DIRECT TAXES / DIRECT TAX LAWS

AMENDMENTS BY THE FINANCE (NO.2) ACT, 2009

I INCOME-TAX ACT, 1961

1. RATES OF TAX

Section 2 of the Finance (No.2) Act, 2009 read with Part I of the First Schedule to the Finance (No.2) Act, 2009, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2009-10. Part II lays down the rate at which tax is to be deducted at source during the financial year 2009-10 i.e. A.Y. 2010-11 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 2009-10 i.e. A.Y.2010-11. Part III of the First Schedule to the Finance (No.2) Act, 2009 will become Part I of the First Schedule to the Finance Act, 2010 and so on.

Rates for deduction of tax at source for the A.Y.2010-11

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 2009-10 i.e. A.Y. 2010-11 from income other than "salaries". These rates of tax deduction at source are the same as were applicable for the A.Y.2009-10, except in the following cases -

(i) In case of domestic companies, tax would be deductible@10% (instead of 20%) on -

(1) insurance commission subject to TDS under section 194D; and

(2) interest other than "interest on securities" subject to TDS under section 194A.

(ii) In case of domestic companies and resident non-corporate persons, tax would be deductible@10% (instead of 20%) on -

(1) deemed dividend under section 2(22)(e) subject to TDS under section 194; and

(2) interest on all securities subject to TDS under section 193.

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 Levy of surcharge has been withdrawn on deductions in all other cases.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 TDS if the income (other than salary) subject to tax deduction or collection at source is paid to a domestic company or a resident non-corporate assessee. However, education cess and secondary and higher education cess would be added to income-tax deducted from salary payment.

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 2009-10

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 2009-10 i.e. A.Y. 2010-11. The basic exemption limit has been increased from Rs.1,50,000 to Rs.1,60,000 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.3,00,000	10% of the amount by which the total income exceeds Rs.1,60,000
Where the total income exceeds Rs.3,00,000 but does not exceed Rs.5,00,000	Rs.14,000 plus 20% of the amount by which the total income exceeds Rs.3,00,000
Where the total income exceeds Rs.5,00,000	Rs.54,000 plus 30% of the amount by which the total income exceeds Rs.5,00,000

The threshold exemption level has been raised from Rs.1,80,000 to Rs.1,90,000 for resident women and from Rs.2,25,000 to 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.3,00,000	10% of the amount by which the total income exceeds Rs.1,90,000

Where the total income exceeds Rs.3,00,000 but does not exceed Rs.5,00,000	Rs.11,000 plus 20% of the amount by which the total income exceeds Rs.3,00,000
Where the total income exceeds Rs.5,00,000	Rs.51,000 plus 30% of the amount by which the total income exceeds Rs.5,00,000

(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.3,00,000	10% of the amount by which the total income exceeds Rs.2,40,000
Where the total income exceeds Rs.3,00,000 but does not exceed Rs.5,00,000	Rs.6,000 plus 20% of the amount by which the total income exceeds Rs.3,00,000
Where the total income exceeds Rs.5,00,000	Rs.46,000 plus 30% of the amount by which the total income exceeds Rs.5,00,000

(ii) Co-operative society

There is no change in the rate structure as compared to A.Y.2009-10.

	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.2010-11 is the same as that for A.Y.2009-10 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.2010-11 is the same as that for A.Y.2009-10 i.e. 30% on the whole of the total income of the local authority.

(v) Company

The rates of tax for A.Y.2010-11 are the same as that for A.Y.2009-10.

(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.2010-11 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 10% 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

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

(i) Section 2(15) defines “charitable purpose” to include relief of the poor, education, medical relief, 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) Section 2(15) has now been amended to specifically include within its ambit, the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest.

(iii) Prior to the amendment, these would have been included under “advancement of any other object of general public utility” and hence, would have been subject to the restriction mentioned above. However, now, they would not be subject to the restrictions which are applicable to the “advancement of any other object of general public utility”.

(Effective from A.Y. 2009-10)

(b) Definition of the term “manufacture” incorporated in the Act [Section 2(29BA)]

(i) Though various tax concessions are provided under the Income-tax Act for encouraging manufacture of articles or things, there is no specific definition of the term “manufacture”. Consequently, there have been legal disputes as to what exactly constitutes “manufacture”.

(ii) In order to remove these disputes and clarify the correct legal intention, a new clause (29BA) has been inserted in section 2 to provide that ‘manufacture’, with all its grammatical variations, shall mean a change in a non-living physical object or article or thing,—

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new object or article or thing with a different chemical composition or integral structure.

(Effective from A.Y. 2009-10)

(c) Zero Coupon Bonds to include bonds issued by scheduled banks also [Section 2(48)]

Related amendment in sections: 36(1)(iiia) & 194A(3)

(i) At present, the definition of zero coupon bonds includes bonds issued only by an infrastructure capital company or infrastructure capital fund or public sector company.

(ii) The Finance (No.2) Act, 2009 has now amended section 2(48) to include such bonds issued by scheduled banks (including nationalized banks) and notified by the Central Government in the Official Gazette within the definition of zero coupon bond, subject to the condition that no payment and benefit is received or receivable before maturity or redemption from the scheduled bank.

(iii) Under section 36(1)(iiia), the pro rata amount of discount on a zero coupon bond is allowed as deduction while computing business income. Consequent to the above amendment, the term "discount" defined in the Explanation to the said section has been amended to include within its scope, the difference between the amount received/receivable by, inter alia, a scheduled bank and the amount payable by the scheduled bank on maturity or redemption of such bond.

(iv) Section 194A(1) provides for deduction of tax at source from interest other than "interest on securities". Section 194A(3) provides for exclusions from the applicability of TDS provisions under section 194A(1). Section 194A(3) provides that the provisions of TDS under section 194A(1) would not be applicable in respect of income paid or payable in relation to a zero coupon bond issued by an infrastructure capital company or infrastructure capital fund or public sector company on or after 1.6.2005. This section has been amended to now provide that the provisions of TDS under section 194A(1) would not be applicable in respect of income paid or payable in relation to a zero coupon bond issued by an infrastructure capital company or infrastructure capital fund or public sector company or scheduled bank on or after 1.6.2005

(Effective from A.Y. 2009-10)

3. INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

(a) Denial of double benefit under section 10(10C) and section 89 in respect of VRS compensation

(i) An employee opting for voluntary retirement scheme receives a lump-sum amount in respect of his balance period of service. This amount is in the nature of advance salary.

(ii) Under section 10(10C), an exemption of Rs.5 lakh is provided in respect of such amount to mitigate the hardship on account of the employee going into the higher tax bracket consequent to receipt of the amount in lump-sum upon voluntary retirement.

(iii) However, some tax payers have resorted to claiming both the exemption under section 10(10C) (upto Rs.5 lakh) and relief under section 89 (in respect of the amount received in excess of Rs.5 lakh). This tax treatment has been supported by many court judgements also, for example, the Madras High Court ruling in CIT v. G.V. Venugopal (2005) 273 ITR 0307 and CIT v. M. Abdul Kareem (2009) 311 ITR 162 and the Bombay High Court ruling in CIT v. Koodathil Kallyatan Ambujakshan (2009) 309 ITR 113 and CIT v. Nagesh Devidas Kulkarni (2007) 291 ITR 0407. However, this does not reflect the correct intention of the statute.

(iv) Therefore, in order to convey the true legislative intention, section 89 has been amended to provide that no relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or a scheme of voluntary separation (in the case of a public sector company), if exemption under section 10(10C) in respect of such compensation received on voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee in respect of the same assessment year or any other assessment year.

(v) Correspondingly, section 10(10C) has been amended to provide that where any relief has been allowed to any assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to that assessment year or any other assessment year.

(Effective from A.Y.2010-11)

(b) Extension of time limit for filing application for tax exemption under section 10(23C)

(i) Under section 10(23C), exemption is provided in respect of income of institutions specified under its different sub-clauses.

(ii) In order to claim exemption in some cases specified therein, approvals are required to be taken from prescribed authorities, in the prescribed manner.

(iii) For example, an educational institution, having annual receipts of more than rupees one crore, has to make an application for seeking exemption at any time during the financial year for which the exemption is sought. Therefore, an eligible educational institution is required to estimate its annual receipts for deciding whether or not to file an application for exemption. This results in genuine hardship, for alleviating which, the time limit for filing such application has been extended from 31st March to 30th September of the succeeding financial year. This benefit of extension of time limit can be availed for F.Y.2008-09 and thereafter.

(iv) For instance, where the gross receipts of a trust or institution exceed rupees one crore in the financial year 2008-2009, it can file an application for grant of exemption in the prescribed form to the prescribed authority on or before 30th September, 2009.

(Effective from A.Y.2009-10)

(c) Exemption under section 10(23D) to be available to mutual funds set up by "other public sector banks" also

(i) Section 10(23D) exempts income of a mutual fund set up by, inter-alia, a public sector bank.

(ii) Clause (a) of the Explanation to section 10(23D) defining "public sector bank", does not include within its scope, "other public sector banks" categorized by the RBI.

(iii) The Central Government holds more than 51% shareholding in IDBI Bank Limited which has been categorized under "other public sector banks" by RBI.

(iv) Therefore, the definition of "public sector bank" has been widened to bring within its scope, a bank included in the category "other public sector banks" by the RBI.

(Effective from A.Y. 2010-11)

(d) Exemption of income received by any person on behalf of NPS Trust [Section 10(44)]

Related amendment in section: 115-O & 197A

The New Pension System (NPS), operational since 1st January, 2004, is compulsory for all new recruits to the Central Government service from 1st January, 2004. Thereafter, it has been opened up for employees of State Government and private sector.

NPS Trust has been set-up on 27th February, 2008 as per the provisions of the Indian Trust Act, 1882 to manage the assets and funds under the NPS in the interest of the beneficiaries. The Finance (No.2) Act, 2009 has exempted the NPS Trust from the applicability of –

(i) income-tax on any income received by any person for, or on behalf of, the NPS Trust [Section 10(44)]

(ii) dividend distribution tax in respect of dividend paid to any person for, or on behalf of, the NPS Trust [Section 115-O]; and

(iii) securities transaction tax on all purchases and sales of equity and derivatives by the NPS Trust.

Further, the NPS Trust shall receive all income without any deduction of tax at source.

Thus, the NPS Trust, which was set up to manage the assets and funds under the New Pension System in the interest of the beneficiaries, would enjoy a "pass-through status".

(Effective from A.Y.2009-10)

(e) Sunset clause for deductions under sections 10A and 10B to be deferred by one more year

(i) Under section 10A, deduction is available in respect of profits and gains derived from the export of articles or things or computer software by newly established undertakings located in any free trade zone or electronic hardware technology park or software technology park (notified by the Central Government).

(ii) Under section 10B, deduction is available in respect of profits and gains derived from the export of articles or things or computer software by newly established undertakings recognised as 100% export oriented undertaking (EOU) under the Industries (Development and Regulation) Act, 1951.

(iii) However, the deductions under these sections were to be allowed only up to A.Y.2010-11.

(iv) The Finance (No.2) Act, 2009 has extended the benefit of deduction under these sections for one more year. Hence, the benefit of deduction under these sections would be available for A.Y.2011-12 also. However, thereafter, with effect from A.Y.2012-13, no deduction would be allowed under these sections.

(Effective from A.Y.2009-10)

(f) 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 [Section 10AA(7)]

(i) As per section 10AA(7), the exempted profit of a SEZ unit is 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) has to be computed in the following manner -

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

(ii) This mode of computation of the profits of business with reference to the total turnover of the business carried on by the assessee seemed to be inequitable to those assessees who are having units in both the SEZ and the domestic tariff area (DTA) as compared to those assessees who are having units only in the SEZ. In order to remove this inequity, section 10AA(7) has been amended 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) The deduction would now 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) Example

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, let us compute the deduction under section 10AA for the P.Y.2008-09 and P.Y.2009-10.

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 Act, 2008, the deduction under section 10AA would be higher in the case of an assessee having units in both SEZ and DTA.

(Effective from A.Y. 2010-11)

(g) Exemption for voluntary contributions received by electoral trusts [Section 13B]

Related amendment in sections: 2(22AAA), 2(24), 80GGB & 80GGC

(i) In the year 2003, by an amendment carried out by the Election and Other Related Laws (Amendment) Act, 2003, sections 80GGB & 80GGC were introduced allowing 100 per cent deduction in respect of the contribution made to registered political parties.

(ii) The Finance (No.2) Act, 2009 has widened the scope of deductions under these sections by allowing deduction to also the contribution/donation made to the electoral trusts as may be approved by the CBDT in accordance with the scheme to be made by the Central Government.

(iii) The deduction shall be 100% of the amount donated.

(iv) Further, voluntary contribution received by such electoral trust shall be treated as its income under section 2(24), but shall be exempt under new section 13B, if the trust distributes to a registered political party during the year, 95% of the aggregate donations received by it during the year along with the surplus if any, brought forward from any earlier previous year.

(v) Another condition for availing the benefit under this section is that the electoral trust should function in accordance with the rules made by the Central Government.

(Effective from A.Y. 2010-11)

(h) Exemption limit for taxation of anonymous donations under section 115BBC

(i) Anonymous donations received by wholly charitable trusts and institutions are subject to tax at a flat rate of 30% under section 115BBC. Further, anonymous donations received by partly charitable and partly religious trusts and institutions would be taxed @ 30%, only if such anonymous donation is made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(ii) In order to provide relief to these trusts and institutions and to reduce their compliance burden, an exemption limit has been introduced, and only the anonymous donations in excess of this limit would be subject to tax@30% under section 115BBC.

(iii) The exemption limit is the higher of the following –

(1) 5% of the total donations received by the assessee; or

(2) Rs.1 lakh.

(iv) The total tax payable by such institutions would be –

(1) tax@30% on anonymous donations exceeding the exemption limit as calculated above; and

(2) tax on the balance income i.e. total income as reduced by the aggregate of anonymous donations received.

(v) The following table illustrates the calculation of anonymous donations liable to tax @30% under section 115BBC –

Situation	Total donations during the year (Rs.)	Anonymous donations received during the year (Rs.)	Exemption (Rs.)	Anonymous donations taxable@30% (Rs.)
1	15,00,000	4,00,000	1,00,000	3,00,000
2	30,00,000	7,00,000	1,50,000	5,50,000
3	40,00,000	10,00,000	2,00,000	8,00,000

(Effective from A.Y. 2010-11)

4. Salaries

Certain fringe benefits to be taxed as perquisites in the hands of employees [Section 17(2)]

Related amendment in sections: 49(2AA) & 115WM

(i) The Finance (No.2) Act, 2009 has delivered the long standing demand of the corporates to abolish FBT. Section 115WM has been inserted to provide that the provisions of Chapter XII-H relating to Fringe Benefit Tax shall not apply in relation to A.Y.2010-11 and thereafter.

(ii) However, the actual tax burden on fringe benefits would not be completely eliminated but would be shifted from the employer to the employee. The employer, instead of paying FBT, would now have to deduct tax at source from the employees in respect of certain fringe benefits, including ESOPs and contribution to superannuation fund in excess of the prescribed limit. These would now be taxed as perquisites in the hands of the employees.

(iii) Accordingly, the following fringe benefits have been brought under the scope of perquisites taxable in the hands of the employees by amending section 17(2) –

(1) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer or former employer, free of cost or at concessional rate to the assessee.

Specified security means “securities” as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956. It also includes the securities offered under employees stock option plan or scheme.

Sweat equity shares means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

The value of specified security or sweat equity shares shall be the fair market value of such security or shares on the date on which the option is exercised by the assessee, as reduced by any amount actually paid by, or recovered from, the assessee in respect of such security or shares. The fair market value means the value determined in accordance with the method as may be prescribed by the CBDT. “Option” means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a pre-determined price.

Note – Consequently, when these securities or shares are transferred by the assessee, the capital gains would be computed by taking the fair market value of the securities or shares, which has been taken into account for perquisite valuation, as the cost of acquisition of such securities or sweat equity shares.

(2) the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds Rs.1 lakh.

(3) the value of any other fringe benefit or amenity as may be prescribed by the CBDT.

(Effective from A.Y. 2010-11)

5. PROFITS AND GAINS OF BUSINESS OR PROFESSION

(a) Definition of "block of assets" as per section 2(11) to apply for all purposes of the Income-tax Act [Section 32(1)]

(i) At present, the term "block of assets" has been defined both in section 2(11) and in Explanation 3 to section 32(1). Since the definitions are not exactly the same in the two sections, it causes difficulty in interpretation.

(ii) In order to remove this difficulty, Explanation 3 of section 32(1) has been amended to delete the definition of "block of assets" provided therein. Hereafter, Explanation 3 to section 32(1) would define only the meaning of "assets" and not "block of assets". As a result, the meaning of "block of assets" has to be derived only from section 2(11).

(Effective from A.Y.2010-11)

(b) Scope of benefit of weighted deduction of 150% for in-house research and development expanded [Section 35(2AB)]

(i) Section 35(2AB) provides a weighted deduction of 150% to a company engaged in the business of biotechnology or in the business of manufacture or production of drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the CBDT, if it has incurred expenditure on scientific research (excepting on land and building) on in-house research and development facility approved by the prescribed authority.

(ii) This benefit of weighted deduction has now been extended to all companies engaged in the business of manufacture or production of any article or thing (except those specified in the list of the Eleventh Schedule) in order to promote research and development extensively in all sectors of the economy.

(Effective from A.Y.2010-11)

(c) Introduction of "investment-linked tax incentives" for specified businesses [New Section 35AD]

Related amendment in sections: 28, 43, 50B, 73A & 80-IA

(i) Although there are a plethora of tax incentives available under the Income-tax Act, they do not fulfill the intended purpose of creating infrastructure since these incentives are linked to profits and consequently have the effect of diverting profits from the taxable sector to the tax-free sector. Therefore, with the specific objective of creating rural infrastructure and environment friendly alternate means for transportation of bulk goods, investment-linked tax incentives have been 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) 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.

(iii) 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.

(iv) The specified business should fulfill the following conditions -

(1) it should not be set up by splitting up, or the reconstruction, of a business already in existence;

(2) it should not be set up by the transfer to the specified business of machinery or plant previously used for any purpose;

In order to satisfy this condition, the total value of the plant or machinery so transferred should not exceed 20% of the value of the total plant or machinery used in the new business.

For the purpose of this condition, machinery or plant would not be regarded as previously used if it had been used outside India by any person other than the assessee provided the following conditions are satisfied:

(a) such plant or machinery was not used in India at any time prior to the date of its installation by the assessee;

(b) the plant or machinery was imported into India from a foreign country;

(c) no deduction in respect of depreciation of such plant or machinery has been allowed to any person at any time prior to the date of installation by the assessee.

(3) 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,—

(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.

(v) The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VI-A under the heading "C – Deductions in respect of certain incomes".

(vi) The assessee cannot claim deduction in respect of such expenditure incurred for specified business under any other provision of the Income-tax Act in the current year or under this section for any other year.

(vii) The benefit will be available –

(a) in a case where the business relates to laying and operating a cross country natural gas pipeline network for distribution, if such business commences its operations on or after the 1st April, 2007; and

(b) in any other case, if such business commences its operation on or after the 1st April, 2009.

Consequently, profit-linked deduction provided under section 80-IA to the business of laying and operating a cross country natural gas distribution network has been discontinued. As a result, any person availing of this incentive can now avail of the benefit under section 35AD.

(viii) For the previous year 2009-10, an assessee carrying on the business of laying and operating a cross country natural gas pipeline network for distribution, including storage facilities being an integral part of such network, would be allowed a deduction of 100% of the capital expenditure (other than on land, goodwill and financial instrument) incurred during any earlier previous year, if the business has commenced operation between 1.4.2007 and 31.3.2009. This will be available in addition to any other capital expenditure (excluding land, goodwill and financial instrument) incurred during the previous year 2009-10. However, no deduction for such amount should have been allowed or allowable to the assessee in any earlier previous year.

(ix) "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.

An "associated person" in relation to the assessee means a person—

(1) who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee;

(2) who holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the capital of the assessee;

(3) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or

(4) who guarantees not less than 10% of the total borrowings of the assessee.

(x) Example

A Ltd. commenced operations of the business of laying and operating a cross-country natural gas pipeline network for distribution on 1st April, 2009. The company incurred capital expenditure of Rs.40 lakh during the period January to March, 2009 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2009. Further, during the financial year 2009-10, it incurred capital expenditure of Rs.150 lakh (out of which Rs.50 lakh was for acquisition of land) exclusively for the above business. Compute the deduction under section 35AD for the A.Y.2010-11, assuming that A Ltd. has fulfilled all the conditions specified in section 35AD.

The amount of deduction allowable under section 35AD for A.Y.2010-11 would be –

Particulars	Rs.
Capital expenditure incurred during the P.Y.2009-10 (excluding the expenditure incurred on acquisition of land) = Rs.150 lakh – Rs.50 lakh	100 lakh
Capital expenditure incurred prior to 1.4.2009 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2009	40 lakh
Total deduction under section 35AD for A.Y.2010-11	140 lakh

(xi) Where any goods or services held for the purposes of the specified business are transferred to any other business carried on by the assessee, or vice versa, and if the consideration for such transfer does not correspond with the market value of the goods or services then the profits and gains of the specified business shall be computed as if the transfer was made at market value.

For the above purpose, "market value" means the price such goods or services would ordinarily fetch in the open market, subject to statutory or regulatory restrictions, if any.

(xii) The deduction shall be allowed to the assessee only if the accounts of the assessee for the relevant previous year have been audited by a chartered accountant and the assessee furnishes the audit report in the prescribed form, duly signed and verified by such accountant along with his return of income.

(xiii) Where it appears to the Assessing Officer that the assessee derives more than ordinary profits from the specified business due to close connection between the assessee and any other person, or due to any other reason, the Assessing Officer may consider such profits as may be reasonably deemed to have been derived from the specified business for the purpose of computing deduction under this section.

(xiv) Clause (vii) has been inserted in section 28 to provide that any sum received or receivable, in cash or kind, on account of any capital asset (in respect of which deduction has been allowed under section 35AD) being demolished, destroyed, discarded or transferred shall be treated as income of the assessee, chargeable to tax under the head "Profits and gains of business or profession".

(xv) New section 73A has been inserted to provide that any loss computed in respect of the specified business shall be set off only against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on. There is no time limit specified for carry forward and set-off and therefore, such loss can be carried forward indefinitely for set-off against income from specified business.

(xvi) Explanation 13 has been inserted in section 43(1) to provide that the actual cost of any capital asset, on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be nil. This would be applicable in the case of transfer of asset by the assessee where -

(1) the assessee himself has claimed deduction under section 35AD; or

(2) the previous owner has claimed deduction under section 35AD. This would be applicable where the capital asset is acquired by the assessee by way of -

(a) gift, will or an irrevocable trust;

(b) any distribution on liquidation of the company;

(c) any distribution of capital assets on total or partial partition of a HUF;

(d) any transfer of a capital asset by a holding company to its 100% subsidiary company, being an Indian company;

(e) any transfer of a capital asset by a subsidiary company to its 100% holding company, being an Indian company;

(f) any transfer of a capital asset by the amalgamating company to an amalgamated company in a scheme of amalgamation, if the amalgamated company is an Indian company;

(g) any transfer of a capital asset by the demerged company to the resulting company in a scheme of demerger, if the resulting company is an Indian company;

(h) any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualization or corporatisation of a recognized stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company (fulfilling the conditions specified);

(i) any transfer of a capital asset or intangible asset by a sole proprietory concern to a company, where the sole proprietory concern is succeeded by a company (fulfilling the conditions specified).

(xvii) For the purposes of computing the net worth of the assets in case of slump sale under section 50B, the value of capital assets in respect of which whole of the expenditure has been allowed as deduction under section 35AD would be Nil.

(Effective from A.Y.2010-11)

(d) Withdrawal of commodities transaction tax [Section 36(1)(xvi)]

(i) Commodities transaction tax was introduced by the Finance Act, 2008. However, it had not been notified.

(ii) Clause (xvi) was inserted in section 36(1) last year to provide that any amount of commodities transaction tax paid by the assessee during the year in respect of taxable commodities transactions entered into in the course of business shall be allowed as deduction subject to the condition that such income from taxable commodities transactions has been included under the head ‘profits and gains of business or profession’.

(iii) However, this tax has been withdrawn this year. Consequently, this deduction has been removed by omitting clause (xvi).

(Effective from A.Y.2009-10)

(e) Scope of deduction under section 36(1)(viii) expanded to include business of providing long-term finance for development of housing in India

(i) Section 36(1)(viii) provides deduction in respect of any special reserve created and maintained by a specified entity.

(ii) The quantum of deduction, however, should not exceed 20% of the profits derived from eligible business computed under the head "Profits and gains of business or profession" carried to such reserve account.

(iii) The eligible business for different entities specified are given in the table below –

(1)	(2)	(3)
	Specified entity	Eligible business
1.	Financial Corporation specified in section 4A of the Companies Act, 1956 Financial corporation which is a public sector company Banking company Co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank)	Business of providing long-term finance for - (i) industrial or agricultural development or (ii) development of infrastructure facility in India; or (iii) construction or purchase of houses in India for residential purposes
2.	A housing finance company	Business of providing long-term finance for the construction or purchase of houses in India for residential purposes.
3.	Any other financial corporation including a public company	Business of providing long-term finance for development of infrastructure facility in India.

(iv) The National Housing Bank is a notified Financial Corporation under section 4A of the Companies Act, 1956. However, since it is not engaged in the long-term financing for construction or purchase of houses in India for residential purpose as required in clause (iii) of column (3) of serial no.1 in the table given above, there has been a view that it is not entitled to the benefit under section 36(1)(viii).

(v) Therefore, this section has been amended to provide that corporations engaged in providing long-term finance (including re-financing) for development of housing in India will be eligible for the benefit under section 36(1)(viii). Therefore, clause (iii) of column 3 of Sl. No.1 would now read as -

"(iii) development of housing in India".

Note - National Housing Bank (NHB) is wholly owned by Reserve Bank of India and is engaged in promotion and regulation of housing finance institutions in the country. It provides re-financing support to housing finance institutions, banks, etc., for the develoment of housing in India.

(Effective from A.Y.2010-11)

(f) Increase in limits for deductibility of remuneration paid to partners by a firm [Section 40(b)(v)]

(i) Payment of remuneration to working partners is allowed as deduction if it is authorized by the partnership deed and is subject to the overall ceiling limits specified in section 40(b)(v).

(ii) The limits for partners' remuneration under section 40(b)(v) has revised upwards and the differential limits for partners' remuneration paid by professional firms and non-professional firms have been removed.

(iii) On the first Rs.3 lakh of book profit or in case of loss, the limit would be the higher of Rs.1,50,000 or 90% of book profit and on the balance of book profit, the limit would be 60%.

(iv) Example

If a firm has paid Rs.7,50,000 as remuneration to its partners for the P.Y.2009-10 in accordance with its partnership deed, and it has a book profit of Rs.10 lakh, then, the allowable remuneration calculated as per the limits specified in section 40(b)(v) would be -

Particulars	Rs.
On first Rs.3 lakh of book profit [3,00,000 × 90%]	2,70,000
On balance Rs.7 lakh of book profit [7,00,000 × 60%]	4,20,000
	6,90,000

The excess amount of Rs.60,000 (i.e., Rs.7,50,000 – Rs.6,90,000) would be disallowed as per section 40(b)(v).

(Effective from A.Y.2010-11)

(g) Increase in limit for attracting disallowance under section 40A(3)/(3A) from Rs.20,000 to Rs.35,000 for payments to transport operators

(i) Section 40A(3) provides for disallowance of expenditure incurred in respect of which payment or aggregate of payments made to a person in a day exceeds Rs.20,000, and such payment or payments are made otherwise than by account payee cheque or account payee bank draft. Section 40A(3A) provides for deeming a payment as profits and gains of business or profession if the expenditure is incurred in a particular year but the payment (or aggregate of payments to a person in a day) is made in any subsequent year in a sum exceeding Rs.20,000 otherwise than by an account payee cheque or by an account payee bank draft. However, the provisions of this section are subject to exceptions as provided in Rule 6DD of the Income-tax Rules, 1962.

(ii) This limit of Rs.20,000 has been raised to Rs.35,000 in case of payment made to transport operators for plying, hiring or leasing goods carriages. Therefore, payment or aggregate of payments up to Rs.35,000 in a day can be made to a transport operator otherwise than by way of account payee cheque or account payee bank draft.

(iii) In all other cases, the limit would continue to be Rs.20,000.

(Effective from 1st October, 2009)

(h) Increase in presumptive income for transport operators [Section 44AE]

(i) Under section 44AE, a presumptive scheme is available to assessees engaged in business of plying, hiring or leasing goods carriages. The scheme applies to an assessee, who owns not more than 10 goods carriages at any time during the previous year. Such assessees opting for the presumptive scheme are not required to maintain books of account under section 44AA or get them audited under section 44AB.

(ii) The presumptive income per vehicle of transport operators under this scheme has been increased from Rs.3,150 per month to Rs.4,500 per month for vehicles other than heavy vehicles and from Rs.3,500 per month to Rs.5,000 per month for heavy vehicles with effect from A.Y.2011-12. (Month includes part of a month also).

(iii) However, the assessee has the option to declare in his return of income, an amount higher than the presumptive income so calculated, claimed to have been actually earned by him from such vehicle.

(iv) Example

Let us take the case of Mr.Y, who owns 5 heavy goods vehicles and 3 light goods vehicles. For the P.Y.2009-10, his presumptive income under section 44AE would be Rs.26,950 [(5 × 3,500) + (3 × 3,150)]. For the P.Y.2010-11, his presumptive income under section 44AE would be Rs.38,500 [(5 × 5,000) + (3 × 4,500)]. Therefore, consequent to this amendment, his presumptive income would go up by Rs.11,550 (i.e., Rs.38,500 – Rs.26,950) for the A.Y.2011-12.

(Effective from A.Y.2011-12)

(i) Increase in scope of coverage of presumptive tax provisions [New section 44AD]

Related amendment in sections: 44AF, 44AA & 44AB

(i) The presumptive taxation scheme, so far restricted to civil construction and retail trade, would now cover all small businesses with total turnover/gross receipts of up to Rs.40 lakh. Section 44AD has been substituted, to include within its scope all such businesses (except the business of plying, hiring and leasing goods carriages covered under section 44AE). Consequently, section

44AF dealing with presumptive taxation for retail trade would not be applicable w.e.f. A.Y.2011-12 since retail trade would also fall within the scope of section 44AD.

(ii) Resident individuals, HUFs and partnership firms (but not LLPs) would be covered under this scheme.

(iii) The scheme would not apply to an assessee who is availing deductions under sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C.—Deductions in respect of certain incomes" in the relevant assessment year.

(iv) The presumptive rate of tax would be 8% of total turnover or gross receipts. However, the assessee has the option to declare in his return of income, an amount higher than the presumptive income so calculated, claimed to have been actually earned by him.

(v) All deductions allowable under sections 30 to 38 shall be deemed to have been allowed in full and no further deduction shall be allowed. However, in the case of a firm, salary and interest would be allowed as deduction subject to the conditions and limits prescribed under section 40(b).

(vi) The written down value of any asset of such business shall be deemed to have been calculated as if the assessee had claimed and had been actually allowed the deduction in respect of depreciation for each of the relevant assessment years.

(vii) The intention of widening the scope of this scheme is to reduce the compliance and administrative burden on small businessmen and relieve them from the requirement of maintaining books of account. Such assessees opting for the presumptive scheme are not required to maintain books of account under section 44AA or get them audited under section 44AB.

(viii) Further, they would also be relieved from the requirement of advance tax payments. It would be sufficient compliance if they pay their tax while filing their return of income before the due date.

(ix) An assessee with turnover of upto Rs.40 lakh, who shows an income below the presumptive rate prescribed under these provisions, will, in case his total income exceeds the taxable limit, be required to maintain books of accounts under section 44AA and also get them audited under section 44AB.

Thus, merely because an eligble assessee does not opt for presumptive taxation under section 44AD, it would not make him liable to maintain books of account under section 44AA or get the same audited under section 44AB. He will have to comply with these requirements only if his total income exceeds the taxable limit. If his total income does not exceed the taxable limit, the requirement of maintaining books of accounts under section 44AA and having the same audited under section 44AB would not arise.

(x) In order to determine whether an assessee, who is engaged in multiple businesses, is eligble to opt for section 44AD, the limit of Rs.40 lakh should be applied business-wise and not by aggregating the turnover of all businesses of the assessee.

(xi) Example

Let us take the case of an assessee, say Mr. X, who has 3 businesses, the details of which are given hereunder -

Business	Turnover during the P.Y.2010-11
1. Retail trade	Rs. 35 lakh
2. Civil construction	Rs. 45 lakh
3. Catering	Rs. 30 lakh

In this case, Mr.X can opt for presumptive taxation under section 44AD in respect of his retail trade business and catering business, but not in respect of civil construction business (since the turnover of this business exceeds Rs.40 lakh). If Mr.X opts for presumptive taxation scheme, then his income from retail trade business would be Rs.2.80 lakh (i.e., 8% of Rs.35 lakh) and his income from catering business would be Rs.2.40 lakh (i.e., 8% of Rs.30 lakh). He is not required to maintain books of account for retail trade and catering business. However, since he cannot avail presumptive taxation scheme in respect of civil construction business, he has to maintain books of account under section 44AA and get them audited under section 44AB.

(Effective from A.Y.2011-12)

Note – The amendments to section 44AE and 44AD given in (h) and (i) above are effective only from A.Y.2011-12. Therefore, they are not applicable for students appearing in May 2010 and November 2010 examinations.

(j) Full depreciation to be deducted to arrive at the written down value under section 43(6) in cases of composite income covered under Rules 7A, 7B & 8 also

(i) As per section 32(1)(ii), depreciation to be allowed has to be computed at the prescribed percentage on the written down value (WDV) of any block of assets. As per section 43(6)(b), in the case of assets acquired before the previous year, the WDV shall be computed by taking the actual cost to the assessee less all depreciation "actually allowed" to him under the Income-tax Act.

(ii) Rules 7A, 7B and 8 of the Income tax Rules, 1962, deal with the computation of income in cases of composite income where income is derived in part from agricultural operations and in part from business chargeable to tax under the head "Profits & Gains of Business or Profession". These rules prescribe the method of computation in the case of manufacture of rubber, coffee and tea. In such cases, the income which is brought to tax as "business income" is a prescribed fixed percentage of the composite income.

(iii) The Hon'ble Supreme Court, in the case of CIT v. Doom Dooma India Ltd (2009) 310 ITR 392, has held that the language used in section 43(6)(b) is deduction of depreciation "actually allowed". Therefore, in composite income cases, where income is partly agricultural and partly chargeable to tax under the head "Profits & Gains of Business or Profession", the depreciation deducted in arriving at the taxable income alone can be taken into account for computing the WDV in the subsequent year.

(iv) For instance, Rule 8 prescribes the taxability of income from the manufacture of tea. Under the said rule, income derived from the sale of tea grown and manufactured by seller shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax. For instance, if the turnover is Rs.20 lakh, the depreciation is Rs.1 lakh and other expenses Rs.4 lakh, then the income would be Rs.15 lakh. Business income would be Rs.6 lakh (being 40% of Rs.15 lakh). As per the Court decision, only the depreciation "actually allowed" i.e., Rs.40,000, being 40% of Rs.1 lakh, has to be deducted to arrive at the written down value. However, the correct legislative intent is that the WDV is required to be computed by deducting the full depreciation attributable to composite income i.e. Rs.1 lakh in this case. The ambiguity in this case has arisen on account of the interpretation of the meaning of the phrase "actually allowed" used in section 43(6)(b).

(v) Therefore, in order to clarify the correct legislative intent, Explanation 7 has been inserted to provide that in cases of 'composite income', for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable under the head "Profits and Gains of business or profession". The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.

(Effective from A.Y.2010-11)

(k) Taxation of investment income/loss of Non-life insurance business [Rule 5 of the First Schedule to the Income-tax Act]

(i) The profits and gains of non-life insurance business has to be determined in the manner laid down under section 44 read with Rule 5 of the First Schedule.

(ii) Rule 5 requires that the profits disclosed in the annual accounts, after adjustments for unexpired risk and disallowances under sections 30 to 43B be taken as the profits and gains of non-life insurance business. Reference is made to the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Controller of Insurance.

(iii) In the year 1999, the Insurance Act, 1938 was amended and the Insurance Regulatory Development Authority (IRDA) was created. In the financial year 2001-02, IRDA introduced "IRDA (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002". The regulations required fresh guidelines and formats for preparation of accounts by General Insurers. The new norms required a non-life insurance company to include profit or loss on realization/sale of investment in the profit and loss account or revenue account. This treatment is also in line with the international best practice on taxation of investment income of non-life insurance companies.

(iv) Accordingly, Rule 5 of the First Schedule to the Income-tax Act now provides that the profits and gains of non-life insurance business would be the profit before tax and appropriations as disclosed in the profit and loss account prepared in accordance with the provisions of the Insurance Act, 1938 or the IRDA Act, 1999, after adjustment for unexpired risk and disallowances under sections 30 to 43B. Further, any increase in respect of any amount taken credit for in the accounts on account of appreciation of or gains on realisation of investments in accordance with the regulations prescribed by IRDA shall be treated as income and included in the computation of the total income. Similarly, deduction shall be allowed in respect of any amount either written off or provided in the accounts to meet diminution in or loss on realisation of investments in accordance with the regulations prescribed by IRDA.

(Effective from A.Y.2011-12)

Note – Since this amendment is effective only from A.Y.2011-12, it is not applicable for students appearing in May 2010 and November 2010 examinations.

6. CAPITAL GAINS

Transfer of land and/or building through "power of attorney" to attract the provisions of section 50C

(i) Section 50C provides that where the consideration received or accruing as a result of the transfer of a capital asset, being land or building or both, is less than the value adopted or assessed by an authority of a State Government (stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain.

(ii) However, the scope of section 50C does not include within its ambit, transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney. Therefore, in order to prevent tax evasion on this account, section 50C has been amended to provide that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain. The term "assessable" has been added to cover transfers executed through power of attorney.

(iii) Explanation 2 has been inserted after section 50C(2) to define the term 'assessable' to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

(Effective from 1st October, 2009)

7. INCOME FROM OTHER SOURCES

(a) Transfer of movable/immovable property without consideration or for inadequate consideration to be taxed in the hands of the recipient [Section 56(2)(vii)]

Related amendment in sections: 2(24) & 49(4)

(i) As per section 56(2)(vi), any 'sum of money' exceeding rupees fifty thousand received without consideration by an individual or HUF will be chargeable to income-tax in the hands of the recipient under the head 'Income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will would not be treated as income. Likewise, anything which is received in kind having 'money's worth' (like property) would be outside the ambit of section 56.

(ii) New clause (vii) has been 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" means immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.

(iii) If an immovable property is received without consideration, the stamp duty value of such property would be taxed as the income of the recipient if it exceeds Rs.50,000. In case an immovable property is received for inadequate consideration, and the difference between the stamp duty value and such consideration exceeds Rs.50,000, such difference would be taxed as the income of the recipient.

If the stamp duty value of immovable property is disputed by the assessee, the Assessing Officer may refer the valuation of such property to a Valuation Officer. In such a case, the provisions of section 50C and section 155(15) shall, as far as may be, apply for determining the value of such property.

(iv) If movable 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 movable 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 CBDT would prescribe the method of determination of fair market value of a movable property.

(v) The table below summarises the new scheme of taxability of gifts with effect from 1st October, 2009 -

	Nature of asset	Particulars	Taxable value
1	Money	Without consideration	The whole amount if the same exceeds Rs.50,000.
2	Immovable property	Without consideration	The stamp value of the property, if it exceeds Rs.50,000.
3	Immovable property	Inadequate consideration	The difference between the stamp value and the consideration, if such difference exceeds Rs.50,000
4	Movable property	Without consideration	The aggregate fair market value of the property, if it exceeds Rs.50,000.
5	Movable property	Inadequate consideration	The difference between the aggregate fair market value and the consideration, if such difference exceeds Rs.50,000

(vi) However, any sum of money or value of property received -

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer or donor, as the case may be; or

(e) from any local authority as defined in the Explanation to section 10(20); or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in section 10(23C); or

(g) from any trust or institution registered under section 12AA

would be outside the ambit of section 56(2)(vii).

(vii) 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).

(viii) Sub-section (4) has been inserted in section 49 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), 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).

(ix) Example

Mr. Z received the following gifts during the P.Y.2009-10 from his friend Mr.Y, -

(1) Cash gift of Rs.1,00,000 on his birthday, 19th June, 2009.

(2) 50 shares of B Ltd., the fair market value of which was Rs.1,00,000, on his birthday, 19th June, 2009.

(3) 100 shares of A Ltd., the fair market value of which was Rs.55,000 on the date of transfer. This gift was received on the occasion of Diwali. Mr. Y, had originally purchased the shares on 1-7-2009 at a cost of Rs. 40,000.

Further, on 17th December, 2009, Mr.Z purchased land from his brother's father-in-law for Rs.3,50,000. The stamp value of land was Rs.5,00,000.

On 1st March, 2010, he sold the 100 shares of A Ltd. for Rs.80,000

Compute the income of Mr.Z chargeable under the head "Income from other sources" and "Capital Gains" for A.Y.2010-11

Computation of "Income from other sources" of Mr.Z for the A.Y.2010-11

	Particulars		Rs.
(1)	Cash gift received before 1.10.2009 is taxable u/s 56(2)(vi) since it exceeds Rs.50,000		1,00,000
(2)	Value of shares of B Ltd. gifted by Mr.Y on 19th June, 2009 is not taxable since only gift of property after 1st October, 2009 is chargeable to tax u/s 56(2)(vii).		-
(3)	Fair market value of shares of A Ltd. is taxable since the gift was made after 1st October, 2009 and the aggregate fair market value exceeds Rs.50,000.		55,000
(4)	Purchase of land for inadequate consideration on 17.12.2009 would attract the provisions of section 56(2)(vii), since the difference between the stamp value and consideration exceeds Rs.50,000. Brother's father-in-law does not fall within the definition of "relative" u/s 56(2).		
	Stamp Value	5,00,000	
	Less: Consideration	3,50,000	1,50,000
Income from Other Sources			3,05,000

Computation of "Capital Gains" of Mr.Z for the A.Y.2010-11

Sale Consideration	80,000
Less: Cost of acquisition [deemed to be the fair market value charged to tax under section 56(2)(vii)]	55,000
Short-term capital gains	25,000

(Effective from 1st October, 2009)

(b) Interest received on compensation/enhanced compensation deemed to be income in the year of receipt and taxable under the head “Income from Other Sources” [Sections 56(2)(viii) & 145A]

Related amendment in section: 57

(i) As per section 145(1), income chargeable under the head “Profits and gains of business or profession” or “Income from other sources”, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(ii) Further, the Hon’ble Supreme Court has, in Rama Bai v. CIT (1990) 181 ITR 400, held that arrears of interest computed on delayed or on enhanced compensation shall be taxable on accrual basis. The tax payers are facing genuine difficulty on account of this ruling, since the interest would have accrued over a number of years, and consequently the income of all the years would undergo a change.

(iii) Therefore, to remove this difficulty, clause (b) has been inserted in section 145A to provide that the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.

(iv) Clause (viii) has been inserted in section 56(2) to provide that income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as “Income from other sources” in the year in which it is received.

(v) Clause (iv) has been inserted in section 57 to allow a deduction of 50% of such income. It is further clarified that no deduction would be allowable under any other clause of section 57 in respect of such income.

(vi) Example

Interest on enhanced compensation received by Mr.G during the previous year 2009-10 is Rs.5,00,000. Out of this interest, Rs.1,50,000 relates to the previous year 2006-07, Rs.1,65,000 relates to previous year 2007-08 and Rs.1,85,000 relates to previous year 2008-09. Discuss the tax implication, if any, of such interest income for A.Y.2010-11.

The entire interest of Rs.5,00,000 would be taxable in the year of receipt, namely, P.Y.2009-10.

Particulars	Rs.
Interest on enhanced compensation taxable u/s 56(2)(viii)	5,00,000
Less: Deduction under section 57(iv) @50%	2,50,000
Interest chargeable under the head “Income from other sources”	2,50,000

(Effective from A.Y.2010-11)

8. DEDUCTIONS FROM GROSS TOTAL INCOME

(a) Certain exemptions and profit-linked deductions in Chapter VI-A to be allowed only if claimed in the return and to be restricted to the profits and gains of such undertaking/unit/enterprise or eligible business, as the case may be [Section 80A]

(i) The profit-linked deductions in Chapter VI-A are susceptible to sizable manipulation by the tax payers who have, in the past, resorted to claiming deduction under more than one section in respect of the same profits by taking advantage of the overlap of provisions of the different sections.

(ii) In order to prevent such manipulation by tax payers, section 80A has been amended to provide that –

(1) the profits and gains allowed as deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of Chapter VIA under the heading "C.-Deductions in respect of certain incomes" in any assessment year, shall not be allowed as deduction under any other provision of the Act for such assessment year [Sub-section (4)];

(2) the deduction, referred to in (1) above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be [Sub-section (4)];

(3) No deduction under any of the provisions referred to in (1) above, shall be allowed if the deduction has not been claimed in the return of income. [Sub-section (5)];

(Effective retrospectively from A.Y.2003-04)

(iii) Further, sub-section (6) has been inserted in section 80A to provide that the transfer price of goods and services between such undertaking or unit or enterprise or eligible business and any other business of the assessee shall be determined at the market value of such goods or services as on the date of transfer. This amendment would be effective from 1st April, 2009 and will accordingly apply to all cases where the proceedings are pending before any authority on or after such date.

(iv) For this purpose, the expression "market value" has been defined to mean,-

(a) in relation to any goods or services sold or supplied, the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;

(b) in relation to any goods or services acquired, the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any.

(Effective from 1.4.2009)

(b) Deduction in respect of contribution to NPS extended to self-employed individuals also [Section 80CCD]

(i) Section 80CCD provides for deduction of employee's and employer's contribution to New Pension System notified by the Central Government. However, if the amount contributed exceeds 10% of salary, then the deduction would be restricted to 10% of salary. This restriction is applicable both in the case of employee's contribution and employer's contribution to such scheme.

(ii) The benefit of deduction under this section is currently available only to individuals employed by the Central Government or any other employer on or after 1.1.2004.

(iii) This deduction is now extended also to self-employed individuals. The deduction in the case of a self-employed individual would be restricted to 10% of his gross total income in the previous year.

(iv) Sub-section (3) provides that the amount standing to the credit of the assessee in the pension account (for which deduction has already been claimed by him under this section) and accretions to such account, shall be taxed as income in the year in which such amounts are received by the assessee or his nominee on -

(a) closure of the account; or

(b) his opting out of the said scheme; or

(c) receipt of pension from the annuity plan purchased or taken on such closure or opting out.

(v) However, it is now provided that the assessee shall be deemed not to have received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year.

(Effective from A.Y.2009-10)

(c) Increase in deduction for a person with severe disability [Section 80U] and for maintenance including medical treatment of a dependent with severe disability [Section 80DD]

(i) Under section 80-DD, deduction is allowable to an individual or HUF, who is a resident in India, in respect of the following:—

(a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; and

(b) Amount paid to LIC or other insurance in respect of a scheme for the maintenance of a disabled dependant.

(ii) The present limit for deduction is Rs.50,000 if the dependant is suffering from disability and Rs.75,000 if the dependant is suffering from severe disability.

(iii) The deduction in respect of maintenance or medical treatment of a dependent with severe disability has been increased from Rs.75,000 to Rs.1 lakh.

However, the deduction in respect of maintenance or medical treatment of a dependent with disability will continue to be Rs.50,000.

(iv) Under section 80U, deduction of Rs.75,000 is available in computing the total income of a resident individual, who is certified by the medical authority to be a person with severe disability. This deduction has also been increased to Rs.1,00,000.

The deduction under section 80U for a person with disability will, however, continue to be Rs.50,000.

(Effective from A.Y.2010-11)

(d) Expansion of scope of section 80E to cover all fields of study after Class XII, including vocational study, for the purpose of interest deduction in respect of loan taken for pursuing such courses

(i) Section 80E provides for a deduction to an assessee, being an individual, on account of any amount paid by him in the previous year by way of interest on loan taken from any financial institution or any approved charitable institution for the purpose of pursuing his higher education or higher education of his relative.

(ii) Presently, the deduction is available only for pursuing full time studies for any graduate or post-graduate course in engineering, medicine, management or for post-graduate course in applied sciences or pure sciences including mathematics and statistics.

(iii) The scope of this section has now been expanded to cover all fields of studies (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority to do so. Therefore, interest on loan taken for pursuing any course after Class XII or its equivalent, will qualify for deduction under section 80E.

(iv) Further, the definition of “relative”, in relation to an individual, has been amended to include, in addition to spouse and children of the individual, the student for whom the individual is the legal guardian.

(Effective from A.Y.2010-11)

(e) One-time approval for institutions and funds for the purpose of recognition under section 80G

(i) Section 80G(5)(vi) provides that the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed.

(ii) The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval.

(iii) The approved institutions and funds face genuine hardship in renewing their approvals from time to time on account of this restriction imposed on the validity of such approvals.

(iv) Therefore, in order to mitigate the hardship and to reduce the burden on the tax administration, the proviso has been omitted, implying that the approval once granted shall continue to be valid in perpetuity.

(v) Since this amendment would be effective from 1st October, 2009, the existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. However, approvals expiring before 1st October, 2009 will have to be renewed and post-renewal, these shall continue to be valid in perpetuity, unless specifically withdrawn.

(Effective from 1st October, 2009)

(f) Extension of sunset clause for tax holiday under section 80-IA for power-sector undertakings and industrial parks

(i) Section 80-IA(4)(iii) provides for deduction in respect of any undertaking which develops, develops and operates or maintains and operates an industrial park notified by the Central Government on or before 31.3.2009.

The time limit has been extended by two years i.e. the deduction would be available in respect of such industrial parks notified by the Central Government on or before 31.3.2011.

(ii) Section 80-IA(4)(iv) provides for deduction in respect of profits and gains derived by an undertaking which –

(1) is set up in India for generation or generation and distribution of power, if it begins to generate power on or before 31st March, 2010;

(2) starts transmission or distribution by laying a network of new transmission or distribution lines on or before 31st March, 2010;

(3) undertakes substantial renovation and modernization of the existing network of transmission or distribution lines on or before 31st March 2010.

This time limit has been extended by one year i.e., from 31st March, 2010 to 31st March, 2011, to enable undertakings which start generation, or transmission or distribution of power during the period between 1st April, 2010 and 31st March, 2011 or which undertakes substantial renovation and modernization of the existing network of transmission or distribution lines between 1st April, 2010 and 31st March, 2011 to avail benefit of deduction under this section.

(Effective from A.Y.2009-10)

(iii) Under section 80-IA(4)(v), an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant is eligible for a 10 year tax benefit if it fulfils the following conditions:-

(1) such company is formed before 30.11.2005 with majority equity participation by public sector companies for enforcing the security interest of the lenders to the company owning the power generating plant;

(2) such Indian company is notified by the Central Government before 31.12.2005; and

(3) the undertaking begins to generate or transmit or distribute power before 31st March, 2008.

The terminal date for commencing the activity of generation, transmission or distribution of power in case of such undertaking has been extended from 31.3.2008 to 31.3.2011.

(Effective retrospectively from A.Y.2008-09)

(g) Tax holiday under section 80-IA not available in respect of works contract

(i) Section 80-IA(1) provides a ten year tax holiday in respect of profits and gains derived by an undertaking or an enterprise from an eligible business i.e., business referred to in sub-section (4).

(ii) The Explanation to the said section has been substituted to clarify that the tax holiday under section 80-IA would not be available in relation to a business referred to in sub-section (4) which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by the undertaking or enterprise referred to in section 80-IA(1).

(Effective retrospectively from A.Y.2000-01)

(h) Extension of time limit for refineries in the private sector to begin refining of mineral oil and expansion of scope of tax holiday under section 80-IB(9)

(i) Under section 80-IB(9), a 100% deduction is allowed in respect of profits and gains derived from commercial production or refining of mineral oil.

(ii) The deduction under this sub-section is available to an undertaking for a period of seven consecutive assessment years including the initial assessment year –

(1) in which the commercial production under a production sharing contract has first started; or

(2) in which the refining of mineral oil has begun.

(iii) However, deduction under this sub-section would be allowed to an undertaking which begins refining of mineral oil on or after 1.4.2009 only if it fulfills the following conditions -

(1) it is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least 49% of the voting rights;

(2) it is notified by the Central Government in this behalf on or before 31st May, 2008; and

(3) it begins refining not later than 31st March, 2012.

(iv) Therefore, the refineries in the private sector have to commence refining of mineral oil on or before the 31st March, 2009.

(v) Since a very short notice period was given to private sector entrepreneurs to complete the execution of their refinery project, consequently, entrepreneurs who had undertaken substantial investment in anticipation of the tax holiday suffered serious financial setback.

(vi) Therefore, sub-section (9) has been substituted to allow them a further period of three years i.e. upto the 31st March, 2012 to begin refining of mineral oil and avail the tax benefit. The new terminal date will, therefore, be the same for both the public and the private sector.

(Effective from 1.4.2009)

(vii) Further, the scope of tax holiday under section 80-IB(9), which was up to now available in respect of profits arising from the commercial production or refining of mineral oil, has been extended to commercial production of natural gas in blocks which are licensed under the -

(1) VIII Round of bidding for award of exploration contracts ("NELP-VIII") under the New Exploration Licencing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.DO.VL, dated 10th February, 1999; or

(2) IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks

and begins commercial production of natural gas on or after 1st April, 2009.

(Effective from A.Y.2010-11)

(i) All blocks licensed under a single contract to be treated as a single "undertaking" [Section 80-IB(9)]

Presently, there is no definition of the term "undertaking" in sub-section (9). Accordingly, an Explanation has been inserted in sub-section (9) to clarify that for the purposes of claiming deduction under sub-section (9), all blocks licensed under a single contract, which has been awarded -

(1) under the New Exploration Licencing Policy announced by the Government of India vide Resolution No.O-19018/22/95-ONG.DO.VL, dated 10.2.1999 or

(2) in pursuance of any law for the time being in force or

(3) by Central or a State Government in any other manner

shall be treated as a single "undertaking".

This definition of "undertaking" will be applicable both in relation to mineral oil and natural gas.

(Effective retrospectively from A.Y.2000-01)

(j) Further conditions to be satisfied by an undertaking developing and building housing projects for claiming benefit of deduction under section 80-IB(10)

(i) Section 80-IB(10) provides for 100% deduction of the profits derived by an undertaking from developing and building housing projects. This benefit is available subject to fulfillment of certain conditions, namely -

(a) The project is approved by a local authority before 31st March, 2007.

This time limit has been extended by one more year. Now, projects approved by a local authority before 31st March, 2008 would qualify for deduction.

(b) The project is constructed on a plot of land having a minimum area of one acre.

(c) The built-up area of each residential unit should not exceed 1,000 sq.ft. in the cities of Delhi and Mumbai (including areas falling within 25 kms. of municipal limits of these cities) and 1,500 sq.ft. in other places.

(d) 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.

(e) 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.

(ii) Though the main purpose of the tax benefit for housing projects is to build housing stock for low and middle income households, which has been ensured by limiting the size of the residential unit, the developers bypass the same by entering into agreement to sell multiple adjacent units to one buyer.

(iii) Accordingly, further conditions have been imposed and the undertaking which develops and builds the housing project shall not be allowed to allot more than one residential unit in the housing project to the same person, not being an individual. Where the person is an individual, no other residential unit in such housing project should be allotted to any of the following persons:-

(1) the individual himself or spouse or minor children of such individual;

(2) the Hindu undivided family in which such individual is the karta;

(3) any person representing such individual, the spouse or minor children of such individual or the Hindu undivided family in which such individual is the karta.

(Effective from A.Y.2010-11)

(iv) The main aim of the tax concession under section 80-IB(10) is to provide tax benefit to the person undertaking the investment risk i.e. the actual developer. However, any person undertaking pure contract risk is not entitled to the tax benefit.

(v) Accordingly, an Explanation has been inserted after sub-section (10) of section 80-IB to provide that the benefit under sub-section (10) would not be available to any undertaking which executes the housing project as a works contract awarded by any other person (including the Central or State Government).

(Effective retrospectively from A.Y.2001-02)

(k) Deduction under section 80-IB extended to an undertaking deriving profit from the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products [Section 80-IB(11A)]

(i) An undertaking deriving profit from the business of processing, preservation and packaging of fruits and vegetables or from the integrated business of handling, storage and transportation of foodgrains is eligible for deduction under section 80-IB(11A),

(ii) The amount of deduction shall be 100% of the profits and gains derived from such business for 5 assessment years beginning with the initial assessment year i.e. the assessment year relevant to the previous year in which the undertaking begins such business. Thereafter, the deduction allowable is 25% (30% in the case of a company). The total period of deduction should not exceed 10 consecutive assessment years.

(iii) The benefit of deduction under section 80-IB(11A) has now been extended to an undertaking deriving profit from the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products, if it begins to operate such business on or after 1.4.2009.

(Effective from A.Y.2010-11)

9. DOUBLE TAXATION RELIEF AND TRANSFER PRICING

(a) Central Government empowered to enter into agreement with specified non-sovereign territories [New Section 90]

(i) Under section 90, the Central Government is empowered to enter into Double Taxation Avoidance Agreement (DTAA) with the Government of any other country outside India for granting double-taxation relief and facilitating exchange of information for preventing avoidance or evasion of tax. Section 90 has been substituted to enable the Government to expand the scope of this co-operation by entering into a DTAA or TIEA (Tax Information Exchange Agreement) with non-sovereign jurisdictions by notifying such specified territories outside India.

(ii) This provision will not only benefit the assessees in these specified territories having commercial relations with India but will also aid in collection of information for taking action against tax evaders both by the authorities in India and the specified territory. An example as to where this provision can be expeditiously implemented is Hong Kong, since there is no DTAA between

India and Hong Kong though the commercial and fiscal relationship between the countries is very strong.

(iii) Sub-section (1) of new section 90 provides that the Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—

(a) for the granting of relief in respect of—

(i) income on which income-tax has been paid both in India and in that country or specified territory; or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory to promote mutual economic relations, trade and investment; or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory; or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory or investigation of cases of such evasion or avoidance; or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory.

The Central Government may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(iv) Where the Central Government has entered into such an agreement with the Government of any country outside India or specified territory outside India for granting relief of tax, or for avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(v) Any term used but not defined in this Act or in the agreement referred to above shall have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf, unless the context otherwise requires, provided the same is not inconsistent with the provisions of this Act or the agreement.

(vi) The charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

(Effective from 1st October, 2009)

Note - Similar amendment has been made in section 44A of the Wealth-tax Act to empower the Central Government to enter into agreement with any country outside India or any territory outside India for the avoidance or relief of double taxation or for the exchange of information for the prevention of evasion or avoidance of wealth-tax or for investigation of cases of such evasion or avoidance or recovery of tax.

(Effective from 1st October, 2009)

(b) No adjustment required if the variation between arm's length price and transfer price is within 5% of transfer price [Section 92C(2)]

(i) Section 92C(2) has been amended to provide that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such price.

(ii) However, if the arithmetical mean, so determined, is within five per cent of the transfer price, then the transfer price shall be deemed to be the arm's length price and no adjustment is required to be made.

(iii) This amendment will take effect from 1st October, 2009 and shall accordingly apply in relation to all cases in which proceedings are pending before the Transfer Pricing Officer (TPO) on or after such date.

(iv) Example

Case	Transfer Price	ALP determined by applying the arithmetical mean	ALP for the Transfer Pricing Adjustment
1	100	105.1	105.1
2	100	104.9	100

(Effective from 1st October, 2009)

(c) Safe harbour rules to be introduced for determination of arm's length price in case of international transactions [Section 92CB]

(i) Section 92C provides for adjustment in the transfer price of an international transaction with an associated enterprise if the transfer price is not equal to the arm's length price. This has resulted in a large number of such transactions being subjected to adjustment giving rise to considerable dispute.

(ii) Therefore, new section 92CB has been introduced to empower the CBDT to formulate safe harbour rules to determine the arm's length price under section 92C and 92CA. Safe harbour means circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.

(Effective from 1st April, 2009)

10. ASSESSMENT OF VARIOUS ENTITIES

(a) Tax treatment for Limited Liability Partnerships (LLPs) [Section 2(23), 140 & 167C]

(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 has 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) Consequently, the following definitions in section 2(23) have been amended -

(1) The definition of 'partner' to include within its meaning, a partner of a limited liability partnership;

(2) The definition of 'firm' to include within its meaning, a limited liability partnership; and

(3) The definition of 'partnership' to include within its meaning, a limited liability partnership.

The definition of these terms under the Income-tax Act would, in effect, also include the terms as they have been defined in the Limited Liability Partnership Act, 2008. Section 2(q) of the LLP Act, 2008 defines a 'partner' as any person who becomes a partner in the LLP in accordance with the LLP agreement. An LLP agreement has been defined under section 2(o) to mean any written agreement between the partners of the LLP or between the LLP and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to the LLP.

(iii) The LLP Act provides for nomination of "designated partners" who have been given greater responsibility. Therefore, clause (cd) has been inserted in section 140, which lays down the "Authorised signatories to the return of income", to provide that the designated partner shall sign the return of income an LLP. However, where, for any unavoidable reason such designated partner is not able to sign and verify the return or where there is no designated partner as such, any partner can sign the return.

(iv) New section 167C provides for the liability of partners of LLP in liquidation. In case of liquidation of an LLP, where tax due from the LLP cannot be recovered, every person who was a partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP. This provision would also apply where tax is due from any other person in respect of any income of any previous year during which such other person was a LLP.

(v) Since the tax treatment accorded to a LLP and a general partnership is the same, the conversion from a general parternship firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. However, if there is a change in rights and obligations of partners or there is a transfer of asset or liability after conversion, then the provisions of section 45 would get attracted.

(vi) The LLP shall be entitled to deduction of remuneration paid to working partners, if the same is authorized by the partnership deed, subject to the limits specified in section 40(b)(v), i.e., -

(a)	On the first Rs.3,00,000 of book profit or in case of a loss	Rs.1,50,000 or 90% of book profit, whichever is higher
(b)	On balance book profit	60% of book profit

(vii) The LLP shall be entitled to deduction of interest paid to partners if such payment is authorized by the partnership deed and the rate of interest does not exceed 12% simple interest per annum.

(viii) The LLPs cannot avail the presumptive taxation scheme under section 44AD w.e.f. A.Y.2011-12. However, section 44AE does not debar a LLP from availing the scheme thereunder.

(ix) The LLP shall comply with section 184, which requires that -

(1) the partnership is evidenced by an instrument;

(2) the individual shares of the partnership are specified in that instrument;

(3) a certified copy of the LLP agreement shall accompany the return of income of the LLP of the previous year relevant to the assessment year in which assessment as a firm is first sought.

(x) If the LLP does not comply with section 184, it shall not be entitled to deduction of payments of interest or remuneration made by it to any partner in computing the income under the head “Profits and gains of business or profession”.

(Effective from A.Y.2010-11)

(b) Increase in rate of MAT as well as its scope of coverage [Section 115JB]

(i) Section 115JB provides that in the case of a company, where 10% of its book profit exceeds the tax on its total income, then the book profit shall be deemed to be the total income and the tax payable on such total income shall be 10% thereof.

(ii) The rate of MAT has been increased from 10% to 15% of book profits.

(iii) With effect from A.Y.2010-11, if tax on the total income of a company is less than 15% of its book profit, then MAT provisions are attracted and the book profit is deemed to be the total income and tax is payable @ 15% thereof.

(iv) The effect of this amendment is that more companies would fall under the MAT net, since, those companies whose tax on total income is higher than 10% of book profit but lower than 15% of book profit would also be required to pay

MAT. Further, their tax burden and cash outflow would be higher on account of the increase in rate of MAT from 10% to 15%.

(v) Example

If the tax payable by a company, say A Ltd., on the total income is Rs.12 lakh and the book profit is Rs.100 lakh, MAT provisions would not have been attracted under the earlier provisions since tax on total income is higher than Rs.10 lakh (i.e. 10% of book profit). However, w.e.f. A.Y.2010-11, MAT provisions would be attracted in this case, since tax on total income (i.e.Rs.12 lakh) is less than Rs.15 lakh (i.e.15% of Rs.100 lakh). Therefore, the book profit of A Ltd. i.e. Rs.100 lakh shall be deemed to be its total income for A.Y.2010-11 and MAT would be payable @15%.

(Effective from A.Y.2010-11)

(c) Provision for diminution in the value of asset to be added back for computation of book profit [Section 115JB]

(i) Section 115JB provides that if the tax computed under the Income-tax Act is less than 15% of book profit, then the book profit is deemed to be the total income and tax is payable @15% thereon. For this purpose, book profit means the net profit as per the profit and loss account prepared in accordance with Parts II and III of Schedule VI to the Companies Act, as adjusted by certain additions/deductions as specified.

(ii) The Supreme Court has, in CIT v. HCL Comnet Systems & Services Ltd. (2008) 305 ITR 409, in the context of section 115JA, observed that provision for bad and doubtful debts cannot be added back to net profit for determining book profit since it does not represent provision for unascertained liability. Such a provision is made to cover up probable diminution in the value of the assets i.e. a debt which is an amount receivable by the assessee. Since debtors represent amount receivable by the assessee, any provision for its irrecoverability cannot be said to be a provision for an unascertained liability, and therefore cannot be added back for determining book profit.

(iii) In order to overcome this ruling of the Supreme Court and to reflect the correct legal intention, Explanation 1 after section 115JB(2) has been amended to provide that the net profit should also be increased by the amount set aside as provision for diminution in the value of any asset, if the same has been debited to profit and loss account, for computing the book profit.

(Effective retrospectively from A.Y.2001-02)

(d) Increase in period for set-off of credit in respect of MAT paid under section 115JB [Section 115JAA]

(i) Section 115JAA enables companies to avail credit in respect of MAT paid under section 115JB and carry forward and set-off such credit within a period of 7 assessment years immediately succeeding the assessment year in which the tax credit becomes allowable. If in the subsequent 7 assessment years, a company continues to pay MAT and the credit is not set-off, it shall lapse.

(ii) The period for setting off such tax credit has been increased from 7 years to 10 years w.e.f. A.Y.2010-11.

(iii) For example, if a company pays MAT for the A.Y.2010-11, it will be eligible for tax credit (equal to MAT paid minus the tax payable on the total income computed in accordance with the provisions of the Act), and such tax credit can be carried forward up to and inclusive of A.Y.2020-21 for set-off against the tax payable on the total income.

(Effective from A.Y.2010-11)

11. INCOME-TAX AUTHORITIES

Power of Joint Director, Joint Commissioner, Additional Director & Additional Commissioner to issue warrant of authorization [Section 132 & 132A]

(i) Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations.

(ii) The authorities empowered to issue authorization are:

(1) Director General or Chief Commissioner;

(2) Director or Commissioner; and

(3) such Joint Director or Joint Commissioner as are empowered by the CBDT to do so.

(iii) Sections 2(28C) and 2(28D) define Joint Commissioner and Joint Director, respectively, to include Additional Commissioner and Additional Director. Accordingly, Additional Directors and Additional Commissioners have been issuing warrant of authorisation since 1st June, 1994. However, there have been Court rulings holding that Joint Directors or Joint Commissioners referred to in section 132 Act does not include Additional Director or Additional Commissioner and, consequently, the warrants of authorisation issued by the latter are illegal. As a result, all search and seizure operations have been declared to be illegal.

(iv) Therefore, a clarificatory amendment has been made in section 132 to provide explicitly that Additional Director and Additional Commissioner always had the power to issue warrant of authorisation under the said provisions, whether or not specifically empowered by the CBDT to do so.

(Effective retrospectively from 1st June, 1994)

(v) Further, it has also been clarified that Joint Commissioner and Joint Director always had the power to issue warrant of authorization, whether or not specifically empowered by the CBDT to do so.

(Effective retrospectively from 1st October, 1998)

(vi) Thus, in effect, the warrants of authorization issued by Additional Director/Additional

Commissioner/Joint Director/Joint Commissioner upto 30th September, 2009 are valid, whether or not they have been specifically empowered by the CBDT to issue such warrants. However, with effect from 1st October, 2009, an Additional Director/Additional Commissioner/Joint Director/Joint Commissioner can issue warrant of authorization only if he has been specifically empowered to do so by the CBDT.

(vii) A similar consequential amendment has been made in section 132A, dealing with powers to requisition books of account, to include Additional Director and Additional Commissioner as an authorized officer retrospectively with effect from 1st June, 1994.

12. ASSESSMENT PROCEDURE

(a) Time limit extended for issue of notification for relaxation, modification or adaptation of any provision of law to facilitate centralized processing of returns [Section 143(1B)]

A Centralised Processing Centre (CPC) is proposed to be set-up at Bangalore for centralised processing of Income-tax returns. With this intention, the Central Government can relax, modify or adapt any provision of law relating to processing of returns subject to the condition that the notification for such relaxation, modification or adaptation is issued on or before 31st March, 2009 and the said notification is laid before each House of Parliament. Since the centre at Bangalore is yet to start functioning, a further period of one year i.e. up to 31st March, 2010, has been allowed to relax, modify or adapt any provision of law relating to processing of returns.

(Effective from 1st April, 2009)

(b) Provision for constitution of alternate dispute resolution mechanism [Section 144C]

Related amendment in sections: 131, 246A & 253

(i) An alternate dispute resolution mechanism which will aid speedy resolution of disputes on a fast track basis has now been provided for under the Income-tax Act. The significant features of the alternate dispute resolution mechanism are briefed hereunder –

(1) The Assessing Officer shall, forward a draft order of assessment to the eligible assessee if he proposes to make, on or after 1st October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

"Eligible assessee" means,-

(i) any person in whose case such variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

(ii) any foreign company.

(2) The eligible assessee shall, within thirty days of the receipt by him of the

draft order,-

(a) file his acceptance of the variations to the Assessing Officer; or

(b) file his objections, if any, to such variation with,—

(i) The Dispute Resolution Panel; and

(ii) The Assessing Officer.

"Dispute Resolution Panel" means a collegium comprising of three commissioners of Income-tax constituted by the CBDT for this purpose.

(3) The Assessing Officer has to complete the assessment on the basis of the draft order, if —

(a) the assessee intimates the acceptance of the variation to the Assessing Officer; or

(b) no objections are received within the period of 30 days specified in (2) above.

(4) The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order within one month from the end of the month in which,—

(a) the acceptance is received; or

(b) the period of filing of objections expires.

(5) The Dispute Resolution Panel shall, in a case where any objections are received, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue such directions, after considering the following, namely:—

(a) Draft order;

(b) Objections filed by the assessee;

(c) Evidence furnished by the assessee;

(d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) Records relating to the draft order;

(f) Evidence collected by, or caused to be collected by, it; and

(g) Result of any enquiry made by, or caused to be made by it.

(7) The Dispute Resolution Panel may, before issuing any such directions -

(a) make such further enquiry, as it thinks fit; or

(b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.

(8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order. However, it cannot set aside any proposed variation or issue any direction as mentioned in (5) above, for further enquiry and passing of the assessment order.

(9) If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.

(10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.

(11) If any direction is prejudicial to the interest of the assessee or the interest of the revenue, then, the same can be issued only after an opportunity of being heard is given to the assessee or the Assessing Officer, as the case may be.

(12) Such direction has to be issued within nine months from the end of the month in which the draft order is forwarded to the eligible assessee.

(13) Upon receipt of such direction, the Assessing Officer has to complete the assessment in accordance with the same, within one month from the end of the month in which the direction is received. There is no requirement of providing any further opportunity of being heard to the assessee,

(14) The CBDT is empowered to make rules for the efficient functioning of the Dispute Resolution Panel and speedy resolution of the objections filed by the eligible assessee.

(Effective from 1st April, 2009)

(ii) Consequential amendments have been made in section 131, 246A & 253.

(1) Section 131(1) has been amended to provide that "Dispute Resolution Panel" shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters –

(i) discovery and inspection;

(ii) enforcing the attendance of any person, including an officer of a banking company and examining him on oath;

(iii) compelling the production of books of account and other documents; and

(iv) issuing commissions.

(2) Section 246A(1) has been amended to exclude the following orders from the orders appealable before the Commissioner (Appeals) –

(i) the order of assessment passed under section 143(3) in pursuance of directions of "Dispute Resolution Panel"; and

(ii) the order of assessment passed under section 147 in pursuance of directions of "Dispute Resolution Panel".

(3) Section 253(1) has been amended to include the following orders as an order appealable before the Appellate Tribunal –

(i) an order of assessment passed by an Assessing Officer under section 143(3) or 147 in pursuance of directions of "Dispute Resolution Panel"; and

(ii) an order passed under section 154 in respect of such order.

(Effective from 1.10.2009)

(c) Assessing Officer empowered to assess or reassess income which comes to his notice subsequently though he has not recorded reasons for the same [Section 147]

(i) As per section 147, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income after recording reasons for re-opening the assessment. Further, he may also assess or reassess any other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section.

(ii) However, few Courts have ruled that the Assessing Officer has to confine the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He cannot extend the proceedings to issues for which no reasons have been recorded. This interpretation, however, does not reflect the correct legislative intent.

(iii) Therefore, in order to clarify the true legislative intent, Explanation 3 has been inserted in section 147 to provide that the Assessing Officer may assess or reassess the income in respect of any issue (which has escaped assessment) which comes to his notice subsequently in the course of proceedings under this section, even though the reason for such issue does not form part of the reasons recorded under section 148(2).

(Effective retrospectively from A.Y.1989-90)

13. COLLECTION AND RECOVERY OF TAX

(a) Change in TDS rates on payments to contractors and sub-contractors and rental payments [Sections 194C & 194-I]

(i) The rate of TDS under section 194C on payments to contractors has been reduced to 1%, where the payee is an individual or HUF and would remain @2% in respect of other payees. The same rates of TDS would apply for both contractors and sub-contractors. These rates would apply for advertising contracts as well.

(ii) Further, in respect of payment to transport contractors and sub-contractors engaged in the business of plying, leasing and hiring goods carriages, TDS provisions would not apply if they furnish their PAN to the deductor. However, if they do not quote PAN, the rate will be 1% for an individual/ HUF transporter and 2% for other transporters upto 31.3.2010 and 20% in all cases w.e.f. 1.4.2010.

(iii) The following table shows a comparison of TDS rates prevalent upto 30.9.2009 vis a vis the rates applicable from 1.10.2009 –

Payee	TDS rate applicable	
	Up to 30.9.2009	From 1.10.2009
Individual / HUF contractor	2%	1%
Other than individual / HUF contractor	2%	2%
Individual / HUF sub-contractor	1%	1%
Other than individual / HUF sub-contractor	1%	2%
Individual / HUF contractor/sub-contractor for advertising	1%	1%
Other than individual / HUF contractor/sub-contractor for advertising	1%	2%
Contractor in transport business	2%	Nil
Sub-contractor in transport business	1%	Nil

(iv) No deduction will be required to be made if the consideration for the contract does not exceed Rs.20,000. However, to prevent the practice of composite contracts being split up into contracts valued at less than Rs.20,000 to avoid tax deduction, it has been provided that tax will be required to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds Rs.20,000 in a single payment or Rs.50,000 in the aggregate during a financial year.

(v) TDS provisions under section 194C are not attracted in respect of the sum credited or paid by an individual or HUF to the account of the contractor, if such credit or payment is exclusively for personal purposes of the individual or HUF.

(vi) The rate of TDS under section 194-I has been reduced from 10% to 2% in respect of rent for plant, machinery or equipment and from 15%/20% to 10% in respect of other rental payments with effect from 1st October, 2009.

(Effective from 1st October, 2009)

Note - There would no surcharge or cess on TDS in respect of all non-salary payments made to resident taxpayers with effect from 1st April, 2009.

(b) Definition of "work" under section 194C amended

(i) The definition of "work" under section 194C has been amended to resolve the issue as to whether outsourcing constitutes work or not.

(ii) Accordingly, as per the new definition, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer, as such a contract is a contract for 'sale'.

(iii) However, this will not be applicable to a contract which does not entail manufacture or supply of an article or thing (e.g. a construction contract).

(iv) It may be noted that the term "work" would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.

(v) In such a case, tax shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.

(Effective from 1st October, 2009)

(c) Periodicity of filing TDS/TCS statements to be prescribed by the Government [Sections 200, 206C]

Related amendment in sections: 139A, 201, 203A, 206A, 272A

(i) As per section 200(3), any person deducting tax in accordance with the provisions of Chapter XVIIB has to furnish, within the prescribed time, quarterly statements for the period ending on the 30th June, 30th September, 31st December and 31st March in each financial year.

(ii) Likewise, section 206C(3) requires filing of quarterly statements for tax collection at source (TCS).

(iii) Also, section 206A requires furnishing of quarterly return in respect of payment of interest to residents without deduction of tax.

(iv) This scheme for filing of quarterly statements/returns for TDS and TCS has now been dispensed with. Consequently, these sections have been amended to allow the Government to prescribe the periodicity of such TDS/TCS statements for the purpose of ensuring administrative flexibility in deciding the periodicity of such statements.

(v) Consequential amendments have been made omitting the word "quarterly" in -

(1) section 139A(5B) requiring quoting of PAN in all statements prepared and delivered in accordance with the provisions of section 200(3);

(2) section 139A(5D) requiring quoting of PAN in all statements prepared and

delivered in accordance with the provisions of section 206C(3);

(3) section 201(1A) levying simple interest @1% per month or part of a month for failure to deduct or pay tax and requiring such interest payment before the furnishing of statement under section 200(3);

(4) section 203A requiring quoting of "tax deduction and collection account number" in all statements prepared and delivered in accordance with section 200(3) or 206C(3);

(5) section 206A(2) requiring preparation of such statements in respect of payment to a resident, any income liable for TDS;

(6) section 272A(2)(l) providing for penalty of Rs.100 per day of continuing default for failure to deliver or caused to delivered the statements within the time specified in section 206A(1).

(Effective from 1.10.2009)

(d) Correction of arithmetic mistakes and adjustment of incorrect claim during computerized processing of TDS statements [New Section 200A]

(i) At present, all statements of tax deducted at source are filed in an electronic mode, thereby facilitating computerised processing of these statements.

(ii) Therefore, in order to process TDS statements on computer, electronic processing on the same lines as processing of income-tax returns has been provided by insertion of new section 200A.

(iii) The following adjustments can be made during the computerized processing of statements of tax deducted at source –

(i) any arithmetical error in the statement; or

(ii) an incorrect claim, if such incorrect claim is apparent from any information in the statement.

The term "an incorrect claim apparent from any information in the statement" shall mean such claim on the basis of an entry, in the statement, –

(a) of an item, which is inconsistent with another entry of the same or some other item in such statement;

(b) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of the Act.

(iv) After making such adjustments, tax and interest [say, under section 201(1A)] would be calculated and sum payable by the deductor or refund due to the deductor will be determined.

(v) An intimation will be sent to the deductor, informing him of his tax liability or the refund due, within one year from the end of the financial year in which the statement is filed. The refund due shall be granted to the deductor.

(vi) For this purpose, the CBDT is empowered to make a scheme for centralized processing of statements of TDS to determine the tax payable by, or refund due to, the deductor.

(Effective from 1st April, 2010)

(e) Time limit for passing of orders under section 201(1) holding a person to be an assessee in default [Section 201(3) & (4)]

(i) At present, there is no time limit for passing an order under section 201(1) holding a person to be an assessee-in-default. This leads to considerable dispute when these proceedings are taken up or completed after considerable time lag.

(ii) In order to remove ambiguity regarding this issue, time limits have now been prescribed, within which the order specified under section 201(1) has to be passed.

(iii) Sub-section (3) provides that an order under section 201(1) deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India has to be passed within two years from the end of the financial year in which the statement of TDS is filed by the deductor. Where no such statement is filed, such order can be passed up till four years from the end of the financial year in which the payment is made or credit is given.

(iv) However, the time limit for passing an order deeming a person to be an assessee-in-default in respect of F.Y.2007-08 and earlier years is 31st March, 2011.

(v) Further, the exclusions from the time limit, as specified in Explanation 1 to section 153, would also apply to the above time limit for passing an order deeming a person to be an assessee-in-default. Also, the time limit would not apply to an order passed consequent to the direction contained in an order of the Commissioner under sections 263 and 264, Commissioner (Appeals) under section 250, Appellate Tribunal under section 254, Supreme Court/ National Tax Tribunal under section 260 and Supreme Court under section 262. Thus, the time limit would be extended where effect is to be given to various appellate proceedings or where proceedings are stayed.

(vi) Section 201(1) deems a person to be an assessee-in-default if he –

(1) does not deduct tax; or

(2) does not pay; or

(3) after so deducting fails to pay

the whole or any part of the tax, as required by or under this Act.

Thus, section 201(1) contemplates three types of defaults. The default contemplated in (2) is covered by the default contemplated in (3). However, the time limit has now been specified only for passing of orders relating to default contemplated in (1) above. There is no time limit specified in respect of the other defaults.

(vii) Therefore, no time-limits have been prescribed for the order under section 201(1) where –

(1) the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,

(2) the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites,

(3) the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

(Effective from 1st April, 2010)

(f) Mandatory requirement of furnishing PAN in all TDS statements, bills, vouchers and correspondence between deductor and deductee [New Section 206AA]

(i) The non-quoting of PAN by deductees in many cases have led to delay in issue of refund on account of problems in the processing of returns of income and in granting credit for tax deducted at source.

(ii) With a view to strengthening the PAN mechanism, new section 206AA has been inserted to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –

(1) the rate prescribed in the Act;

(2) at the rate in force i.e., the rate mentioned in the Finance Act; or

(3) at the rate of 20%.

For instance, in case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I. However, non-furnishing of PAN by the deductee in case of income by way of winnings from lotteries, card games etc., would result in tax being deducted at the existing rate of 30% under section 194-B. Therefore, wherever tax is deductible at a rate higher than 20%, this amendment would not have any consequence.

(iii) Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.

(iv) Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

(v) If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the rate specified in (ii) above.

(vi) These provisions will also apply to non-residents where tax is deductible on payments or credits made to them.

(vii) Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

(Effective from 1st April, 2010)

(g) Advance tax payable only if advance tax liability is Rs.10,000 or more [Section 208]

(i) Currently, the liability to pay advance tax arises when the amount of such tax payable during that year by the assessee is Rs.5,000 or more. This limit was fixed way back in 1996.

(ii) The Finance (No.2) Act, 2009 has now revised this limit in order to provide for inflation adjustment. Accordingly, from financial year 2009-10 onwards, advance tax would be payable only if the advance tax liability is Rs.10,000 or more.

(Effective from 1st April, 2009)

14. PENALTY

Scope of levy of penalty under Explanation 5A to section 271(1) expanded

(i) Explanation 5A has been inserted in section 271(1) w.e.f. 1.6.2007 which would be applicable in respect of searches conducted on or after 1st June, 2007. This Explanation provides that where an assessee is found to be the owner of any -

– asset and he claims that such assets have been acquired by him by utilizing his income for any previous year; or

– income based on any entry in the books of account or documents or transactions and he claims that such entry represents his income for any previous year,

which has ended before the date of the search and the due date for filing of the return has expired and return has not been filed, such income would be deemed to be concealed income, even if such income is declared in the return of income filed on or after the date of search.

(ii) The scope of Explanation 5A has been expanded retrospectively w.e.f. 1st June, 2007 to cover cases where the assessee has filed the return of income for any previous year before the date of search and the income found during the course of search relating the such previous year is not disclosed in the return of income. In such cases also, the assessee would be deemed to have concealed the particulars of income and would be liable for penalty under section 271.

(iii) The provisions of penalty covered under Explanation 5A to section 271(1) in respect of search initiated on or after 1.6.2007 is summarized in the table below –

	Relevant previous year	Penalty
(1)	P.Y. which has ended before the date of search, in respect of which the due date has expired, but the return has not been furnished. For example, in respect of P.Y.2009-10, if the date of search is 15.11.2010, then the P.Y. has ended before that date (i.e., on 31.3.2010) and the due date of filing return (31.7.2010/30.9.2010, as the case may be) has also expired, but the return has not been furnished. In such a case, penalty would be attracted under this section.	100% to 300% of the tax sought to be evaded.
(2)	P.Y. which has ended before the date of search, in respect of which return has been furnished, but income found during the search has not been disclosed in the return. In such a case also, penalty would be attracted under this section.	100% to 300% of the tax sought to be evaded.

(Effective retrospectively from 1.6.2007)

15. MISCELLANEOUS PROVISIONS

(a) Exclusion of period of stay of proceedings of assessment/reassessment while computing the period of validity of the order of provisional attachment [Section 281B]

(i) Section 281B(1) empowers the Assessing Officer to make provisional attachment of the assets of the assessee during the pendency of any proceeding for assessment or reassessment.

(ii) Section 281B(2) further provides that every attachment order shall cease to have effect after the expiry of a period of six months from the date of order made under sub-section (1).

(iii) However, the period of validity of provisional attachment order can be extended upto a maximum of two years (in total), by the Chief Commissioner, Commissioner, Director General or Director for reasons to be recorded in writing.

(iv) It has been provided that where an application for settlement under section 245C is made, the period commencing from the date on which such application is made and ending with the date on which the order under section 245D(1) is made shall be excluded for computing the period of 2 years.

(v) In several cases, the assessees have filed writ petitions in High Courts and

Supreme Court and have obtained stay of the assessment proceedings. Generally, such stay remains in force for several years during which the validity of provisional attachment order expires.

(vi) Therefore, it has now been provided w.r.e.f. A.Y.1988-89, that the period during which the proceedings for assessment or reassessment are stayed by an order or injunction of any Court, shall be excluded in calculating the period of 2 years specified above.

(Effective retrospectively from A.Y.1988-89)

(b) Introduction of Document Identification Number and facility for electronic communication [New Sections 282B & 282]

(i) In order to improve the standards of service and transparency in the functioning of the Income-tax Department, a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by the Income-tax Department has been introduced to facilitate tracking of documents and alleviate the taxpayers grievances.

(ii) Accordingly, a new section 282B has been inserted to provide that every income tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

(iii) Where the notice, order, letter or any correspondence issued by any income-tax authority does not bear a Document Identification Number, such notice, order, letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.

(iv) Further, every document, letter or any 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.

(v) Where the document, letter or any correspondence received by any income-tax authority or on behalf of such authority does not bear the Document Identification Number, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

(Effective from 1st October, 2010)

(vi) As per section 282, a notice or requisition under the Act may be served on the person therein named either by post or as if it were a summons issued by a court. Hereafter, with effect from 1st October, 2009, such notice or requisition can be served by electronic mail also.

(vii) Accordingly, this section has now been substituted w.e.f. 1.10.2009 to provide that the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -

(1) by post or such courier services as approved by the CBDT; or

(2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or

(3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or

(4) by any other means of transmission as may be provided by rules made by the CBDT in this behalf.

(viii) The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

(Effective from 1st October, 2009)

(c) Authority empowered to grant an approval under the Income-tax Act deemed to have power to withdraw the approval granted [New section 293C]

(i) The Central Government, CBDT and income-tax Authorities are empowered under the various provisions of the Income-tax Act to grant approval to the assessees for availing the benefit of incentives available under the Act.

(ii) However, only some provisions of the Income-tax Act specifically contain provisions for withdrawal of approval. In all other cases, there is no specific power to withdraw the approval granted.

(iii) Therefore, a new section 293C has been inserted to provide explicitly, such power to withdraw an approval granted. This section provides that an approval granting authority (i.e. the Central Government, CBDT or income-tax authority, as the case may be) shall also have the powers to withdraw the approval at any time.

(iv) However, such withdrawal can be made only after giving a reasonable opportunity to the concerned assessee of showing cause against the proposed withdrawal. Further, the reasons for withdrawal of the approval should be recorded by the concerned authority.

(Effective from 1st October, 2009)

II. WEALTH-TAX ACT, 1957

Wealth-tax exemption limit raised [Section 3]

(i) At present, wealth-tax liability is attracted in the hands of every individual, HUF and company at the rate of 1% of the net wealth in excess of Rs.15 lakh.

(ii) This limit was fixed way back in 1992.

(iii) Accordingly, in order to provide for inflation-adjustment, the limit has now been enhanced to Rs.30 lakh for the valuation of net wealth as on 31.3.2010 and thereafter.

(Effective from A.Y.2010-11)

IMPORTANT NOTIFICATIONS / CIRCULARS ISSUED BETWEEN 1.5.2008 AND 30.4.2009

I. CIRCULARS

1. Circular No. 5/2008 dated 14.7.2008

The CBDT has, vide notification S.O. No. 493(E), dated 13.3.2008, notified the categories of taxpayers who are mandatorily required to electronically pay taxes on or after 1st April, 2008. The taxpayers who are required to pay taxes by the prescribed mode are - (i) a company; and (ii) a person (other than a company), to whom the provisions of section 44AB of the Income-tax Act, 1961 are applicable. Further, payment of tax electronically has been defined to mean payment of tax by way of - (i) internet banking facility of the authorised bank or (ii) credit or debit cards.

Consequent to issue of the notification, foreign assessees have been facing difficulties in complying with the provisions with regard to mandatory e-payment of taxes. Since they do not have a presence in India, they are not able to meet the 'know your customer norms' of the banks. This has resulted in their inability to open bank accounts and make payment of taxes through the electronic mode. Also, the resident taxpayers have been facing difficulties in availing internet banking facilities of the authorized banks. A clarification has also been sought as to whether payment of tax deducted at source by a deductor will fall within the meaning of 'tax' for the purpose of the impugned notification.

Therefore, with a view to facilitating electronic payment of taxes by different categories of taxpayers, CBDT has issued Circular No.5/2008 dated 14.7.2008 to clarify that an assessee can make electronic payment of taxes also from the account of any other person. However, the challan for making such payment must clearly indicate the Permanent Account Number (PAN) of the assessee on whose behalf the payment is made. It is not necessary for the assessee to make payment of taxes from his own account in an authorized bank. Further, it is also clarified that payment of any amount by a deductor by way of Tax Deducted at Source (TDS) or Tax Collected at Source (TCS) shall fall within the meaning of 'tax' for the purpose of Rule 125 of the Income-tax Rules, 1962.

2. Circular No.7/2008 dated 1.8.2008

Order under section 119(1) of the Income-tax Act, 1961 regarding exemption from the TDS provisions under section 197 read in conjunction with section 10(26BBB) of the Income-tax Act, 1961

The CBDT has, in exercise of the powers conferred under section 119(1) of the Income-tax Act, 1961, directed that corporations which are established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen and whose income qualifies for exemption from income-tax under section 10(26BBB) would also be exempt from tax deduction/collection at source on their receipts. This exemption shall be valid for 3 years from the date of issue of this order. However, this exemption shall not absolve such organisation from their statutory obligation of deducting TDS on all contractual payments made by them to other parties including sub-contractors etc.

3. Circular No.10/2008 dated 5.12.2008

Clarification regarding the meaning of the expression 'fish or fish products' used in Rule 6DD(e)(iii) of the Income-tax Rules, 1962

Under section 40A(3), disallowance is attracted in the computation of income in a case where a payment or aggregate of payments exceeding twenty thousand rupees is made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft. However, payment otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft exceeding twenty thousand rupees does not attract the aforesaid disallowance in certain circumstances as prescribed under Rule 6DD of the Income-tax Rules, 1962. Such exceptions, inter-alia, refer to payment made to the producer for the purchase of fish or fish products under sub-clause (iii) of clause (e) of rule 6DD.

In regard to this sub-clause, the following clarifications have been issued for proper implementation of Rule 6DD -

(i) The expression 'fish or fish products' used in rule 6DD(e)(iii) would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.'.

(ii) The 'producers' of fish or fish products for the purpose of rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

However, the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called.

4. Circular No.11/2008 dated 19.12.2008

Exemption under section 11 in case of an assessee claiming both to be a charitable institution as well as a mutual organisation

Section 2(15) defines charitable purpose to include the following:-

(i) Relief of the poor

(ii) Education

(iii) Medical relief, and

(iv) the advancement of any other object of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of charitable purpose. Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of -

(a) any activity in the nature of trade, commerce or business; or

(b) 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.

The following implications arise from this amendment -

(1) The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves the carrying on of commercial activities.

(2) Relief of the poor encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that -

    (i) the business should be incidental to the attainment of the objectives of the entity, and

    (ii) separate books of account should be maintained in respect of such business.

    Similarly, entities whose object is education or medical relief would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

The newly inserted proviso to section 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e. the fourth limb of the definition of charitable purpose contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

In the final analysis, however, whether the assessee has for its object the advancement of any other object of general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible.

II NOTIFICATIONS

1. Notification No. 88/2008/F.NO. 275/43/2008-IT(B), dated 21.8.2008

The CBDT has, in exercise of the powers conferred by clause (a) of the Explanation to section 194J, notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:

a. Sports Persons,
b. Umpires and Referees,
c. Coaches and Trainers,
d. Team Physicians and Physiotherapists,
e. Event Managers,
f. Commentators,
g. Anchors and
h. Sports Columnists.

2. Notification No. 90/2008, dated 28.8.2008

Section 90A(1) provides that an agreement may be entered into by any specified association in India with any specified association in the specified territory outside India which may be adopted by the Central Government by way of notification in the Official Gazette, for granting relief of tax or, as the case may be, for avoidance of double taxation. The Central Government has now notified that where such an agreement provides that any income of a resident of India may be taxed in the other country then, such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-tax Act, 1961, and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement.

3. Notification No. 91/2008, dated 28.8.2008

Section 90(1) provides that the Central Government may enter into an agreement with the Government of any country outside India for granting relief of tax or, as the case may be, for avoidance of double taxation. The Central Government has now notified that where such an agreement provides that any income of a resident of India may be taxed in the other country then, such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-tax Act, 1961, and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement.

4. Notification No.97/2008 dated 10.10.2008

Rule 6DD of the Income-tax Rules has been substituted. This Rule now provides for cases and circumstances in which a payment or aggregate of payments exceeding twenty thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft.

As per this rule, no disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees in the cases and circumstances specified hereunder, namely:

(a) where the payment is made to -
   (i) the Reserve Bank of India or any banking company;
   (ii) the State Bank of India or any subsidiary bank;
   (iii) any co-operative bank or land mortgage bank;
   (iv) any primary agricultural credit society or any primary credit society;
   (v) the Life Insurance Corporation of India;

(b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;

(c) where the payment is made by -
   (i) any letter of credit arrangements through a bank;
   (ii) a mail or telegraphic transfer through a bank;
   (iii) a book adjustment from any account in a bank to any other account in that or any other bank;

(iv) a bill of exchange made payable only to a bank;

(v) the use of electronic clearing system through a bank account;

(vi) a credit card;

(vii) a debit card.

(d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;

(e) where the payment is made for the purchase of -

(i) agricultural or forest produce; or

(ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or

(iii) fish or fish products; or

(iv) the products of horticulture or apiculture,

to the cultivator, grower or producer of such articles, produce or products;

(f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;

(g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;

(h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;

(i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -

(i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and

(ii) does not maintain any account in any bank at such place or ship;

(j) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;

(k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;

(l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business.

5. Notification No. 3/2009 dated 5.1.2009

Clause (xv) of section 80C(2) provides that the subscription to any such deposit scheme of the National Housing Bank as the Central Government may notify in this behalf would qualify for deduction under section 80C. Accordingly, in exercise of the powers conferred in section 80C(2)(xv), the Central Government has specified the National Housing Bank (Tax Saving) Term Deposit Scheme, 2008, the subscription to which would qualify for deduction under section 80C.

6. Notification No. 9/2009 dated 7.1.2009

Section 10(15)(iv)(h) exempts interest payable by any public sector company in respect of such bonds or debentures specified by the Central Government by notification in the Official Gazette. The notification would also specify the conditions subject to which the exemption would be available. Accordingly, in exercise of the powers conferred in section 10(15)(iv)(h), the Central Government has specified the issue of tax free bonds by India Infrastructure Finance Company Limited during the financial year 2008-09, the interest on which would be exempt under the said section. Further, it has been provided that such benefit shall be admissible only if the holder of such bonds registers his or her name and the holding with the said Corporation.

7. Notification No.15/2009, dated 30.1.2009

Rule 8C of the Wealth-tax Rules, 1957 has been substituted. New Rule 8C provides for the following scale of fees to be charged by a registered valuer.

(1) The fees to be charged by a registered valuer for valuation of any asset should not exceed the amount calculated at the following rates, namely:

(a) On the first Rs.5 lakh of the asset as valued	1/2 per cent of the value;
(b) On the next Rs.10 lakh of the asset as valued	1/5 per cent of the value;
(c) On the next Rs.40 lakh of the asset as valued	1/10 per cent of the value;
(d) On the balance of the asset as valued	1/20 per cent of the value.

(2) Where two or more assets are required to be valued by a registered valuer at the instance of an assessee all such assets shall be deemed to constitute a single asset for the purposes of calculating the fees payable to such registered valuer.

(3) However, where the amount of fees calculated in accordance with (1) and (2) above is less than Rs.500, the registered valuer may charge Rs.500 as his fees.

8. Notification No. 28/2009, dated 16.3.2009

Rule 37BA providing for credit for tax deducted at source for the purposes of section 199 and Rule 37-I providing for credit for tax collected at source for the purposes of section 206C(4) have been inserted with effect from 1.4.2009.

Rule 37BA provides for credit for tax deducted at source for the purposes of section 199.

Sub-rule (1) provides that credit for tax deducted at source and paid to the Central Government in accordance with the provisions of Chapter XVII, shall be given to the person to whom payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

Sub-rule (2) provides that if the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for tax deducted at source shall be given to the other person in cases where-

(a) the income of the deductee is included in the total income of another person under the provisions of section 60, section 61, section 64, section 93 or section 94;

(b) the income of a deductee being an association of persons or a trust is assessable in the hands of members of the association of persons, or in the hands of trustees, as the case may be;

(c) the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or Hindu undivided family, as the case may be;

(d) the income from a property, deposit, security, unit or share held in the name of a deductee is owned jointly by the deductee and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset:

However, in such cases, the deductee should file a declaration with the deductor. Such declaration filed by the deductee should contain the name, address, permanent account number of the person to whom credit is to be given, payment or credit in relation to which credit is to be given and reasons for giving credit to such person.

Also, the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in sub-rule (1). The deductor should issue the certificate for deduction of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax referred to in sub-rule (1) and should keep the declaration in his safe custody.

Sub-rule (3) provides that the credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable. Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

Sub-rule (4) provides that credit for tax deducted at source and paid to the account of the Central Government shall be granted on the basis of -

(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority; and

(ii) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

Rule 37-I provides for credit for tax collected a source for the purposes of section 206C(4).

Sub-rule (1) provides that the credit for tax collected at source and paid to the Central Government in accordance with provisions of section 260C, shall be given to the person from whom the tax has been collected, on the basis of the information relating to collection of tax at source furnished by the collector to the income-tax authority or the person authorized by such authority.

Sub-rule (2) provides that where tax has been collected at source and paid to the Central Government, credit for such tax shall be given for the assessment year for which the income is assessable to tax. Where tax has been collected at source and paid to the Central Government and the lease or license is relatable to more than one year, credit for tax collected at source shall be allowed across those years to which the lease or license relates in the same proportion.

Sub-rule (3) provides that the credit for tax collected at source and paid to the account of the Central Government shall be granted on the basis of -

(i) the information relating to collection of tax furnished by the collector to the income-tax authority or the person authorized by such authority; and

(ii) the information in the return of income in respect of the claim for the credit,

subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

9. Notification No. 37/2009 dated 21.4.2009

The CBDT has, through Notification No.10/2009 dated 19.1.09, notified the Income-tax (Third Amendment) Rules, 2009 which came into force from 1.4.2009. This notification had inserted "new commercial vehicles acquired on or after 1.1.2009 but before 1.4.2009 and put to use before 1.4.2009 for the purposes of business or profession" under the head MACHINERY AND PLANT, which would be eligible for depreciation at the rate of 50%.

Subsequently, the CBDT has, through this notification notified that the benefit of increased depreciation of 50% on commercial vehicles be extended to such vehicles acquired and put to use before 1st October 2009. Therefore, the commercial vehicles acquired on or after 1.1.2009 but before 1.10.2009 and put to use before 1.10.2009 will be eligible for depreciation at the rate of 50%.

10. 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 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