entire payment for the property is paid by the buyer after the completion of construction, the activity of construction would be deemed to be a taxable service provided by the builder/promoter/developer.

Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 illustrates the types of agreements that are covered under the 'commercial or industrial construction service/construction of residential complex service':-

- Where the buyer and the builder enter into an agreement called 'agreement to sell' to ultimately sell the property under settled terms without transferring the ownership of the property to the buyer. At the conclusion of the contract and completion of the payments relating thereto, property is transferred from promoter to buyer by executing a 'Sale Deed' on payment of appropriate stamp duty.
- Where, at the initial stage, the promoter and all the prospective buyers enter into agreement by executing the 'Sale of Undivided Portion of The Land' which transfers the property right to the buyers without demarcating a part of land, which can be associated with a particular buyer. In many cases, an instrument called 'Construction Agreement' is simultaneously executed under which the obligations of the promoter to get property are constructed and that of the buyer to pay the required consideration are incorporated.

(Effective from 1st July, 2010)

(iii) Port/Airport/Other port services

Departmental Clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 provides the following clarification:-

The definitions of the taxable services, namely the 'airport services', 'port services' and 'other port services' have been amended to provide the following-

(a) All services provided entirely within the airport/port premises would fall under these services.

The purpose behind introducing aforesaid three services was to consolidate the number of activities being undertaken within the premises of ports and airports under one head. However, at some places, individual services are classified according to their individual description on the grounds that the provisions of section 65A of the Finance Act, 1994 prescribes adoption of a specific description over a general one. Thus, it defeated the intent of the statute. Consequently, this amendment has been introduced.

(b) An authorization from the airport/port authority would not be a precondition for taxing these services.

Sub-clauses (zn), (zzl) and (zzm) of section 65(105) use the phrase '**any person authorised by port/airport**'. In many ports/airports, there is no procedure of specifically authorizing a service provider to undertake a

particular activity. The authorities issue entry-passes or identity cards to a service provider instead of, issuing authority/permission letters to him authorising him to undertake a particular task. Hence, earlier, many taxpayers used to claim waiver of tax under these services on the ground that the port/airport authority had not specifically authorised them to provide a particular service.

A. Port services by major ports [Section 65(82)/section 65(105)(zn)]

Prior to amendment

Earlier, **section 65(82)** defined 'port service' as follows:-

"Port service" means any service rendered by a port or other port or any person authorized by such port or other port, in any manner, in relation to a vessel or goods.

Further, **section 65(105)(zn)** defined the taxable service - 'port service', in this regard, as follows:-

Any service provided or to be provided to any person, by a port or **any person authorised by the port, in relation to port services,** in any manner.

Amendment made by the Finance Act, 2010

Definition of 'port service' has been amended as follows:-

"Port service" means any service rendered within a port or other port, in any manner.

Consequently, **section 65(105)(zn)** has been amended. New section reads as follows:-

Any service provided or to be provided to any person, by any other person, in relation to port services in a port, in any manner.

B. Other port services [Section 65(105)(zzl)]

Prior to amendment

Earlier, **section 65(105)(zzl)** defined the taxable service - 'other port service' as follows:-

Any service provided or to be provided to any person, by other port or **any person authorised by that port in relation to port services**, in any manner

Amendment made by the Finance Act, 2010

Section 65(105)(zzl) has been amended. New section reads as follows:-

Any service provided to any person, by any other person, in relation to port services in other port, in any manner.

C. Airport services [Section 65(105)(zzm)]

Prior to amendment

Section 65(105)(zzm) defined the taxable service 'airport service' as follows:-

Any service provided or to be provided to any person, by airports authority or **any person authorised by it**, in an airport or a civil enclave.

Amendment made by the Finance Act, 2010

Section 65(105)(zzm) has been amended. New section reads as follows:-

Any service provided to any person, by airports authority or by any other person, in any airport or a civil enclave.

(Effective from 1st July, 2010)

(iv) Commercial training or coaching services [Section 65(105)(zzc)]

Following explanation has been added in the definition of the taxable service 'commercial training or coaching service':-

The expression "commercial training or coaching centre", occurring in the following definitions, includes any centre or institute, by whatever name called, where training or coaching is imparted for consideration, whether or not such centre or institute is registered as a trust or a society or similar other organisation under any law for the time being in force and carrying on its activity with or without profit motive and the expression "commercial training or coaching" shall be construed accordingly:-

- Definition of the taxable service - 'commercial training or coaching service [Section 65(105)(zzc)].
- Definition of 'commercial training or coaching' [Section 65(26)].
- Definition of 'commercial training or coaching centre' [Section 65(27)].
- Definition of 'renting of immovable property' [Section 65(105)(90a)].

Reason for aforesaid amendment

The reason for adding the aforesaid explanation is to clarify the legislative intent that the term 'commercial' appearing in the relevant definitions only means that such training or coaching should be provided for a consideration, whether or not such training or coaching is conducted with a profit motive.

The aforesaid amendment has been made effective retrospectively from 1st July, 2003.

(v) Sponsorship services [Section 65(105)(zzzn)]

Prior to amendment

Earlier, the services provided in relation to sponsorship of sports events were specifically excluded from the 'sponsorship services'.

Amendment made by the Finance Act, 2010

The **exclusion** relating to sponsorship pertaining to sports events **has been removed**. Earlier, sponsorship of sports events was kept out of the purview of the taxation with a view to encourage sports activity and to provide an avenue for funding sports events. However, there grew a disparity between the advertisements through sponsorship of such events and the advertisements displayed otherwise. Hence, service provided in relation to sponsorship of sports events has now been brought under the service tax net.

(Effective from 1st July, 2010)

(vi) Transport of passengers by air services [Section 65(105)(zzzo)/section 65(77c)]

Prior to amendment

1. Scope of service was limited

Earlier, only the travel in:-

- **business class** for
- **international journey**

was liable to service tax under the category of 'transport of passengers by air service' **[Section 65(105)(zzzo)]**.

2. Definition of passenger under section 65(77c)

"passenger" means any person boarding, at any customs airport, an aircraft for performing an international journey, but does not include —

(i) a person who has arrived at such customs airport from a place outside India and is in transit through India, provided that he does not pass through immigration and does not leave customs area and continues his journey to a place outside India; and

(ii) a person employed or engaged by the aircraft operator in any capacity on board the aircraft

Amendment made by the Finance Act, 2010

1. Expansion in the scope of the service

The scope of the aforesaid service has been expanded to cover the following:-

- Domestic as well as international journeys.
- Journey in a business class as well as economy class.

Now, **section 65(105)(zzzo)** reads as follows:-

Any service provided to any passenger, by an aircraft operator, in relation to scheduled or non-scheduled air transport of such passenger embarking in

India for domestic journey or international journey.

2. Definition of passenger under section 65(77c) amended as follows:-

"passenger" means any person boarding an aircraft in India for performing domestic journey or international journey

(Effective from 1st July, 2010)

(vii) Auctioneer services [Section 65(105)(zzzr)]

Prior to amendment

The definition of taxable service 'auctioneer services' excludes the 'auction by Government'. However, earlier, there was confusion as to whether following services would be considered as auction by Government:-

(a) An auction conducted by the private organizations for selling the property belonging to or vested in the Central or the State Governments (such as goods confiscated by Customs Department).

(b) An auction conducted by the Government bodies, such as 'Tobacco Board' for selling the properties belonging to private individuals or organizations.

Clarification made by the Finance Act, 2010

In order to avoid the confusion, it has been clarified by inserting an explanation to section 65(105)(zzzr) that the phrase 'auction by Government' appearing in the definition of taxable service, namely 'auctioneer's service' means an auction where Government property is being auctioned and not when the Government acts as an auctioneer for the private goods. Hence, case (a) mentioned above will be considered as 'auction by Government'.

(Effective from 1st July, 2010)

(viii) Renting of immovable property services [Section 65(105)(zzzz)]

(a) Activity of renting of immovable property *per se* constitutes a taxable service

The definition of taxable service 'renting of immovable service' under section 65(105)(zzzz) has been amended to clarify that the **activity of renting of immovable property per se would also constitute a taxable service** under the relevant clause.

Departmental clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 provides the following clarification:-

Renting of immovable service was introduced in 2007 with a view to tax the commercial use of immovable property hired on rent. However, the Hon'ble High Court of Delhi, in its order dated 18-4-2009 in the case of *Home Solutions*

Retail India Ltd. & Others v. UOI, struck down this levy by observing that the renting of immovable property for use in the course of furtherance of business or commerce did not involve any value addition and therefore, could not be regarded as service. Apart from the revenue loss caused to the exchequer, the judgment placed the landlords in a very precarious situation. In view of this judgment, the commercial tenants had stopped reimbursing the tax element to their landlords. However, the landlords were receiving regular demand notices being issued to protect Government's revenue for the interim period.

Therefore, in order to clarify the legislative intent and also bring in certainty in tax liability, the relevant definition of taxable service has been amended so as to provide that the activity of renting of immovable property per se would also constitute a taxable service under the relevant clause.

The aforesaid amendment has been made effective retrospectively from 1st June, 2007.

(b) Vacant land rented for construction constitutes immovable property

Further, it has been provided that **tax would be charged on renting of a vacant land** if there is an agreement or contract between the lessor and lessee that a construction on such land is to be undertaken for furtherance of business or commerce during the tenure of the lease.

Departmental clarification:-

D.O.F. No. 334/1/2010-TRU dated 26.02.2010 provides the following clarification:-

In many states, reportedly the local industrial corporations or PSUs or even private organizations rent vacant land on long term leases with an explicit understanding that lessee would construct factory or commercial building on that land. In such cases, the ownership of the land is not transferred to the lessee. Thus, it is a service provided by the lessor to the lessee. The situation is similar to renting out a constructed structure for commercial purposes.

Only difference is that in former case, at the time of executing the lease agreement the land is in a vacant state while in later case, the lessee constructs commercial structure thereon after executing the lease deed. Such lease agreements used to escape service tax because of the exclusion mentioned above.

Clause (v) to Explanation 1 inserted by the Finance Act, 2010 has brought the former cases within the service tax purview.

The aforesaid amendment is effective from 1st July, 2010.

(c) Amended section 65(105)(zzzz):-

Thus, now the definition of taxable service - 'renting of immovable service' under section 65(105)(zzzz) reads as follows:-

Service provided or to be provided to any person, by any person **by renting of immovable property or any other service in relation to such renting**, for use in the course of or, furtherance of business or commerce.

Explanation 1. — For the purposes of this sub-clause, "**immovable property**" includes —

(i) building and part of a building, and the land appurtenant thereto;

(ii) land incidental to the use of such building or part of a building;

(iii) the common or shared areas and facilities relating thereto;

(iv) in case of a building located in a complex or an industrial estate, all common areas and facilities relating thereto, within such complex or estate; and

(v) vacant land, given on lease or license for construction of building or temporary structure at a later stage to be used for furtherance of business or commerce.

but does not include —

(a) vacant land solely used for agriculture, aquaculture, farming, forestry, animal husbandry, mining purposes;

(b) vacant land, whether or not having facilities clearly incidental to the use of such vacant land;

(c) land used for educational, sports, circus, entertainment and parking purposes; and

(d) building used solely for residential purposes and buildings used for the purposes of accommodation, including hotels, hostels, boarding houses, holiday accommodation, tents, camping facilities.

(ix) Information technology software services [Section 65(105)(zzzze)]

Prior to amendment

Earlier, 'information technology software service' was subjected to tax only in cases where such IT software was used for furtherance of business or commerce.

Amendment made by the Finance Act, 2010

The scope of the taxable service has now been expanded to tax such service even if the service provided is used for purposes other than business or commerce.

(Effective from 1st July, 2010)

(x) Investment management services provided under ULIP [Section 65(105)(zzzzf)]

Prior to amendment

Earlier, the explanation to the definition of the aforesaid taxable service provided

that the gross amount charged by the insurer from the policy holder for the said services provided or to be provided was the difference between the total premium paid and the sum of premium for risk cover plus amount of segregated fund. It also included any amount subsequently charged by the insurer in relation to management of ULIP.

Amendment made by the Finance Act, 2010

Explanation to the definition of the taxable service has been amended. Now, the gross amount charged by the insurer from the policyholder for the said service provided or to be provided would be as follows:-

(a) the actual amount charged by the insurer for management of funds under ULIP

or

(b) the maximum amount of fund management charges for ULIP fixed by Insurance Regulatory Development Authority

whichever is **higher**.

Amended section 65(105)(zzzzf):-

Now, amended section 65(105)(zzzzf) of the Finance Act, 1994 reads as under:-

Taxable service means any service provided or to be provided to a policy holder, by an insurer carrying on life insurance business, in relation to management of investment, under unit linked insurance business, commonly known as Unit Linked Insurance Plan (ULIP) scheme.

Explanation — For the purposes of this sub-clause —

(i) management of segregated fund of unit linked insurance business by the insurer shall be deemed to be the service provided by the insurer to the policy holder in relation to management of investment under unit linked insurance business.

(ii) the gross amount charged by the insurer from the policy holder for the said service provided or to be provided shall be equal to the maximum amount fixed by the Insurance Regulatory and Development Authority established under section 3 of the Insurance Regulatory and Development Authority Act, 1999, as fund management charges for unit linked insurance plan or the actual amount charged for the said purpose by the insurer from the policy holder, whichever is higher.

Reason for amendment

The insurance companies recover various types of charges from the policy holders like:-

- Premium allocation charges

- Policy administration charges
- Policy surrender charges
- Partial withdrawal charges
- Miscellaneous charges
- Switching charges
- Fund management charges

Some of these charges are not for fund management. However, while determining the value of taxable service for investment management services provided under ULIP, only the charges relating to asset management should be taken into account. Consequently, explanation to the definition of the taxable service has suitably been amended.

(Effective from 1st July, 2010)

3. Definition of business entity [Section 65(19b)]

Section 65(19b), inserted by the Finance Act, 2010, introduces the definition of 'business entity' as follows:-

Business entity

includes:-

- association of persons
- body of individuals
- company or
- firm

but does not include

- an individual.

It may be noted that the 'individual' includes sole proprietorship.

(Effective from 08.05.2010)

SIGNIFICANT AMENDMENTS MADE THROUGH NOTIFICATIONS/CIRCULARS ISSUED BETWEEN 01.05.2009 AND 30.04.2010

A. EXEMPTIONS:

1. Exemption to management, maintenance or repair of roads service

The taxable service provided to any person by any other person in relation to management, maintenance or repair of roads has been exempted from the whole of the service tax leviable thereon.

[*Notification No. 24/2009 ST dated 27.07.2009*]

2. Exemption to certain specified goods transported through national waterway, inland water and coastal shipping

The taxable service provided to any person in relation to the transport of following goods through national waterway, inland water and coastal shipping has been exempted from whole of the service tax leviable thereon:

(i) Foodstuffs including edible oil seeds and edible oils; food grains (cereals and pulses) and flours; fruits, vegetables and flowers; agricultural, fishery, marine produce; meat and poultry; water; tea and coffee; salt, sugar, sugarcane; grocery; milk and milk products; livestock and cattle fodder, dhoties, sarees and voils, long cloth, sheeting

(ii) Petroleum and petroleum products

(iii) Fertilizer whether inorganic, organic or mixed

(iv) Hank yarn made wholly from cotton

(v) Raw jute and jute textile

(vi) Seeds of food crops and seeds of fruits and vegetables; seeds of cattle fodder and jute seeds

(vii) Medicine/pharmaceutical products

(viii) Relief materials meant for victims of natural or manmade disasters, calamities, accidents and mishap

(ix) Defence/ military equipments

(x) Luggage of passengers, whether carried as personal luggage in the ship or booked separately as consignment/ postal mail / mail bags/household effects

(xi) Newspaper/magazines registered with Registrar of Newspapers

The above amendment became effective from 1st September, 2009.

[*Notification No. 30/2009 ST dated 31.08.2009*]

3. Exemption to the business auxiliary service provided by the sub-broker to a stock-broker

The business auxiliary service provided by a sub-broker, to a stock-broker in relation to sale or purchase of securities listed on a registered stock exchange has been exempted from the whole of the service tax leviable thereon.

[*Notification No. 31/2009 ST dated 01.09.2009*]

Note: Finance (No. 2) Act, 2009 amended the definition of stock-broker under section 65(101) to exclude sub-broker from the ambit of stock-broker service. Consequently, the services provided by a sub-broker under 'stock broker services' are outside the purview of service tax. The above circular has now exempted the services provided by the stock broker under business auxiliary service also.

4. Exemption to taxable service provided in relation to manufacture of specified goods charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955

The business auxiliary service provided by any person, to a client in relation to the manufacture of pharmaceutical products, medicines, perfumery, cosmetics or toilet preparations containing alcohol, which are charged to excise duty under Medicinal and Toilet Preparations (Excise Duties) Act, 1955 has been exempted from the whole of the service tax leviable thereon.

[*Notification No. 32/2009 ST dated 01.09.2009*]

5. Exemption under 'club or association service' extended to five more associations/export councils till 31.03.2010

Notification No.16/2009 ST dated 07.07.2009 has exempted services provided by twenty two export promotion councils, which were earlier taxable under the category of club or association services.

Notification No. 35/2009 ST dated 03.09.2009 has amended the said notification so as to extend the exemption to the following organizations:

1. Electronics and Computer Software Export Promotion Council, PHD House, 3 rd Floor, Ramakrishna Dalmia Wing, New Delhi-110 016.
2. Indian Oilseeds & Produce Export Association Export Promotion Council, 62, Mittal Chambers, Nariman Point, Mumbai-400 021.
3. Jute Manufacturers Development Council, 3A, Park Plaza,71, Park Street, Kolkata-700016.
4. Services Export Promotion Council, #1206, Chiranjiv Tower, 43, Nehru Place, New Delhi- 110 019.

5. Wool Industry Export Promotion Council, Churchgate Chamber, 7th Floor, 5, New Marine Lines, Mumbai - 400 020.

Thus, now total of twenty seven export promotion councils have been granted exemption under Notification No. 16/2009. However, this exemption is till 31.03.2010 only.

6. Exemption to value of inputs used for providing business auxiliary service during manufacture/processing of alcoholic beverages

The value of inputs, used in providing the business auxiliary service provided by a person (service provider) to any other person (service receiver) during the course of manufacture or processing of alcoholic beverages by the service provider, for or on behalf of the service receiver, is exempt from the service tax subject to the following conditions, namely:-

(a) that no CENVAT credit has been taken under the provisions of the CENVAT Credit Rules, 2004;

(b) that there is documentary proof specifically indicating the value of such inputs; and

(c) where the service provider also manufactures or processes alcoholic beverages, on his or her own account or in a manner or under an arrangement other than as mentioned aforesaid, he or she shall maintain separate accounts of receipt, production, inventory, despatches of goods as well as financial transactions relating thereto.

Meaning of 'input' and 'capital goods'

Here, 'input' and 'capital goods' shall have the meaning as is assigned to them under rule 2 of the CENVAT Credit Rules, 2004.

[*Notification No. 39/2009 ST dated 23.09.2009*]

7. Exemption to specified taxable services used for export of goods — *Notification No. 17/2009-S.T.* amended

Notification No. 40/2009 ST dated 30.09.2009 has amended *Notification No.17/2009 ST dated 07.07.2009* which exempts certain specified taxable services received by an exporter and used for export of goods. The following service (inserted at point no. 17 in the original notification) received by an exporter and used for export of goods has also been exempted vide this notification:

17.	(zzzzl)	Service provided for transport of export goods through national waterway, inland water	i. The exporter shall- 1. produce the Bill of Lading or a Consignment Note or a similar document by whatever name

		and coastal shipping.	called, issued in his name; 2. produce evidence to the effect that the said transport is provided for export of relevant goods.

8. Exemption to service in relation to execution of a works contract in respect of canals, other than those primarily used for the purposes of commerce or industry

The works contract service provided in respect of canals, other than those primarily used for the purposes of commerce or industry, has been exempted from the whole of service tax leviable thereon.

[*Notification No. 41/2009 ST dated 23.10.2009*]

9. Exemption to the manufacture of parts of cycles or sewing machines in relation to specified processes subject to specified conditions.

Business auxiliary service provided by a person to any other person in relation to one or more of the **specified process*** during the course of manufacture of parts of cycles or sewing machines, if all the following conditions are satisfied:-

(a) The aggregate value of aforesaid service does not exceed Rs. 150 lakh during the preceding financial year.

(b) The exemption shall be restricted to the first clearances, wherein the aggregate value of aforesaid taxable service does not exceed Rs. 150 lakh, made on or after the 1st April in any financial year.

(c) Where the service provider also undertakes one or more of the specified process in relation to manufacture of parts or whole of goods leviable to central excise duty, he shall maintain separate accounts of receipt, production and clearance of exempted and dutiable goods and services.

***Meaning of specified process:-**

Here, **specified process** means:-

- electroplating
- zinc plating
- anodizing
- heat treatment
- powder coating
- painting including spray painting or auto black.

[*Notification No. 42/2009-ST dated 12.11.2009*]

10. Exemption to Central and State Seed Testing Laboratories, and Central and State Seed Certification Agencies

Exemption from service tax has been granted to any service provided to any person in relation to the 'technical testing and analysis service' and 'technical inspection and certification service' provided by Central or State Seed Testing Laboratories, and Central or State Seed Certification Agencies notified under the Seeds Act, 1966.

[*Notification No. 10/2010 ST dated 27.02.2010*]

11. Exemption to transmission of electricity

Exemption from service tax has been provided to the taxable service provided to any person, by any other person for transmission of electricity.

[*Notification No. 11/2010 ST dated 27.02.2010*]

12. Certain services provided in relation to erection, commissioning or installation exempted

Exemption from service tax has been provided to services relating to 'erection, commissioning or installation' of:-

- Mechanized Food Grain Handling Systems etc.;
- Equipment for setting up or substantial expansion of cold storage; and
- Machinery/equipment for initial setting up or substantial expansion of units for processing of agricultural, apiary, horticultural, dairy, poultry, aquatic, marine or meat products.

[*Notification No. 12/2010 ST dated 27.02.2010*]

13. Exemption provided to Indian News Agencies subject to specified conditions

Exemption from service tax has been provided to Indian news agencies under 'online information and database retrieval service' and 'business auxiliary service' only if such news agency:-

(i) is notified as a **news agency set up in India** solely for collection and distribution of news,

(ii) is **specified under section 10(22B)** of the Income Tax Act, 1961, and

(iii) applies its income or accumulates it for collection and distribution of news and **does not distribute its income in any manner to its members**.

[*Notification No. 13/2010 ST dated 27.02.2010*]

14. Exemption to right to use the packaged/canned software subject to certain specified conditions

The taxable service of providing the right to use the packaged/canned software, pre-packed in retail packages intended for single use has been exempted from the service tax under 'information technology software services' subject to the following conditions:-

1. the document providing the right to use such software is packed along with the software.
2. **(a) In case of import:** The importer has paid the custom duty on the entire amount received from the buyer.

   (b) In case of domestic production: The manufacturer/duplicator/the person holding the copyright to software has paid the excise duty on the entire amount received from the buyer.
3. the benefit under the following notifications has not been availed:-
   - *Notification No. 17/2010 CE dated 27.02.2010*
   - *Notification No. 31/2010 Cus dated 27.02.2010*

[*Notification No. 02/2010 ST dated 27.02.2010 and Notification No. 17/2010 ST dated 27.02.2010*]

B. WITHDRAWAL OF/AMENDMENT TO EXISTING EXEMPTIONS:

1. Definition of vocational training institute substituted

Prior to amendment

Under 'commercial training and coaching services', the taxable services provided in relation to commercial training or coaching, by a vocational training institute is exempt. Earlier, the vocational training institute was defined as follows:-

"vocational training institute" means a commercial training or coaching centre which provides vocational training or coaching that impart skills to enable the trainee to seek employment or undertake self-employment, directly after such training or coaching.

Amendment made by the *Notification No. 3/2010-ST dated 27.02.2010*

The aforesaid definition of vocational training institute has been substituted by the following definition:-

"Vocational training institute" means an Industrial Training Institute (ITI) / Industrial Training Centre (ITC) affiliated to the National Council for Vocational Training, offering courses in designated trades as notified under the Apprentices Act, 1961.

Note:

1. *The ITI and ITC have equivalent recognition and the certificates/diploma's granted by them have the same recognition. The only difference between ITC and ITI is that ITI are the institutes owned by the Government while the ITC are the institutes owned by the private parties.*
2. *List figuring under Schedule I of the Apprentices Act, 1961 covers engineering as well as non-engineering trades. Few of the designated trades covered are:-*
   - *cutting and tailoring trades*
   - *beautician trades*
   - *agricultural trades*
   - *electrical trades*
   - *glass and ceramic trades*
   - *heat engine trades*
   - *hi-tech trades*

Implication of the amendment

The exemption from service tax in relation to vocational training courses would be available only if the following conditions are satisfied:-

- Vocational training institute is an ITI/ITC which is affiliated to the National Council for Vocational Training.
- It offers course in any of the designated trades.

Exemption extended to "Modular Employable Skill courses" provided by a vocational training provider

The above exemption from the service tax has been extended to the commercial training or coaching centre services provided in relation to "Modular Employable Skill courses" provided by a vocational training provider registered under 'Skill Development Initiative Scheme' with the Directorate General of Employment and Training, Ministry of Labour and Employment.

[Notification No. 23/2010-ST dated 29.04.2010]

2. Food grains and pulses included in the list of items eligible for exemption when transported by road

Prior to amendment

At present, transport of fruits, vegetable, eggs or milk by road by a goods transport agency is exempt from service tax.

Amendment made by the *Notification No. 4/2010-ST dated 27.02.2010*

The scope of exemption has been enhanced by including food grains and pulses in the aforesaid list of exempted goods.

3. Withdrawal of exemption available to the Government of Rajasthan under Group Personal Accident Scheme

Prior to amendment

Earlier, Group Personal Accident Scheme provided by Govt. of Rajasthan to its employees under 'general insurance service' was exempt from the service tax.

Amendment made by the *Notification No. 5/2010-ST dated 27.02.2010*

The aforesaid exemption has now been withdrawn.

4. Transport of goods by rail service

(a) Exemption from service tax on transport of goods by Government railway excluding transport of containerized goods by others withdrawn

Exemption from service tax on service provided in relation to 'Transport of Goods by Rail' by *Notification No. 33/2009 ST dated 01.09.2009* has been withdrawn.

Implication of the Amendment

Now services provided in relation to goods transported by railways including Government railways, whether in containers or otherwise are liable to service tax.

The said amendment is effective from 1st July, 2010.

[Notification No. 7/2010-ST dated 27.02.2010 and Notification No. 20/2010 ST dated 30.03.2010]

(b) Abatement of 70% of the gross value of the freight charged in relation to 'transport of goods by rail' service

Notification No. 1/2006 dated 01.03.2006 has been amended to provide an abatement of 70% of the gross value of the freight charged on goods (other than exempted goods), in case of 'transportation of goods by rail whether in container or otherwise'. Consequently, the service provider has to pay the service tax on only 30% of the value of the service subject to the fulfillment of the following conditions:-

(i) the CENVAT credit of duty on inputs or capital goods or the CENVAT credit of service tax on input services, used for providing such taxable service, has not been taken under the provisions of the CENVAT Credit Rules, 2004 and

(ii) the service provider has not availed the benefit under *Notification No. 12/2003-ST dated 20.06.2003.*

The said amendment is effective from 1st July, 2010.

[Notification No. 9/2010-ST dated 27.02.2010 and Notification No. 22/2010 ST dated 30.03.2010]

(c) Exemption for transport of specified goods by rail

Service provided to any person in relation to transport of certain specified goods by rail has been exempted from the service tax. Few such specified goods are as follows:-

- Defence/ military equipments
- Railway equipments/ materials
- Postal mail bags
- Relief material for victims of natural calamities
- Kerosene oil meant for supply through public distribution system

The said amendment is effective from 1st July, 2010.

[Notification No. 8/2010-ST dated 27.02.2010 & Notification No. 21/2010 ST dated 30.03.2010]

The sequence of the amendments made in relation to the 'transport of goods by rail service' has been detailed in the tables below depicting a comparative analysis of the situation:-

S.No.	Prior to 01.09.2009	01.09.2009 to 30.06.2010	With effect from 01.07.2010
1.	Transport of goods **by rail in containers** was liable to service tax. Following services were not taxable:- (i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers.	(a) Finance (No.2) Act, 2009 imposed service tax on goods transported by railways including Government railways, whether in containers or otherwise. (b) Thereafter, *Notification No. 33/2009-ST dated 01.09.2009* provided that following services were exempt:-	Transport of goods by railways including Government railways, whether in containers or otherwise has been made liable to service tax.

		(i) Transport of goods by Government railway. (ii) Transport of goods by rail otherwise than in containers. Hence, only transport of goods by rail in containers remained liable to service tax. **Conclusion:** Position prior to 01.09.2009 was restored.	
2.	*Notification No. 1/2006 dated 01.03.2006* provided an abatement of 70% of the gross value of the freight charged to the 'transport of goods in containers by rail service'.	(a) *Notification No. 1/2006 dated 01.03.2006* was amended to provide the said abatement to 'service of transport of goods by rail, whether in container or otherwise' w.e.f. 01.09.2009. (b) *Notification No. 34/2009-S.T dated 01-9-2009* again amended *Notification No. 1/2006 dated 01.03.2006* to provide the said abatement to 'transport of goods in containers by rail'. **Conclusion:** Position prior to 01.09.2009 was restored.	An abatement of 70% of the gross value of the freight charged has been provided to 'transport of goods by rail whether in containers or otherwise'.

Prior to 01.09.2009	01.09.2009 to 08.09.2009	09.09.2009 to 30.06.2010	With effect from 01.07.2010
There were no specified goods which were exempt in relation to transport of goods by rail in containers.	*Notification No. 28/2009-S.T. dated 31-8-2009* exempted transport of certain specified goods by rail. However, the said notification was subsequently rescinded by *Notification No. 36/2009-S.T. dated 9-9-2009*. Hence, the specified goods were exempt for the said period of 8 days.	With the rescission of *Notification No. 28/2009-S.T,* position prior to 01.09.2009 was restored.	Exemption provided to transport of the specified goods by rail has now been restored.

C. AMENDMENTS/CLARIFICATIONS IN THE SERVICE TAX RULES, 1994:

1. Quantum of service tax reduced for e-payment from Rs. 50 lakh to Rs. 10 lakh

Proviso to rule 6(2) has been amended to provide that an assessee shall deposit the service tax electronically through internet banking if he has paid the total service tax of Rs. 10 lakh or more (including the amount of service tax paid by utilisation of CENVAT credit) in the preceding financial year.

The said amendment is effective from 1st April, 2010.

[Notification No. 01/2010-ST dated 19.02.2010]

2. E-filing of returns made mandatory for assessees paying service tax of Rs. 10 lakh or more in the previous year

The facility of e-filing of returns was earlier optional for the assessees. Proviso inserted to rule 7(2) has now made the electronic filing of returns mandatory for the assessee who has paid total service tax of Rs. 10 lakh or more including the amount of service tax paid by utilization of CENVAT credit in the preceding financial year.

The said amendment is effective from 1st April, 2010.

[Notification No. 01/2010-ST dated 19.02.2010]

D. CLARIFICATIONS REAGRDING SERVICE TAX LAIBILTY IN CASE OF PROVISION OF CERTAIN SERVICES

1. Commission/remuneration paid to directors (whole-time or independent) and Managing Director not liable to service tax

S.No.	Issue	Clarification
1.	Whether service tax is payable on commission paid to Managing Director/Directors (whole time, or Independent) by the company under business auxiliary service?	Some Companies make payments to Managing Director/Directors (Whole-time or Independent), terming the same as 'commissions'. The said amount paid by a company to their Managing Director/Directors (Whole-time or Independent) even if termed as commission, is not the 'commission' that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.
2.	Whether service tax is payable by Independent Directors who are part of the Board of Directors under management consultant's service?	The Managing Director/Directors (Whole-time or Independent) being part of Board of Directors perform management function and they do not perform consultancy or advisory function. The definition of management consultant service makes it clear that what is envisaged from a consultant is advisory service and not the actual performance of the management function. The payments made by Companies, to Directors cannot be termed as payments for providing management consultancy service. Therefore, it is clarified that the amount paid to Directors (Whole-time or Independent) is not chargeable to service tax under the category 'Management Consultancy service'. However, in case such directors provide any advice or consultancy to the company, for which they are being compensated separately, such service would become chargeable to service tax.

[*Circular No. 115/09/2009 ST dated 31.07.2009*]

2. Canals constructed by Govt. or under Govt. projects not liable to service tax under commercial or industrial construction service

Issue	Clarification
Whether service tax is leviable on the construction of canals for Government projects?	As per section 65 (25b) of the Finance Act, 1994 "commercial or industrial construction service" is chargeable to service tax if it is used, occupied or engaged either wholly or primarily for the furtherance of commerce or industry. As the canal system built by the Government or under Government projects, is not

	falling under commercial activity, the canal system built by the Government will not be chargeable to service tax. However, if the canal system is built by private agencies and is developed as a revenue generating measure, then such construction should be charged to service tax.

[*Circular No. 116/09/2009 ST dated 15.09.2009*]

3. Dams, irrigation projects, buildings or infrastructure construction under turnkey/EPC contract by Government not covered under the works contract service

Issue	Clarification
Whether service tax is leviable on construction activity of dams, buildings or infrastructure construction etc. through EPC (Engineering Procurement & Construction) mode taken up by the Government?	The said service is covered under section 65 (105)(zzzza) of Finance Act, 1994. The said section itself excludes works contract in respect of dams, road, airports, railways, transport terminals, bridges & tunnels executed through EPC mode. Hence, works contract in respect of above works even if done through EPC mode are exempt from payment of service tax.

[*Circular No. 116/09/2009 ST dated 15.09.2009*]

4. Service tax not leviable on tour operator service in connection with Haj & Umrah pilgrimage

It is clarified that service tax is not chargeable on the services provided in respect of tour undertaken for carrying out Haj and Umrah Pilgrimage in Saudi Arabia by Indian pilgrims considering these as export of service, provided they fulfill the other conditions of export as provided in the Export of Service Rules, 2005*.

[*Circular No. 117/11/2009 ST dated 31.10.2009*]

5. Re-insurance commission not liable to service tax

Meaning of re-insurance commission

When an insurance company re-insures the insurance business with another insurance company, it deducts a part of the premium paid to the reinsurance company for meeting the administrative expenses, i.e. they jointly bear the expenses for running the insurance/reinsurance business. This shared expense is commonly known as 'commission' though strictly it is not in the nature of a commission.

* Export of Services Rules, 2005 have been discussed in details in the study material of Indirect Tax Laws at CA final level.

Service tax liability on re-insurance commission

The demand was being raised on this amount deducted alleging it to be the consideration paid to the insurance companies for promoting the business of re-insurers, thereby providing them the 'business auxiliary service'. It has been clarified that the arrangement between the insurance company and the reinsurer is only sharing of expenses. The insurance company is not promoting the business of re-insurer because the the policy holder may not even be aware of the operations of the re-insurer. Resultantly, no service tax liability arises in the given case.

[*Circular No. 120(a)/2/2010-ST dated 16.04.2010*]

6. Container detention charges not liable to service tax

Meaning of container detention charges

Container detention charges are imposed by shipping companies for marine containers kept beyond the pre-determined period and not returned to the designated location within that period.

Service tax liability on container detention charges

Container detention charges are actually the 'penal rent' for retaining the containers beyond the pre-determined period.

The retention of the container beyond the pre-determined period is not a 'business auxiliary service' because:-

- it is not a service provided on behalf of the client
- it is not an infrastructural support in the business of either the shipping lines or the customer

Therefore, the amount collected as 'detention charges' is not chargeable to service tax.

E. OTHERS

1. Conditions for exemption to services provided to a developer or units of special economic zone amended

Notification No.9/2009 ST dated 03.03.2009 was issued to provide refund of service tax paid on taxable services specified in section 65(105) of the Finance Act, 1994 which are provided in relation to the authorised operations (as defined under SEZ Act, 2005) in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ.

Notification No. 15/2009 ST dated 20.05.2009 has amended the aforesaid notification in the following manner:-

(A) Where the aforesaid services are consumed wholly within SEZ

Unconditional exemption is provided to the services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. Therefore, the conditions to be satisfied in order to claim the exemption would be:-

(a) Approval of list of services

The developer or units of Special Economic Zone shall get the services required in relation to the authorised operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);

(b) Actual use of specified services

The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

(c) Exemption from payment of service tax

In case of the services consumed wholly within the special economic zone, the exemption can be claimed by the developer or units of special economic zone without following the refund route.

(d) No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004.

(e) Exemption under no other notification claimed

Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification.

(f) Proper records of receipts and utilization of services

The developer or unit of a special economic zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.

(B) Where the aforesaid services are consumed partially or wholly outside SEZ

Exemption is provided to the services consumed within the SEZ following the refund route with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit. Therefore, the conditions to be satisfied in order to claim the exemption would be:-

(a) Approval of list of services

The developer or units of Special Economic Zone shall get the services required in relation to the authorized operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);

(b) Actual use of specified services

The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone;

(c) Actual payment of service tax

The developer or units of Special Economic Zone claiming the exemption has actually, in the first instance, paid the service tax on the specified services.

(d) Refund of service tax paid

The exemption claimed by the developer or units of Special Economic Zone shall be provided by way of refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone;

(e) No CENVAT credit of service tax paid on specified services

No CENVAT credit of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004;

(f) Exemption under no other notification claimed

Exemption or refund of service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone shall not be claimed except under this notification.

Further, in case where the services are consumed partially/wholly outside SEZ, following points would require consideration:-

(a) the person liable to pay service tax under sub-section (1) or sub-section (2) of section 68 of the said Finance Act shall pay service tax as applicable on the specified services provided to the developer or units of Special Economic Zone and used in relation to the authorised operations in the Special Economic Zone, and such person shall not be eligible to claim exemption for the specified services:

Provided that where the developer or units of Special Economic Zone and the person liable to pay service tax under sub-section (2) of section 68 for the said services are the same person, then in such cases exemption for the specified services shall be claimed by that person;

(b) the developer or units of Special Economic Zone shall claim the exemption by filing a claim for refund of service tax paid on specified services;

(c) the developer or units of Special Economic Zone shall file the claim for refund to the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;

(d) the developer or units of Special Economic Zone who is not registered as an assessee under the Central Excise Act, 1944 or the rules made thereunder, or the said Finance Act or the rules made thereunder, shall, prior to filing a claim for refund of service tax under this notification, file a declaration in the Form with the respective jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be;

(e) the jurisdictional Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after due verification, allot a service tax code (STC) number to the developer or units of Special Economic Zone within seven days from the date of receipt of the said Form;

(f) the claim for refund shall be filed, within six months or such extended period as the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall permit, from the date of actual payment of service tax by such developer or unit to service provider;

(g) the refund claim shall be accompanied by the following documents, namely:-

(i) a copy of the list of specified services required in relation to the authorised operations in the Special Economic Zone, as approved by the Approval Committee;

(ii) documents for having paid service tax;

(iii) a declaration by the Special Economic Zone developer or unit, claiming such exemption, to the effect that such service is received by him in relation to authorised operation in Special Economic Zone.

(h) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise, as the case may be, shall, after satisfying himself that the said services have been actually used in relation to the authorised operations in the Special Economic Zone, refund the service tax paid on the specified services used in relation to the authorised operations in the Special Economic Zone.

(i) where any refund of service tax paid on specified services is erroneously refunded for any reasons whatsoever, such service tax

refunded shall be recoverable under the provisions of the said Finance Act and the rules made thereunder, as if it is a recovery of service tax erroneously refunded.

2. Provisions of service tax extended to the specified areas in the continental shelf and exclusive economic zone of India for the specified purposes

The provisions of Chapter V have been extended to the specified areas in the continental shelf and exclusive economic zone of India for the specified purposes in the manner depicted in the table below:-

S.No.	The areas in the Continental Shelf and the Exclusive Economic Zone of India	Purpose
1.	Whole of continental shelf and exclusive economic zone of India	Any service provided for all activities pertaining to construction of installations, structures and vessels for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof.
2.	The installations, structures and vessels within the continental shelf and the exclusive economic zone of India, constructed for the purposes of prospecting or extraction or production of mineral oil and natural gas	Any service provided or to be provided by or to such installations, structures and vessels and for supply of any goods connected with the said activity.

[Notification No. 14/2010-S.T. dated 27-2-2010]