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Government of India  
Ministry of Finance  
Department of Revenue  
(Central Board of Direct Taxes)

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*Dated, the 6<sup>th</sup> April, 2011.*

**EXPLANATORY  
NOTES TO THE  
PROVISIONS OF THE  
FINANCE ACT, 2010**

**INCOME-TAX ACT**

***Finance Act, 2010 – Explanatory Notes to the Provisions of Finance Act, 2010***

**CIRCULAR NO. .01./2011, DATED 6<sup>th</sup> April, 2011**

**AMENDMENTS AT A GLANCE**

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## 1. Introduction

**1.1** The Finance Act, 2010 (hereafter referred to as the Act) as passed by the Parliament, received the assent of the President on the 8<sup>th</sup> day of May, 2010 and has been enacted as Act No. 14 of 2010. This circular explains the substance of the provisions of the Act relating to direct taxes.

## 2. Changes made by the Act

**2.1** The Act has,

- (i) specified the rates of income-tax for the assessment year 2010-11 and the rates of income-tax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2010-11.
- (ii) amended sections 2, 9, 10, 10AA, 12A, 32, 35, 35AD, 35DDA, 40(a)(ia), 43, 44AB, 47, 47A, 49, 56, 72A, 80C, 80D, 80-IB, 80-ID, 115JAA, 115JB, 143, 194B, 194BB, 194C, 194D, 194H, 194-I, 194J, 201, 203, 206C, 245A, 245C, 245D, 260A, 271B, 282B of the Income-tax Act, 1961;
- (iii) Inserted a new section 80CCF of the Income-tax Act, 1961;
- (iv) amended rules 5 of Part B of the First Schedule, rule 3 of Part A of the Fourth Schedule and Part B of Thirteenth Schedule of the Income-tax Act, 1961;
- (v) amended sections 22A, 22D, 27 and 27A of Wealth-tax Act, 1957;

## 3. Rate structure

### 3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2010-11

**3.1-1** In respect of income of all categories of taxpayers liable to tax for the assessment year 2010-11, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance (No.2) Act, 2009 for the purposes of computation of advance tax, deduction of tax at source from Salaries and charging of tax payable in certain cases during the financial year 2009-10.

The major features of the rates specified in the said Part I are as follows:

**3.1-2** INDIVIDUAL, HINDU UNDIVIDED FAMILY, ASSOCIATION OF PERSONS, BODY OF INDIVIDUALS OR ARTIFICIAL JURIDICAL PERSON. - Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under :-

Income chargeable to	Rate of income-tax		
	Individual (other than individual	Individual	Individual senior

tax	woman resident in India and senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person	woman, resident in India and below the age of sixty-five years	citizen, resident in India, who is of the age of sixty- five years or more
Up to Rs. 1,60,000	Nil	Nil	Nil
Rs. 1,60,001 - Rs. 1,90,000	10%	Nil	Nil
Rs. 1,90,001 - Rs. 2,40,000	10%	10%	Nil
Rs. 2,40,001 - Rs. 3,00,000	10%	10%	10%
Rs. 3,00,000 - Rs.5,00,000	20%	20%	20%
Rs.5,00,000 and above	30%	30%	30%

In the case of every individual, Hindu undivided family, association of persons or body of individuals, no surcharge shall be levied.

An additional surcharge called the Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, in all cases. For instance, if the income-tax computed is Rs. 1,00,000, then the education cess of two per cent is to be computed on Rs. 1,00,000 which works out to Rs. 2,000. In addition, the amount of tax computed shall also be increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax. No marginal relief shall be available in respect of Education Cess.

**3.1-3 CO-OPERATIVE SOCIETIES** - In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 - Rs. 20,000	20%
Exceeding Rs. 20,000	30%

No surcharge shall be levied. Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

**3.1-4 FIRMS** - In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part I of the First Schedule to the Act. No surcharge shall now be levied in the case of a firm.

Additional surcharge called the Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, in all cases. In addition, such amount of tax shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax computed at the rate of one per cent on the amount of tax, in all cases. No marginal relief shall be available in respect of Education Cess.

**3.1-5 LOCAL AUTHORITIES** - In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part I of the First Schedule to the Act. No surcharge shall be levied. However, Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

**3.1-6 COMPANIES** - In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of ten per cent in a case where such domestic company has total income exceeding one crore rupees.

In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two and one-half per cent only in the cases where such company has total income exceeding one crore rupees.

However, marginal relief shall be allowed in the case of every company to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. Also, in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act and where such income exceeds one crore rupees, marginal relief shall be provided.

Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge.

### **3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2010-11.**

**3.2-1** In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2010-11 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2010-11

will continue to be the same as those specified in Part II of the First Schedule to the Finance (No.2) Act, 2009.

**3.2-2 SURCHARGE** - The tax deducted at source in each case shall be increased by a surcharge for purposes of the Union as follows:-

(i) In the case of every individual, Hindu undivided family, association of persons and body of individuals, no surcharge shall be levied.

(ii) In the case of every artificial juridical person, no surcharge shall be levied.

(iii) No surcharge shall be levied on the amount of income-tax deducted in the case of a co-operative society and local authority

(iv) In the case of every firm and domestic company, no surcharge shall be levied.

(v) The surcharge on TDS shall be levied only on payments made to foreign companies. The rate of surcharge in such cases is 2.5 per cent of such income tax.

**3.2-3 EDUCATION CESS** - The additional surcharge, called the Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of two per cent of income-tax and surcharge, if any, in the case of salary payments to residents and in the case of all payments to non-residents . For instance, if such tax is Rs. 1,00,000 and the surcharge is Rs. 10,000, then the education cess of two per cent is to be computed on Rs. 1,10,000 which works out to be Rs. 2,200.

In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent in all such cases. Thus in the earlier illustration, where the amount of tax deducted is Rs. 1,00,000, the surcharge is Rs. 10,000, the Education Cess of two per cent is Rs. 2,200, the said Secondary and Higher Education Cess will be computed on Rs. 1,10,000 which works out to be Rs. 1,100. The total cess in this case will amount to Rs. 3,300 (i.e., Rs. 2,200 + Rs. 1,100).

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

**3.3-1** The rates for deducting income-tax at source from Salaries and computing advance tax during the financial year 2010-11 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2010-11 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

**3.3-2 INDIVIDUAL, HINDU UNDIVIDED FAMILY, ASSOCIATION OF PERSONS, BODY OF INDIVIDUALS OR ARTIFICIAL JURIDICAL PERSON** - Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual. Hindu undivided family,

association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). In the case of individuals, the basic exemption limit remains unchanged as Rs. 1,60,000. The exemption limit for every woman resident in India and below the age of 65 years of age also remains unchanged as Rs. 1,90,000. Further, the exemption limit for every individual resident in India and of the age of 65 years or more at any time during the previous year remains unchanged as Rs. 2,40,000. The tax slabs in all such cases have been widened.

The rates of tax during the financial year 2010-11 in the case of persons mentioned above are as follows:-

Income chargeable to tax	Rate of income-tax		
	Individual (other than individual woman resident in India and senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person	Individual woman, resident in India and below the age of sixty-five years	Individual senior citizen, resident in India, who is of the age of sixty- five years or more
Up to Rs. 1,60,000	Nil	Nil	Nil
Rs. 1,60,001 - Rs. 1,90,000	10%	Nil	Nil
Rs. 1,90,001 - Rs. 2,40,000	10%	10%	Nil
Rs. 2,40,001 - Rs. 5,00,000	10%	10%	10%
Rs. 5,00,000 - Rs.8,00,000	20%	20%	20%
Rs.8,00,000 and above	30%	30%	30%

No surcharge shall be levied in such cases.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed. In addition, the amount of tax computed shall also be increased by an additional cess called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax. No marginal relief shall be available in respect of Education Cess.

**3.3-3 CO-OPERATIVE SOCIETIES** - In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	Rate
Up to Rs. 10,000	10%
Rs. 10,001 - Rs. 20,000	20%



Exceeding Rs. 20,000	30%
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No surcharge shall be levied. Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

**3.3-4 FIRMS** - In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act. No Surcharge shall be levied. The Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed. In addition, such amount of tax shall be further increased by an additional cess called Secondary and Higher Education Cess on income-tax computed at the rate of one per cent on the amount of tax, in all cases. No marginal relief shall be available in respect of Education Cess.

**3.3-5 LOCAL AUTHORITIES** - In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part III of the First Schedule to the Act. No surcharge shall be levied. However, Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

**3.3-6 COMPANIES** - In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.

In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of seven and half per cent in a case where such domestic company has total income exceeding one crore rupees.

In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, in fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two and one-half per cent in the case where such company has total income exceeding one crore rupees. However, marginal relief shall be allowed in the case of every company to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees.

However, Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed including surcharge. No marginal relief shall be available in respect of Education Cess.

#### **4. Change in the Definition of “charitable purpose”**

**4.1** For the purposes of the Income-tax Act, “charitable purpose” has been defined in section 2(15) which, among others, includes “the advancement of any other object of general public utility”.

4.2 However, “the advancement of any other object of general public utility” is not a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

4.3 The absolute restriction on any receipt of commercial nature may create hardship to the organizations which receive sundry considerations from such activities. Therefore, section 2(15) has been amended to provide that “the advancement of any other object of general public utility” shall 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 do not exceed Rs.10 lakhs in the previous year.

4.4 *Applicability* - This amendment has been made effective retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent years.

## 5. Income deemed to accrue or arise in India to a non-resident

5.1 Section 9 provides for situations where income is deemed to accrue or arise in India. Vide Finance Act, 1976, a source rule was provided in section 9 through insertion of clauses (v), (vi) and (vii) in sub-section (1) for income by way of interest, royalty or fees for technical services respectively. It was provided, inter alia, that in case of payments as mentioned under these clauses, income would be deemed to accrue or arise in India to the non-resident under the circumstances specified therein. The intention of introducing the source rule was to bring to tax interest, royalty and fees for technical services, by creating a legal fiction in section 9, even in cases where services are provided outside India as long as they are utilized in India. **The source rule, therefore, means that the situs of the rendering of services is not relevant. It is the situs of the payer or the situs of the utilization of services by the payer which will determine the taxability of such services in India. This was the settled position of law till 2007.**

5.2 However, the Hon’ble Supreme Court, in the case of Ishikawajima-Harima Heavy Industries Ltd., Vs DIT (2007)[288 ITR 408], held that despite the deeming fiction in section 9, for any such income to be taxable in India, there must be sufficient territorial nexus between such income and the territory of India. It further held that for establishing such territorial nexus, the services have to be rendered in India as well as utilized in India. This interpretation was not in accordance with the legislative intent that the situs of rendering service in India is not relevant as long as the services are utilized in India. Therefore, to remove doubts regarding the source rule, an Explanation was inserted below sub-section (2) of section 9 with retrospective effect from 1st June, 1976 vide Finance Act, 2007. The Explanation sought to clarify that where income is deemed to accrue or arise in India under clauses (v), (vi) and (vii) of sub-section (1) of section 9, such income shall be included in the total income of the non-resident, regardless of whether the non-resident has a residence or place of business or business connection in India. **However, the Karnataka High Court, in its judgement in the case of Jindal Thermal Power Company Ltd. vs DCIT (TDS), has held that the Explanation, in its present form, does not do away with the requirement of rendering of services in India for any income to be deemed to accrue or arise to a non-resident under section 9.** It has been held that on a plain reading of the Explanation, the criteria of rendering services in India and the utilization of the

service in India laid down by the Supreme Court in its judgment in the case of Ishikawajima-Harima Heavy Industries Ltd.(supra) remains untouched and unaffected by the Explanation.

**5.3** In order to remove any doubt about the legislative intent of the aforesaid source rule, this Explanation has been substituted with a new Explanation to specifically state that the income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) of section 9 and shall be included in his total income, whether or not, (a) the non-resident has a residence or place of business or business connection in India; or (b) the non-resident has rendered services in India.

**5.4** *Applicability* - This amendment has been made effective retrospectively from 1st June, 1976 and will, accordingly, apply in relation to the assessment year 1977-78 and subsequent years.

## **6. Computation of exempted profits in the case of units in Special Economic Zones (SEZs)**

**6.1** Section 10AA was inserted in the Income-tax Act by the Special Economic Zone Act, 2005 with effect from 10.2.2006. Through the Finance (No.2) Act, 2009, section 10AA(7) of the Income-tax Act, 1961 was amended and the words “by the undertaking” were substituted for “by the assessee” with effect from assessment year 2010-11 and subsequent assessment years. This was done as the existing formula was perceived to be discriminatory in so far as those assessees are concerned who have multiple units in both the SEZ and the domestic tariff area (DTA) vis-à-vis those assessees who were having units in only the SEZ. With a view to removing the anomaly, the provisions of sub-section (7) of section 10AA of the Income-tax Act were amended.

**6.2** *Applicability* - In order to make the amendment effective for earlier years, a proviso to sub-section (7) has been inserted to provide that the provision of sub-section (7), as amended by Finance (No. 2) Act, 2009, is applicable to the assessment year 2006-07 and subsequent assessment years.

## **7. Cancellation of registration obtained under section 12A**

**7.1** Section 12AA provides the procedure relating to registration of a trust or institution engaged in charitable activities. Section 12AA(3) previously provided that if the activities of the trust or institution are found to be non-genuine or its activities are not in accordance with the objects for which such trust or institution was established, the registration granted under section 12AA can be cancelled by the Commissioner after providing the trust or institution an opportunity of being heard.

**7.2** The power of cancellation of registration is inherent and flows from the authority of granting registration. However, judicial rulings in some cases have held that the Commissioner does not have the power to cancel the registration which was obtained earlier by any trust or institution under provisions of section 12A as it is not specifically mentioned in section 12AA.

**7.3** Therefore, section 12AA has been amended to provide that the Commissioner can also cancel the registration obtained under section 12A as it stood before amendment by Finance (No.2) Act, 1996.

**7.4 *Applicability*** - This amendment has been made applicable with effect from 1st June, 2010 and shall accordingly apply for assessment year 2011-12 and subsequent assessment years.

## **8. Weighted deduction for scientific research and development**

**8.1** The existing provisions of section 35(1)(ii) of the Income-tax Act provide for a weighted deduction from the business income to the extent of 125 per cent of any sum paid to an approved scientific research association that has the object of undertaking scientific research or to an approved university, college or other institution to be used for scientific research. Further, under section 35(2AA) of the Act, weighted deduction to the extent of 125 per cent is also allowed for any sum paid to a National Laboratory or a university or an Indian Institute of Technology (IIT) or a specified person for the purpose of an approved scientific research programme.

**8.2** In order to encourage more contributions to such approved entities for the purposes of scientific research, the Act has been amended to increase this weighted deduction from 125 per cent to 175 per cent.

**8.3** Section 35(1)(iii) provide for a weighted deduction from business income to the extent of 125 per cent of any 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. Section 80GGA allows deductions for donations made to such association, universities, etc.

**8.4** Under the existing section 10(21), exemption was granted in respect of the income of a scientific research association which was 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) of the Act subject to specified conditions.

**8.5** The associations which are engaged in undertaking research in social science or statistical research were not covered by the provisions of existing section 35(1) (iii). Such research associations were also not entitled to exemption in respect of their income.

**8.6** Therefore section 35(1)(iii) of the Act has been amended so as to include an approved research association which has as its object undertaking research in social science or statistical research. Section 10(21) of the Act has also been amended so as to provide exemption to such associations in respect of their income. This exemption will be subject to the same conditions under which an approved research association undertaking scientific research is entitled to exemption in respect of its income. An amendment to include allowability of deductions for donations made to such associations has also been made.

**8.7** Under the existing provisions of section 35(2AB) of the Income-tax Act, a company is allowed weighted deduction of 150 per cent of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research on an approved in-house research and development facility. In order to further incentivise the corporate sector to invest in in-house research, the Act has been amended to increase this weighted deduction from 150 per cent to 200 per cent.

**8.8 *Applicability*** - These amendments have been made effective from 1st April 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

## **9. Investment-linked deduction for specified businesses**

**9.1.1** Investment-linked tax incentive, which was introduced by the Finance (No. 2) Act, 2009, allows 100 per cent deduction in respect of the whole of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the “specified business” during the previous year in which such expenditure is incurred. Such “specified business” includes the business of setting up and operating cold chain facilities, warehousing facilities for storage of agricultural produce and laying and operating a cross-country natural gas or crude or petroleum oil pipeline network.

**9.1.2** The benefit of investment linked tax incentive under section 35AD has now been extended to the following specified businesses in addition to the existing businesses:-

- (i) building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government and commencing operations on or after the 1st day of April, 2010;
- (ii) building and operating, anywhere in India, a new hospital with at least one hundred beds for patients and commences operation on or after the 1<sup>st</sup> April, 2010;
- (iii) developing and building a housing project under a scheme for slum re-development or rehabilitation framed by the Central Government or a State Government, as the case may be, and notified by the Board in this behalf in accordance with the guidelines as may be prescribed and commences operation on or after the 1st day of April, 2010.

**9.2.1** Sub-section (3) of section 35AD has been substituted so as 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 shall be allowed under the provisions of Chapter VI-A under the heading “C.-Deductions in respect of certain incomes” in relation to such specified business for the same or any other assessment year. A similar amendment has been made in section 80A.

**9.2.2 *Applicability*** - These amendments have been made applicable with effect from 1<sup>st</sup> April, 2011 and will accordingly apply to the assessment year 2011-12 and subsequent assessment years.

**9.3.1** The meaning of ‘common carrier capacity’ has been redefined for cross-country natural gas or crude or petroleum oil pipeline network on the basis of the regulations specified by the Petroleum and Natural Gas Regulatory Board.

**9.3.2 *Applicability*** - This amendment has been made applicable with retrospective effect from 1<sup>st</sup> April, 2010 and will accordingly apply to the assessment year 2010-11 and subsequent assessment years.

## **10. Disallowance of expenditure on account of non-compliance with TDS provisions**

**10.1.1** The existing provisions of section 40(a)(ia) of Income-tax Act provide for the disallowance of expenditure like interest, commission, brokerage, professional fees, etc. if tax on such expenditure was not deducted, or after deduction was not paid during the previous year. However, in case the deduction of tax is made during the last month of the previous year, no disallowance is made if the tax is deposited on or before the due date of filing of return.

**10.1.2** The said section has been amended to provide that no disallowance will be made if after deduction of tax during the previous year, the same has been paid on or before the due date of filing of return of income specified in sub-section (1) of section 139.

**10.1.3 *Applicability*** - This amendment takes effect retrospectively from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

**10.2.1** Under the existing provisions of section 201(1A) of the Act, a person is liable to pay simple interest at one per cent for every month or part of month in case of failure to deduct tax or payment of tax after deduction.

**10.2.2** In order to discourage the practice of delaying the deposit of tax after deduction, the Act has been amended to increase the rate of interest for non-payment of tax after deduction from the present one per cent to one and one-half per cent for every month or part of month.

**10.2.3 *Applicability*** - This amendment takes effect from 1st July, 2010.

## **11. Limit of turnover or gross receipts for the purpose of audit of accounts and for presumptive taxation**

**11.1** Under the existing provisions of section 44AB, every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts in business exceed forty lakh rupees in the previous year. Similarly, a person carrying on a profession is required to get his accounts audited if the gross receipts in profession exceed ten lakh rupees in the previous year.

**11.2** In order to reduce the compliance burden of small businesses and professionals, the Act has been amended to increase the threshold limit from forty lakh rupees to sixty lakh rupees in the case of persons carrying on business and from ten lakh rupees to fifteen lakh rupees in the case of persons carrying on profession.

**11.3** In view of the above, the Act has also been amended to increase the maximum penalty, leviable under section 271B for failure to get accounts audited under section 44AB or to furnish a report of such audit, from one lakh rupees to one lakh fifty thousand rupees.

**11.4.** For the purpose of presumptive taxation under section 44AD, the Act has been amended to increase the threshold limit of total turnover or gross receipts from forty lakh rupees to sixty lakh rupees.



**11.5 *Applicability*** - These amendments take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

## **12. Conversion of a private company or an unlisted public company into a limited liability partnership (LLP)**

**12.1** The Finance (No. 2) Act, 2009 provided for the taxation of LLPs in the Income-tax Act on the same lines as applicable to partnership firms. Section 56 and section 57 of the Limited Liability Partnership Act, 2008 allow conversion of a private company or an unlisted public company (hereafter referred as company) into an LLP. Under the existing provisions of Income-tax Act, conversion of a company into an LLP had definite tax implications. Transfer of assets or shares held in the company by a shareholder on conversion attracted levy of capital gains tax. Similarly, carry forward of losses, unabsorbed depreciation, etc. was not available to the successor LLP.

**12.2** Hence the Act has been amended, so that the transfer of assets or shares held in the company by a shareholder on conversion of a company into an 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 capital gains tax under section 45, subject to certain conditions. These conditions are as follows:

- (i) all assets and liabilities of the company become the assets and liabilities of the LLP;
- (ii) the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;
- (iii) no consideration other than share in profit and capital contribution in the LLP arises to partners;
- (iv) the erstwhile shareholders of the company continue to be entitled to receive at least 50 per cent of the profits of the LLP for a period of 5 years from the date of conversion;
- (v) the total sales, turnover or gross receipts in business of the company [which are taxable under the head “Profits and gains of the business or profession”] do not exceed sixty lakh rupees in any of the three preceding previous years; and
- (vi) 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.

**12.3** The Act has been amended to allow carry forward and set-off of business loss, unabsorbed depreciation and amortisation of expenditure incurred under voluntary retirement scheme to the successor LLP which fulfils the above mentioned conditions.

**12.4** The Act has been amended to provide that if the conditions stipulated above are not complied with, the benefit availed by the company or by the shareholders, shall be deemed to be the profits and gains of the successor LLP or the shareholder of the predecessor company, as the case may be, chargeable to tax for the previous year in which the requirements are not complied with.

**12.5** The Act has been amended to provide that 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.

**12.6** The Act has been amended to provide that 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.

**12.7** It is also provided that 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.

**12.8** The Act has been further amended to provide that the cost of acquisition of a capital asset being rights of a partner in successor LLP, shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion.

**12.9** Credit in respect of tax paid by a company under section 115JB is allowed only to such company under section 115JAA. It is clarified that the tax credit under section 115JAA shall not be allowed to the successor LLP.

**12.10** *Applicability* - These amendments take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

### **13. Taxation of certain transactions without consideration or for inadequate consideration**

**13.1** Under the previously existing provisions of section 56(2) (vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income tax in the hands of recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision. The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archeological collection, drawings, paintings, sculpture or any work of art.

**13.2** These are anti-abuse provisions which were applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value was not attracted by the anti-abuse provision. In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, section 56 was amended to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). It is also provided to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act.

**13.3** *Applicability* - This amendment has been made effective from 1st June, 2010 and accordingly, apply in relation to the assessment year 2011-12 and subsequent years.



**13.4** The provisions of section 56(2) (vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. Therefore, the definition of property has been amended to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

**13.5** In several cases of immovable property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential. Therefore clause (vii) of section 56(2) has been amended to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property.

**13.6** *Applicability* - These amendments have been made effective retrospectively from 1st October, 2009 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

**13.7** The definition of 'property' as provided under section 56 has been amended to include transactions in respect of 'bullion'. This amendment has been made effective from 1st June, 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

**13.8** Section 142A(1) has been amended to allow the Assessing Officer to make a reference to the Valuation Officer for an estimate of the value of property for the purposes of section 56(2). This amendment has been made effective from 1st July, 2010 and accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

#### **14. Deduction in respect of long-term infrastructure bonds**

**14.1** In tune with the policy thrust of promoting investment in the infrastructure sector, a new section 80CCF was inserted in the Income-tax Act to provide that subscription during the financial year 2010-11 made to long-term infrastructure bonds (as may be notified by the Central Government), to the extent of Rs. 20,000, shall be allowed as deduction in computing the income of an individual or a Hindu undivided family. This deduction will be over and above the existing overall limit of tax deduction on savings of upto Rs.1 lakh under section 80C, 80CCC and 80CCD of the Act.

**14.2** *Applicability* - This amendment has been made applicable with effect from 1<sup>st</sup> April, 2011 and will apply only to the assessment year 2011-12.

#### **15. Deduction in respect of contribution to the Central Government Health Scheme (CGHS)**

**15.1** Under the earlier provisions of section 80D, deduction in respect of premium paid towards a health insurance policy upto a maximum of Rs. 15,000 is available for self, spouse and dependent children. A further deduction of Rs. 15,000 is also allowed for buying an insurance policy in respect of dependent parents. The deduction is enhanced to Rs. 20,000 in both cases if the person insured is of age of 65 years or above.

**15.2** The Central Government Health Scheme (CGHS) is a medical facility available to serving and retired Government servants. This facility is similar to the facilities available through health insurance policies.

**15.3** Deduction from the total income has now been allowed in respect of any contribution made to CGHS by including such contribution under the provisions of section 80D. The deduction will be limited to the current aggregate as mentioned in the section.

**15.4** *Applicability* - This amendment has been made applicable with effect from 1<sup>st</sup> April, 2011 and will accordingly apply to the assessment year 2011-12 and subsequent assessment years.

## **16. Deduction for developing and building housing projects**

**16.1** Under the existing provisions of section 80-IB(10), 100 per cent deduction is available in respect of profits derived by an undertaking from developing and building housing projects approved by a local authority before 31.3.2008. This benefit is available subject to, *inter alia*, the following conditions:

(a) 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.

(b) the built-up area of the shops and other commercial establishments included in the housing project should not exceed 5 per cent of the total built-up area of the housing project or 2,000 sq.ft. whichever is less.

**16.2** To allow for extraordinary conditions due to the global recession and the resultant slowdown in the housing sector, the period allowed for completion of a housing project in order to qualify for availing the tax benefit under the section, has been increased from the existing 4 years to 5 years from the end of the financial year in which the housing project is approved by the local authority. This extension will be available for housing projects approved on or after 1.4. 2005 but on or before 31.3.2008.

**16.3** Further, the norms for built-up area of shops and other commercial establishments in eligible housing projects have also been enhanced in order to enable basic facilities for the residents. The permissible built-up area of the shops and other commercial establishments which can be included in the eligible housing project is increased to three per cent of the aggregate built-up area of the housing project or 5000 sq. ft., whichever is higher. This benefit will be available to projects approved on or after 1.4.2005 but before 31.3.2008, which are pending for completion.

**16.4** *Applicability* - These amendments have been made applicable with retrospective effect from 1<sup>st</sup> April, 2010 and will accordingly apply to the assessment year 2010-11 and subsequent assessment years.

**16.5** Vide Instruction No.4/2009 dated 30.6.2009, the Board has already clarified regarding deduction under section 80-IB(10) in respect of undertakings developing and building housing projects. It was clarified that the deduction can be claimed on a year-to-year basis where the assessee is showing profit from partial completion of the project in every year. In case it is found that the condition of completing the project within the specified time limit of 4 years as stated in section 80-IB(10) has not been satisfied, the deduction granted to the assessee in the earlier years should be withdrawn.

The conditions regarding the time-limit for completion of the project and for the permissible built up area of shops and other commercial establishments included in the housing project have been relaxed as indicated above. Accordingly, the deduction granted to an assessee in the earlier years should be withdrawn only if the revised conditions are not satisfied.

## **17. Deduction of profits of a hotel or a convention centre in the National Capital Territory (NCT)**

**17.1** Section 80-ID of the Income-tax Act provides for 100 per cent deduction for five years, of profits derived by an undertaking from the business of a two-star, three-star or four-star category hotel or from the business of building, owning and operating a convention centre located in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad, provided such hotel has started functioning or such convention centre is constructed during the period 1.4.2007 to 31.3.2010.

**17.2** To provide some more time for these facilities to be set up in the light of the Commonwealth Games in October, 2010, clauses (i) and (ii) of section 80-ID have been amended to extend the date by which the hotel has to start functioning or the convention centre has to be constructed, from the existing 31<sup>st</sup> March, 2010, to 31<sup>st</sup> July, 2010.

**17.3** *Applicability* - This amendment has been made applicable with effect from 1<sup>st</sup> April, 2011 and will accordingly apply to the assessment year 2011-12 and subsequent assessment years.

## **18. Minimum Alternate Tax under Section 115JB**

**18.1** Under the existing provisions of section 115JB of the Income Tax Act, a company is required to pay a Minimum Alternate Tax (MAT) on its book profit, if the income-tax payable on the total income, as computed under the Act in respect of any previous year relevant to the assessment year commencing on or after the 1st day of April, 2010, is less than such minimum. The amount of tax paid under section 115JB is allowed to be carried forward and set off against tax payable upto the tenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under the provisions of section 115JAA.

**18.2** Sub-section (1) of section 115JB has been amended to increase the MAT rate to eighteen per cent from the existing fifteen per cent.

**18.3** *Applicability* - This amendment has been made applicable with effect from 1<sup>st</sup> April, 2011 and accordingly apply to the assessment year 2011-12 and subsequent assessment years.

## 19. Centralised Processing of Returns

**19.1** Section 143 of the Income Tax Act, 1961 was amended vide Finance Act, 2008 and concept of Centralised Processing of Returns was introduced, so that all the returns are expeditiously processed and tax payable or refund due to assessee are determined in a definite frame. Under the existing provisions of section 143(1B), the Central Government was empowered, for the purposes of giving effect to the scheme of centralised processing of returns, to issue a notification relating to such processing of returns. Such a notification could be issued up to 31st March, 2010.

**19.2** A Centralised Processing Centre has been set up where returns are being processed in batches. However, some more functionalities in the processing of returns may need to be added to make it a complete end-to-end process. Therefore, it is proposed to extend the time limit for issue of such notification under section 143 (1B) from 31st March, 2010 to 31st March 2011.

**19.3** Consequential amendments on similar lines are proposed to be made in section 115WE of the Income-tax Act.

**19.4** *Applicability* - These amendments are proposed to take effect retrospectively from 1st April, 2010.

## 20. Rationalisation of provisions relating to Tax Deduction at Source (TDS)

**20.1** Under the scheme of deduction of tax at source as provided in the Income-tax Act, every person responsible for payment of any specified sum to any person is required to deduct tax at source at the prescribed rate and deposit it with the Central Government within the specified time. However, no deduction is required to be made if the payments do not exceed prescribed threshold limits.

**20.2** In order to adjust for inflation and also to reduce the compliance burden of deductors and taxpayers, the Act has been amended to raise the threshold limit for payments mentioned in sections 194B, 194BB, 194C, 194D, 194H, 194-I and 194J as under:

<i>Sl. Section No.</i>	<i>Nature of payment</i>	<i>Existing threshold limit of payment (Rupees)</i>	<i>Amended threshold limit of payment (Rupees)</i>
1. 194B	Winnings from lottery or crossword puzzle	5,000	10,000
2. 194BB	Winnings from horse race	2,500	5,000
3. 194C	Payment to contractors	20,000 (for a single transaction) 50,000 (for aggregate of transactions during	30,000 (for a single transaction) 75,000 (for aggregate of transactions during

		financial year)	financial year)
4.	194D Insurance commission	5,000	20,000
5.	194H Commission or Brokerage	2,500	5,000
6.	194-I Rent	1,20,000	1,80,000
7.	194J Fees for professional or technical services	20,000	30,000

**20.3** *Applicability* - These amendments take effect from 1st July, 2010.

## **21. Certificate of Tax Deduction at Source (TDS) and Tax Collection at Source (TCS)**

**21.1** The existing provisions of section 203(3) of the Income-tax Act dispense with the requirement of furnishing of TDS certificates by the deductor to the deductee on or after 1st April, 2010. Similarly, under section 206C(5) of the Act, a collector of tax at source will also not be required to issue tax collection certificate to the person from whom tax has been collected on or after 1st April, 2010.

**21.2** Considering the fact that the TDS/TCS certificate constitutes an important document for the deductee/collectee, the Act has been amended that the deductor/collector will continue to furnish TDS/TCS certificates to the deductee/collectee even after 1st April, 2010.

**21.3** *Applicability* - These amendments take effect retrospectively from 1st April, 2010.

## **22. Settlement Commission**

The conditions for filing of an application before the Settlement Commission and the time for disposal of an application by the Settlement Commission have been modified. The changes are as under:-

**22.1** Under the existing provisions of section 245A (b), the term “case”, in relation to which an application can be made is defined as any proceeding for assessment of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application is made to the Settlement Commission. However, it excluded, among others, proceedings for assessment or reassessment resulting from a search or as a result of requisition of books of account or other documents or any assets, initiated under the Act. The Act has been amended to include proceedings for assessment or reassessment resulting from search or as a result of requisition of books of account or other documents or any assets, within the definition of a “case” which can be admitted by the Settlement Commission. Explanation to section 245A (b) has been amended to specify the date on which the proceedings for assessment or reassessment shall be deemed to have commenced and concluded in the case of a person whose income is being assessed or reassessed as a result of search or as a result of requisition of books of account or other documents or any assets.

**22.2** Under the existing provisions of section 245C of the Income-tax Act, an application could be filed before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees. The proviso to section 245C has been substituted so as to provide that an application can be filed before the Settlement Commission, in cases where proceedings for assessment or reassessment have been initiated as a result of search or as a

result of requisition of books of account or other documents or any assets, if the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees. It is further proposed that, in other cases, an application can be made before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.

**22.3** Under the existing provisions of section 245D (4A) of the Income-tax Act, Settlement Commission shall pass an order within twelve months from the end of the month in which the application was made. Further, clause (ii) of sub-section (4A) has been amended so as to provide that the Settlement Commission, shall, in respect of an application filed on or after 1st June, 2007 but before 1st June, 2010, pass an order within the said period of twelve months. A new clause (iii) in sub-section (4A) has been inserted so as to provide that the Settlement Commission shall, in respect of an application made on or after 1st June, 2010, pass an order within eighteen months from the end of the month in which the application is made.

**22.4** Consequential amendments have been made in section 22A and section 22D of the Wealth-tax Act to give effect to the above mentioned changes.

**22.5** *Applicability* - These amendments have been made effective from 1st June, 2010.

### **23. Power of the High Court to condone delay in filing of appeals**

**23.1** The existing provisions of section 260A(2) provide that an appeal against the order of Income-tax Appellate Tribunal can be filed before the High Court within a period of one hundred and twenty days from the date of the receipt of the order by the assessee or the Commissioner. Sub-section (7) of section 260A of the Income-tax Act provides that the provisions of Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply in the case of an appeal filed under this section before the High Court.

**23.2** The Delhi High Court, while interpreting provisions of section 260A, has held that the High Court has the power to condone delay in filing of an appeal. However, Allahabad, Bombay, Kolkata, Guwahati and Chattisgarh High Courts have held otherwise. It has therefore been provided to retrospectively insert sub-section (2A) in section 260A of the Income-tax Act to specifically provide that the High Court may admit an appeal after the expiry of the period of one hundred and twenty days, if it is satisfied that there was sufficient cause for not filing the appeal within such period.

**23.3** Consequential amendments on similar lines have been made in section 27A of the Wealth-tax Act.

**23.4** *Applicability* - These amendments take effect retrospectively from 1st October, 1998.

**23.5** Under section 256 of the Income-tax Act, the Income-tax Appellate Tribunal could refer a case to the High Court. In case where the Income-tax Appellate Tribunal refused to refer a case to the High Court, the assessee or the Commissioner were allowed to file an appeal before the High Court against such refusal of the Tribunal within a period of six months from the date on which he was

served with an order of refusal. Sub-section (2A) in section 256 has been inserted retrospectively so as to empower the High Court to admit an application after the expiry of the period of six months, if it is satisfied that there was sufficient cause for not filing the same within such period.

**23.6** Consequential amendments on similar lines have been made in section 27 of the Wealth-tax Act.

**23.7** *Applicability* - These amendments take effect retrospectively from 1st June, 1981.

## **24. Document Identification Number**

**24.1** Section 282B (Allotment of Document Identification Number) is a new section inserted by the Finance (No. 2) Act, 2009 in the Income-tax Act with effect from 1st October, 2010. Under the provisions of this section, an income-tax authority is required to allot a computer generated Document Identification Number before issue of every notice, order, letter or any correspondence to any other income-tax authority or assessee or any other person and such number shall be quoted thereon. It also provides that every document, letter, correspondence received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number. In order to cover the entire gamut of services mentioned in section 282B on a pan-India basis, it would be essential to have the requisite infrastructure and facilities in place. Section 282B has been amended so as to provide that Document Identification Number will be required to be issued on or after 1st July, 2011.

**24.2***Applicability* - The amendment has been made effective from 1st October, 2010.

## **25. Taxation of income of non-life insurance business**

**25.1** Section 44 read with the First Schedule to the Income-tax Act provides the scheme of computation of income of insurance companies. According to Rule 5 of the said Schedule, the income of non-life insurance business is taken as 'profit before tax and appropriations' as per the profit and loss account of the company, prepared in accordance with the regulations made by the Insurance Regulatory Development Authority (IRDA), subject to certain adjustments.

**25.2** The Finance (No. 2) Act, 2009 amended the First Schedule to provide that in case of non-life insurance business, appreciation of or gains on realisation of investments taken credit for in the accounts shall be treated as income and be included in the computation of the total income.

**25.3** The appreciation in the value of investments, being in the nature of unrealized gain is not taken into account for determining profit or loss of non-life insurance business as per the IRDA regulations. The Act therefore has been amended to provide that the unrealized gains due to appreciation in the value of investments will not be included in the total income. Similarly, deduction will not be allowed for provision for losses due to diminution in the value of investments as this is not a realized loss.

**25.4** It has also been provided that any gain or loss on realisation of investments shall be added or deducted for the purpose of computation of the total income, if the same is not already credited or debited in the profit and loss account.



**25.5 Applicability** - This amendment takes effect from 1<sup>st</sup> April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

(M. Rajan)  
Under Secretary to the Government of India  
Dated 06.04.2011  
[F.No.142/1/2011-SO(TPL)]

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(M. Rajan)  
Under Secretary to the Government of India

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