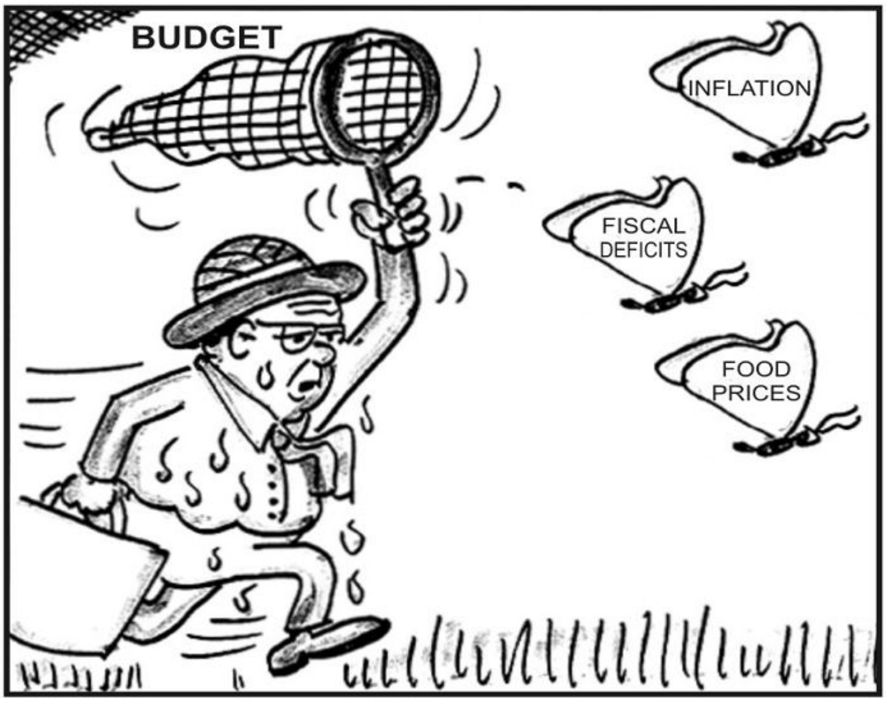
The Union BUDGET

2010 - 2011

Overview of Significant Proposals



Khandelwal Jain & Co.

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KHANDELWAL JAIN & CO.

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UNION BUDGET 2010-2011

Overview of Significant Proposals

Khandelwal Jain & Co.

H.O. : 6-B, PIL Court, 6th Floor, 111, Maharshi Karve Road,
Churchgate, Mumbai – 400 020.
Tel. : 4311 5000 (Multiple Lines) Fax : (91-22) 4311 5050
Email : kjco@vsnl.com

R.O. : 12-B, Baldota Bhavan, 5th Floor, 117, Maharshi Karve Road,
Churchgate, Mumbai – 400 020
Tel. : 4311 6000 (Multiple Lines) Fax : (91-22) 4311 6060
Email : kjco@vsnl.com

This is a brief note on the Budget 2010-2011 proposals giving the salient features of the significant proposals. We hope you will find it useful.

Branches :

AURANGABAD

First Floor, City Pride Building,
Mondha Naka Signal,
Jalna Road,
Aurangabad – 431 001.
TeI.Nos. : (91-240) 2331967, 2353372
Fax No. : (91-240) 2354844
E-mail: aurangabad@kjco.net

CHANDIGARH

2372, Sector-22C,
Chandigarh – 160 022.
Cell : +91-9815069846
E-mail: chandigarh@kjco.net

NEW DELHI

221, Hans Bhavan,
Bahadur Shah Zafar Marg,
Near I.T.O. Office,
New Delhi – 110 002.
Tel.Nos. : (91-11) 23370091 / 0892 / 8795
Fax No. : (91-11) 23378794
E-mail: de1hi@kjco.net

VISAKHAPATNAM

Plot No.134, Sector-5,
M.V.P. Colony,
Visakhapatnam – 530 017.
Tel. Nos. : (91-0891) 2531184
E-mail : vizag@kjco.net

C O N T E N T S

I. DIRECT TAX PROPOSALS :

A. INCOME TAX

1. Rates of Income Tax for Assessment Year 2010-2011 :

There is no change proposed in the basic exemption limit for Senior Citizens (Rs.2,40,000/-), Women below the age of 65 years (Rs.1,90,000/-) and other resident individuals (Rs.1,60,000/-). However, it is proposed to widen the tax slabs.

For Individuals, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI) the tax rate of 10% will be applicable for the total income upto Rs.5,00,000/-, rate of 20% will apply for total income between Rs.5,00,000/- to Rs.8,00,000/- and highest tax (maximum marginal) rate of 30% will apply to total income above Rs.8,00,000/- as given in the table below.

No Surcharge will be levied for individuals, HUF, AOP, BOI and firms.

No change is proposed in the rates of income tax in respect of other categories of tax payers. However, Bill proposes to reduce the surcharge in case of a domestic company having income above Rs. one crore to 7.5% from existing rate of 10%.

'Education Cess' (2%) and 'Secondary and Higher Education Cess' (1%) on the amount of income-tax and surcharge (where applicable) will continue.

Further, the Bill proposes to increase the MAT rate to 18% from the existing 15%.

The table below gives the income slabs and rates of income tax applicable to different categories of tax payers.

Income	**Existing rate for A.Y. 2010-11**	**Proposed rate for A.Y.2011-2012 [Ref. Note]**
For Individuals, HUF, AOP and BOI		
Upto Rs.1,60,000/-	**NIL**	**NIL**
From Rs.1,60,001 to 3,00,000	@ 10%+2%EC+1%SEC **= @10.3%**	**@10%+2%EC+1%SEC = @10.3%**
From Rs.3,00,001/- to Rs.5,00,000/-	@20%+2%EC+1%SEC = @20.6%	**@10%+2%EC+1%SEC = @10.3%**
From Rs.5,00,001 to 8,00,000	@ 30% + 2% EC + 1%SEC = 30.9%	**@20%+2% EC +1% SEC =20.6%**
Above Rs.8,00,000	@ 30%+**2%EC**+ 1%SEC **=30.9%**	**@30%+2% EC+ 1% SEC = 30.9%**
For Local authorities	@30%+2%EC+1%SEC =30.9%	**NO CHANGE**
For Firms	@30%+**2%EC**+1%SEC **=30.9%**	
For Co-operative Societies		
Upto Rs.10,000	@10% + 2% EC + 1% SEC = 10.3%	**NO CHANGE**
From Rs.10,001 to 20,000	@20% + 2% EC + 1% SEC = 20.6%	
Above Rs.20,000	@30% + 2% EC + 1% SEC = 30.9%	
For Domestic Companies *Up to Rs.1 crore*	@30% + 2% EC + 1% SEC = 30.9%	**NO CHANGE**
Above Rs.1 crore	@30%+10% SC + 2% EC + 1% SEC = 33.99%	**@30%+7.5% SC+2%EC+ 1%SEC = 33.2175%**
For Foreign Companies *Up toRs. 1 crore*	@40% + 2% EC + 1% SEC =41.2%	**NO CHANGE**
Above Rs. 1 crore	@40%+2.5% SC+2% EC+1% SEC = 42.23%	
Dividend Distribution Tax u/s.115-O		
By Domestic Company	16.995%	**16.60875%**
By Money Market Mutual Fund or Liquid Fund	28.325%	**27.6812%**
By other Mutual Funds		
- For income distributed to Individual/HUF	14.163%	**13.841%**
- For income distributed to others	22.660%	**22.145%**
Minimum Alternate Tax (MAT) u/s.115JB Book Profit upto Rs. 1 crore	@15% + 2% EC + 1% SEC = 15.45%	**@18% + 2% EC + 1% SEC = 18.54%**
Above Rs.1 crore – Domestic Companies	**@15%** + 10% SC + 2% EC + 1% SEC = **16.9950%**	**@18% + 7.5% SC + 2% EC + 1% SEC = 19.9305%**
Above Rs.1 crore – Foreign Companies	**@15%** + 2.5% SC + 2% EC + 1% SEC = **15.8363%**	**@18% + 2.5% SC + 2% EC + 1% SEC = 19.0035%**

Notes :

(i) Resident individual/HUF shall be eligible for deduction allowable from income chargeable to tax under existing Section 80C of an amount not exceeding Rs.1,00,000/- with respect to sum paid or deposited in specified schemes, financial savings etc.

(ii) In addition to above tax saving deduction, the Bill proposes to insert a new Section 80CCF to provide for further deduction in respect of investments in notified long-term Infrastructure Bonds to the extent of Rs.20,000/-.

(iii) Resident woman below sixty-five years of age having total income upto Rs.1,90,000/- would not be required to pay any income tax.

(iv) In the case of a senior citizen i.e. a resident individual of the age of 65 years or more at any time during the previous year, having total income upto Rs.2,40,000/- would not be required to pay any income tax.

2. Amendment to Definition of 'Charitable Purpose' [Section 2]

By Finance Act, 2008 the definition of 'Charitable Purpose' in Section 2(15) was amended so as to provide that the charitable trusts or institutions having object of general public utility would not be eligible for exemption under the Income Tax Act, if they are engaged/involved in the activity in the nature of trade, commerce or business or any activity of rendering any service for a fee. Thus, under the existing provisions there is absolute restriction for carrying on any commercial activity.

Now, with a view to remove hardships to organizations which receive sundry considerations from such activities, the Bill proposes to amend the definition of 'Charitable Purpose' so as to provide that the advancement of any object of general public utility shall continue to be a 'Charitable Purpose' if the total receipts from any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce, or business do not exceed Rs.10 lakh in a year.

This amendment will take effect retrospectively from 1st April, 2009 and will accordingly apply to Assessment Year 2009-10 and subsequent years.

3. Clarification on income deemed to accrue or arise in India:[Section 9(1)]

The existing provisions of Clauses (v), (vi) and (vii) of Section 9(1) provide that income, shall be deemed to accrue or arise in India, by way of interest, royalties and fees for technical services, respectively if the payment is payable by the Government or a resident. This receipt basis of taxation was the object of much litigation on the grounds that it runs contrary to the well settled international norms of taxation on territorial nexus basis. The Supreme Court **Ishikawajima-Harima Heavy Industries Ltd. v. DIT, 288 ITR 408,** ruled that Section 9(1)(vii) should be read together with Section 5 thereof, which takes within its purview the territorial nexus on the basis of which tax is required to be levied. Therefore, the Court held that Section 9(1)(vii) of the Act envisages the fulfillment of two conditions for the services to be taxed in India, viz.: (a) such services are rendered in India, and (b) such services are utilized in India, and these two conditions have to be satisfied simultaneously. Therefore, when a technical service is rendered outside India, even if it is utilized in India, the provisions of Section 9(1)(vii) of the IT Act will not be applicable. However, the ratio of this judgment was sought to be nullified by the amendment of Section 9 of the IT Act by the Finance Act, 2007, by which an Explanation was inserted therein. Through the said amendment the legislative intent was to bring to tax such remittance by way of 'source' rule. However, recently the Karnataka High Court, in the case of Jindal Thermal Power Company Ltd. v. DCIT (TDS) 225 CTR 220 and the Bombay High Court in the case of Clifford Chahce 318 ITR 237, have held that the Explanation in its present form, does not have the effect of nullifying the decision in Ishikawajima-Harima Heavy Industries Ltd. It has been held that the principle of territorial nexus of taxation as was propounded by Supreme Court remains good law despite the retrospective amendment by Finance Act, 2007.

The Bill now proposes to substitute the existing Explanation with a new Explanation to reaffirm the legislative intent to tax such payments by way of 'source' rule. Accordingly, it proposes to clarify that the income of a non-resident shall be deemed to accrue or arise in India under clause (v), (vi) and (vii) of Section 9(1) and shall be included in the total income, whether or not:

(a) the non-resident has a residence or place of business or business connection in India, or

(b) the non-resident has rendered services in India.

This amendment will take retrospective effect from 1st June 1976 and will be applicable from A.Y. 1977-78 onwards.

4. Extension of Exemption to associations undertaking research in social science/statistical research. [Section 10]:

Under the existing provisions of Section 10(21), exemption is granted in respect of the income of a scientific research association approved and notified u/s.35(1)(ii) subject to specified conditions.

It is now proposed to amend Section 10(21) so as to extend the benefit of exemption also to an approved research association which has its object of undertaking research in social science or statistical research, subject to specified conditions.

5. Computation of exempted profits of units in SEZ made applicable to earlier years. [10AA]:

Existing provisions of Section 10AA(7) was amended by Finance (No.2) Act, 2009, so as to provide that profits derived from export of articles or things or services shall be the amount which bears to the profits of the business of the undertaking, being the unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking. This amendment was made with a view to remove the anomaly for computing export profits in proportion to turnover of the business of the undertaking rather than in proportion to turnover of the business carried by the assessee. However, this amendment was made effective from A.Y. 2010-11. Now, with a view to make the amendment effective for earlier years also, it is proposed to provide that the provisions of sub-section (7) as amended by Finance Act, 2009 will apply to the A.Y. 2006-07 and subsequent assessment years.

6. Cancellation of Registration obtained u/s.12A:

Before the insertion of Section 12AA by Finance (No.2) Act, 1996 w.e.f. 1.4.1997, in order to take benefit of Exemption u/s.11, a Trust or institution was required to get itself registered u/s.12A. After the amendment w.e.f. 1.4.1997, the registration was mandatory as per procedure laid down in Section 12AA. Under the existing sub-section (3) of Section 12AA the registration granted u/s.12AA can be cancelled by Commissioner if it is found that the activities of the Trust are non-genuine or its activities are not in accordance with the objects for which the Trust was established.

However, judicial rulings in some cases have held that Commissioner does not have the power to cancel the registration which was obtained earlier u/s.12A as it is not specifically mentioned in Section 12AA.

The Bill therefore, proposes to amend Section 12AA(3) so as to provide for cancellation of registration obtained u/s.12A before the amendment by Finance (No.2) Act, 1996.

This amendment will take effect from 1st June, 2010.

7. Weighted Deduction on R & D enhanced: [Section 35]

(a) At present, a weighted deduction of 125% of any sum paid to an approved scientific research association that has the object of undertaking scientific research or to an approved university, college or other institution to be used for scientific research, or to an approved National Laboratory or a university or an IIT to be used for the purpose of approved scientific research programme, is allowed from business income.

The Bill proposes to increase this weighted deduction from 125% to 175% so as to encourage more contribution to such entities.

Further, Bill also proposes to extend the benefit of similar weighted deduction to sum paid to an approved Research Association engaged in research in social science or statistical research.

Consequently, any sum paid to a research association which has as its object to undertake research in social science or statistical research and which is approved u/s.35(1)(iii) will be eligible for deduction u/s.80GGA with effect from 1st April, 2011.

(b) At present u/s.35(2AB) weighted deduction of 150% of the expenditure incurred by a company on scientific research on an approved in-house research and development facility is allowed from its business income. In order to encourage more in-house research investment, the Bill proposes to increase this weighted deduction from 150% to 200%.

These amendments will apply to Assessment Year 2011-12 and subsequent years.

8. Investment linked Deduction extended to business of Building and Operating Hotels: [Section 35AD]

(a) With effect from A.Y. 2010-11, u/s.35AD investment linked deduction of 100% of capital expenditure is allowable to specified businesses of setting up and operating cold chain facilities, warehousing facilities for storage of agricultural produce and laying and operating a cross country natural gas or crude or petroleum oil pipeline work.

The Bill proposes to amend the definition of the term 'Specified Business" in Section 35AD(8)(c) so as to extend similar benefits of deduction to the business relating to building and operating, anywhere in India, a new hotel of two-star or above category as classified by the Central Government, if the hotel commences operation on or after 1st April, 2010.

Similarly, Bill also proposes to amend section 35AD(3) so as to provide that if deduction under section 35AD is claimed and allowed for any assessment year, no deduction shall be allowed under the provisions of chapter VI-A under the heading "C" – Deduction in respect of certain incomes in relation to such specified business for the same or any other assessment year.

These amendments shall apply w.e.f. AY 2011-12.

(b) Presently one of the conditions for the specified business of operating a cross country pipeline is that it 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.

The Bill proposes to amend this condition so as to provide that the proportion of the total pipeline capacity to be made available for use on common carrier basis should be as specified by regulations made by the Petroleum & Natural Gas Regulatory Board instead of one third as provided hitherto.

This amendment will apply with retrospective effect from 1.4.2010 & shall accordingly apply in w.e.f. Assessment Year 2010-11.

9. Allowance of expenditure on payment of TDS before due date of filing of Return [Sec 40a(ia)].

As per the existing proviso to Section 40a(ia) if in respect of any expenditure, tax has been deducted during the last month of the previous year but paid after the due date of filing of return or deducted during any other month of the previous year but paid after the end of the said previous year, such expenditure shall not be allowed as a deduction in computing the income of the previous year in which such tax is not paid.

The Bill proposes to amend the said proviso so as to provide that no disallowance shall be made if after ***deduction of tax during the previous year***, the same has been paid on or before the due date of filing of return of income as specified in Section 139(1).

This amendment will take effect retrospectively from 1.4.2010 and will accordingly apply w.e.f. assessment year 2010-11.

10. Increase in limits for applicability of Tax Audit [Section 44AB]

Under the existing provisions of Section 44AB, every person carrying on business or profession is required to get his accounts audited before the specified due date if his total sales, turnover or gross receipts exceeds Rs. 40 Lakhs (for business) / Rs. 10 Lakhs (for profession) in the previous year. These limits have not been revised since 1984.

It is proposed to increase the aforesaid limit from Rs. 40 Lakhs to Rs. 60 Lakhs for business and from Rs. 10 Lakhs to Rs. 15 Lakhs for profession.

It is also proposed to increase the maximum penalty leviable u/s 271B for failure to get accounts audited u/s 44AB and to furnish the report from Rs. 1,00,000/- to Rs. 1,50,000/-.

Correspondingly, **Under section 44AD**, the limit of maximum total turnover or gross receipts for presumptive scheme of taxation for any business (except business of plying, hiring or leasing goods carriage) is proposed to be increased from Rs. 40 Lakhs to Rs. 60 Lakhs.

These amendments are proposed to take effect from 1st April, 2011 and will accordingly apply w.e.f. Assessment Year 2011-12.

11. Clarificatory amendment for computing income of non resident from the business of exploration of mineral oils, royalty, technical fees etc. [Section 44BB and 44DA]

Under the existing provisions of section 44BB, income of a non-resident assessee who is engaged in the business of providing services or facilities in connection with or supplying plant or machinery on hire used or to be used in the prospecting for or extraction or production of mineral oils is computed at ten percent of the aggregate of the amounts paid or payable to the assessee whether in or out of India on account of the provisions of such services and facilities. The existing provisions of section 44DA, provide the procedure for computing income by way of royalty or fees for technical services, in case the right, property or contract giving rise to such income are effectively connected with the permanent establishment of the non-resident through which business is carried out in India.

In view of judicial pronouncements, doubts have been raised regarding scope of section 44BB vis-à-vis section 44DA as to whether fees for technical services relating to the exploration sector would also be covered under presumptive taxation provisions of section 44BB. In order to remove doubts and to clarify the distinct scheme of taxation of income by way of fees for technical services, it is proposed to amend the proviso to said section 44BB(1) so as to clarify that the provisions of section 44BB shall not apply to income covered under 44DA.

It is also proposed to insert a second proviso to the section 44DA so as to clarify that the provisions of section 44BB shall not apply in respect of income referred to in the aforesaid section 44DA.

These amendments will take effect from 1st April, 2011 and will accordingly apply w.e.f. AY 2011-12.

12. Exemption from Capital Gains Tax on conversion of a company into a Limited Liability Partnership (LLP) [Section 47 (xiiib)]

Section 47 of the Income Tax Act provides for transactions which are not regarded as 'Transfer' and consequently not chargeable to Capital gain tax under section 45 of the Income Tax Act. Under the existing provisions, Limited Liability Partnerships (LLP) are taxable on the same lines as applicable to partnership firms. However, under the existing provisions of section 47, the transaction of conversion of a company into an LLP in terms of section 56 and section 59 of the Limited Liability partnership Act, 2008, is not specifically included therein. Accordingly, transfer of assets on such conversion attracts levy of capital gains tax. Similarly, benefits of carry forward of losses and of unabsorbed depreciation are not available to the successor LLP.

The Bill now proposes to amend section 47 by inserting a new clause (xiiib) so as to provide that any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP as a result of conversion of the company into a LLP in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008 shall not be regarded as a transfer for the purposes of capital gains tax under section 45, subject to following conditions:

a) the total sales, turnover or gross receipts in business of the company do not exceed sixty lakh rupees in any of the three preceding previous years;

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

c) no consideration other than share in profit and capital contribution in the LLP arises to partners;

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

e) all assets and liabilities of the company become the assets and liabilities of the LLP; and

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

Further Bill proposes to add clause (4) in section 47A so as to provide that on breach of stipulated conditions, the benefit availed by the predecessor company shall be deemed to be the profits and gains of the successor LLP and chargeable to tax in the previous year in which the conditions are breached.

Further, Bill also proposes to provide:

(a) the aggregate depreciation allowable to the Predecessor Company and successor LLP shall not exceed, in any previous year, the depreciation calculated at the prescribed rates as if the conversion had not taken place.

(b) the actual cost of the **block of assets** in the case of the LLP shall be written down value of the block of assets of the predecessor company on the date of conversion **[Section 43(6) Explanation 2C].**

(c) the cost of acquisition of the Capital Assets for the LLP firm shall be deemed to be the cost at which the predecessor company acquired it. [Section 49(1) (iii) (e)]

(d) for allowance of carry forward and set off of the accumulated losses and the unabsorbed depreciation of the predecessor company to the successor LLP.

    If the specified conditions are not complied, the benefit of set off of loss or allowance of depreciation **in any previous year** claimed by LLP, shall be deemed to be the income of the LLP chargeable to tax in the year in which such conditions are breached.

(e) for deduction of the expenditure incurred under Voluntary Retirement Scheme (VRS) for remaining years as would have been allowed to the predecessor company. No VRS deduction shall be allowed to the predecessor company in the previous year in which the conversion takes place.

MAT credit u/s. 115JAA of predecessor company shall not be allowed to successor LLP.

These Amendments will take effect from 1st April, 2011 and will, accordingly, apply w.e.f. assessment year 2011-12.

13. a) **Removal of Taxation of deemed income on transfer of Immovable Property for inadequate consideration : [Section 56(2)]**

As per the provisions inserted by the Finance Bill 2009 w.e.f. 1st October, 2009 u/s.56(2)(vii)(b), if an Individual or HUF receives any immovable property without consideration or for inadequate consideration then the difference between the stamp duty value and the consideration paid was to be considered as deemed income in hands of the receiver.

The Bill now proposes to exclude transfer of any immovable property for inadequate consideration from the ambit of provisions of section 56(2):

This amendment will take effect retrospectively from 1st October, 2009, (the date from which it was made effective) and will, accordingly, apply in relation to the assessment year 2010-2011 and onwards.

b) **Transfer of Shares to firms / companies in which public are not substantially interested without or with inadequate consideration to be taxed as deemed income [Sec 56(2)(vii)]**

i) The existing provisions of Section 56(2) do not apply to the transactions of receipts of property without consideration or for inadequate consideration, by a firm or a company in which public are not substantially interested.

With a view to capture transactions of transfer of unlisted shares to a firm or a closely held company within the tax net, the Bill proposes to amend section 56(2) so as to include transfer of shares of a company (not being a company in which public are substantially interested) for inadequate or without consideration, to a firm or a company (not being a company in which public are substantially interested) on or after the 1st day of June, 2010:

However, Bill proposes to exclude the transactions of business reorganization, such as amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47.

ii) Bill also proposes to amend **Explanation 4 to section 49** so as to provide that for the purpose of computing capital gain chargeable to tax u/s 45, the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56(2)(viia).

c) **Definition of property amended to apply to only capital assets :-**

Under the existing provisions of Section 56(2), the transfer of property for inadequate or without consideration, in the normal course of the business may also be taxed in the hands of recipient. In order to remove this anomaly the Bill now proposes to amend the definition of property to include only the property in the nature of **capital asset**. Accordingly, provisions of section 56(2) (vii) would not apply to receipt of property being in the nature of stock-in-trade, raw material and consumable stores in respect of the business of recipient.

d) **The Bill also proposes to amend definition of property so as to include "bullion".**

The amendments at (b) (c) & (d) will take effect from 1st June, 2010, and will, accordingly, apply w.e.f. assessment year 2011-2012.

14. Deduction in respect of investment in long-term infrastructure bonds [Section 80CCF]

The Bill proposes to insert a new section 80CCF to grant deduction to an Individual or a Hindu Undivided Family for the subscription made by them in notified long-term infrastructure bonds.

The maximum limit of deduction under this section is Rs. 20,000/- and this deduction will be over and above the existing aggregate limit of deduction of Rs. 1,00,000/- allowable under section 80C , 80CCC and 80CCD of the Act.

This amendment will be effective from 1st April, 2011 i.e. A.Y. 2011-12.

15. Deduction in respect of contribution to Central Government Health Scheme [Section 80D(2)]

The existing provisions of section 80D(2) provides deduction to an Individual in respect of the health insurance premium paid by him upto a maximum limit of Rs. 15,000/- for himself, spouse and dependent children .A further deduction of Rs. 15,000 is allowed to an Individual for an insurance policy for his dependent parents. The deduction in both the cases shall be enhanced to Rs. 20,000/- if the person insured is of age 65 years or above.

The Bill now proposes to extend the benefit of deduction in respect of any contribution made by an Individual to Central Government Health Scheme. However, the aggregate limit for deduction remains the same.

The said amendment will be effective from 1st April, 2011 i.e. A.Y. 2011-12.

16. Relaxation in conditions for availing Tax holiday for an approved Housing projects: [Section 80-IB]

The existing provisions of Section 80-IB(10) provides for 100% deduction in respect of profits derived by an undertaking from developing and building housing projects approved by a local authority before 31.3.2008 if the project is completed within 4 years and subject to other specified conditions.

In view of global recession and resultant slowdown in the housing sector, the Bill proposes to increase the period allowed for completion of housing project approved on or after 1st April 2005, from 4 to 5 years from the end of the financial year in which the project is approved.

It further proposes to revise the existing limit of the built-up area of shops and other commercial establishments included in the housing project in order to enable basic facilities to the residents. The existing limit is maximum 5% of the aggregate built-up area of the housing project or 2000 square feet, whichever is less. The said limit is revised to 3% of the aggregate built up area or 5,000 square feet, whichever is higher, for projects which are pending completion as on 1st April, 2010.

These amendments will take effect retrospectively, from 1st April, 2010 and will, accordingly, apply w.e.f. assessment year 2010-11.

17. Extension of time to Hotels and Convention Centres : [Section 80-ID]

The existing provisions provide for 100% deduction for five years, in respect of profits derived by an undertaking from the business of hotels and convention centres in the specified areas provided such hotel has started functioning or convention centre is constructed during the period 1.4.2007 to 31.3.2010.

The Bill proposes to extend the date by which the hotel has to be constructed and start functioning or the convention centre has to be constructed, from the present date of 31st March 2010 to 31st July, 2010.

The said amendment will be effective from 1st April, 2011 i.e. A.Y. 2011-12.

18. Rate of Minimum Alternate Tax (MAT) increased from 15% to 18%. [Section 115JB]

Under the existing provisions, MAT @15% is payable by a company on its book profit, if the tax payable on its total income as computed under other provisions of the Income Tax Act, 1961 is less than 15% of the book profit.

The Bill now proposes to increase the rate of MAT u/s.115JB from existing 15% to 18% with effect from 1st April, 2011.

This increased MAT rate will accordingly apply w.e.f. A.Y. 2011-12.

19. Reference to Valuation Officer in certain cases [Section 142A]

The existing provisions provide that the Assessing Officer, for the purpose of making any assessment or reassessment' may require the Valuation Officer to make an estimate of the value in respect of the following and report the same to him:

(a) Investment referred to in section 69A or section 69B

(b) Value of any bullion, jewellery or another valuable article referred to in section 69A or 69B

The Bill proposes to amend section 142A(1) so as to enable the Assessing Officer to make reference to the Valuation Officer also in respect of any property referred to in section 56(2). This amendment will take effect from 1st July, 2010.

20. Threshold limit for Tax Deduction at Source (TDS) Raised: [Section 194B – 194J]

Under the existing provisions of Chapter XVII B, relating to Tax Deduction at Source, no deduction is required to be made if the payments do not exceed prescribed threshold limits.

With a view to reduce the compliance burden, the Bill now proposes to raise the threshold limit for payments mentioned in sections 194B, 194BB, 194C, 194D, 194H, 194I and 194J, as under:

Sr. No.	Nature of Payment	Relevant Section	Existing threshold limit of payment (Rs)	Proposed threshold limit of payment (Rs.)
				(w.e.f. 01.07.2010)
1	Winning from lotteries or crossword puzzles	194B	Rs. 5,000	Rs. 10,000
2	Winnings from horse races	194BB	Rs.2,500	Rs. 5,000
3	Payment to contractors	194C	Rs. 20,000 (For a single transaction) Rs. 50,000 (For aggregate of transactions during the Financial Year)	Rs. 30,000 (For a single transaction) Rs. 75,000 (For aggregate of transactions during the Financial Year)
4	Insurance commission	194D	Rs. 5,000	Rs. 20,000
5	Commission or Brokerage	194H	Rs. 2,500	Rs. 5,000
6	Rent	194-I	Rs. 1,20,000	Rs. 1,80,000
7	Fees for professional or technical services	194J	Rs. 20,000	Rs.30,000

21. Compensatory Interest u/s 201(1A) for Delay in payment of TDS enhanced:

Under the existing provisions of Sec 201(1A), a person is liable to pay interest @ 1% for every month or part of the month in case of failure to deduct tax or payment of tax after deduction. With a view to discourage non-compliance the Bill proposes to increase the rate of interest for non-payment of tax within due date after deduction to 1.5% per month or part of the month. Accordingly, revised interest rate proposed to be charged will be as under:

Particulars	Present Rate	Proposed Rate
(a) From the date on which tax is deductible to the date on which tax is deducted for every month or part of month.	1%	1%
(b) From the date of deduction of tax to the date of payment of tax for every month or part of month.	1%	1.5%

Such interest shall be paid before furnishing the prescribed statements u/s.200(3) in Form No. 24Q and 26Q.

This amendment will take effect from 1st July, 2010.

22. Issue of TDS/TCS Certificates to be continued:

Finance (No. 2) Act, 2004 had proposed that credit for TDS shall be granted without producing TDS certificates. However, the dematerialization process was deferred to 01.04.2010 by the Finance Act 2008. The Finance Act 2008 dispensed with the requirement of furnishing of TDS certificates on or after 01.04.2010. However, considering the practical difficulty in claiming TDS credit and the importance of TDS/TCS certificate, the Bill now proposes to omit Section 203(3) so that the deductor will be required to continue to furnish TDS certificate to the deductee even after 01.04.2010.

23. Scope of Proceedings before the Settlement Commission enlarged [Section 245A, 245B & 245C]

a) Chapter XIX-A in Income Tax Act contains provisions relating to settlement of cases by the Settlement Commission. Under the existing provisions persons in whose case proceedings have been made as a result of search or requisition of books u/s. 132A, are not eligible to make application to the Settlement Commission. The Bill proposes to provide that such person can also make an application which can be admitted by the Settlement Commission.

b) Under the existing provisions of Section 245C(1), no application can be made to the settlement commission unless the additional amount of income tax payable on the income disclosed in the application exceeds Rs. 3 lakhs.

The Bill now proposes to substitute the proviso to section 245C(1) so as to provide that an application can be made before the Settlement Commission,

(i) in the cases of proceedings resulting from search or as a result of requisition of books of accounts; if the additional amount of income-tax payable on the income disclosed in the application exceeds Rs. 50 lakhs.

(ii) in other cases if additional income tax payable on the income disclosed in the application exceeds Rs. 10 lakhs.

c) <u>Extension of time limit for passing orders [Section 245D]</u> :

Under the existing provisions of section 245D(4), the settlement commission is required to pass an order within 12 months from the end of the month in which the application is made.

The Bill now proposes to extend the time limit as under:

i) In respect of an application made on or after 1st June, 2007 but before 1st June, 2010, within 12 months

ii) In respect of an application made on or after 1st June, 2010, within 18 months from the end of the month in which the application is made.

These amendments will take effect from 1st June, 2010.

24. Empowering the High Court to condone the delay in filling appeals [section 260A]

Under the existing provisions of section 260A, an appeal against the Tribunal Order can be filed before the High Court within a period 120 days from the date of receipt of order appealed against. There is no provision for condonation of delay. The issue as to the power of High Court to condone delay in filing appeal has been a matter of dispute. Recently, the Supreme Court in **CIT Vs. Hongo India** has held that the High Court has no power to condone the delay in filing appeal u/s. 35G of the Central Excise Act. This was followed in the context of section 260A of the Income Tax Act, 1961 by the Bombay High Court in CIT v. Grasim Industries (Bom) 27 DTR 130.

With a view to correctly reflect the legislative intention, the Bill proposes to insert sub section (2A) in section 260A to specifically empower the High Court to condone the delay in filing an appeal after the expiry of the period of 120 days, if it is satisfied that there is a sufficient cause for not filing the appeal within such period.

This amendment will take effect retrospectively from 1st October, 1988.

25. Deferment of Document Identification Number (DIN) [Section 282B]

The Finance Act (No.2) 2009, has inserted a new Section 282B to provide for a introduction of a computer based system of allotment and quoting of Document Identification Number (DIN) for each correspondence sent or received by it so as to enable tracking of documents and minimize tax payers grievances with effect from 1st October, 2010.

However, the national level information technology infrastructure facilities of Income Tax Department is yet to be streamlined. Therefore it is proposed that allotment of DIN be made applicable with effect from 1st July, 2011.

26. Un-realised Gain/Loss on investment not to be considered for computing profit and gains of Non-life insurance business [First Schedule, Rule 5] :

The profits and gains of non-life insurance business is computed under section 44 read with Rule 5 of the First Schedule.

According to Rule 5 of the said Schedule as amended by Finance (No.2) Act, 2009 the income of non-life insurance business is taken as 'profit before tax and appropriations' as per the profit and loss account of the company, prepared in accordance with the regulations made by the Insurance Regulatory Development Authority (IRDA), subject to adjustments mentioned in clause (a), (b) & (c) of said Rule 5. The said clause (b) provides that in case of non-life insurance business, appreciation of or gains on realization of investments taken credit for in the accounts shall be treated as income and be included in the computation of the total income. Similarly, any amount written off or provided in accounts to meet diminution in or loss on realization of investments shall be deducted.

However, in accordance with the regulations made by IRDA, the appreciation in the value of investments, being in the nature of unrealized gain is not to be taken into account for determining profit or loss of non-life insurance business. Therefore, unrealized gains due to appreciation in the value of investments will not be included in the total income as it is not accounted for in the books. The Bill, therefore, now proposes to substitute the said clause (b) so as to provide that deduction will not be allowed for provision for losses due to diminution in the value of investments as this is not a realized loss.

The Bill also proposes to provide that any gain or loss on realization of investments shall be added or deducted for the purpose of computation of the total income, if the same is not already credited or debited in the profit and loss account.

This amendment is proposed to take effect from 1st April, 2011 and will, accordingly, apply w.e.f. A.Y. 2011-12.

B. INTERNATIONAL TAXATION - RECENT AMENDMENTS:

Social Security Agreement:-

As we are aware that in this era of globalization, India is known as for its human resource and is one of the leading supplier of human capital to other nations, resulting into huge movement of employees from one country to others. In order to provide benefits to employees employed abroad and relief to the companies from duplication of social security contributions costs, the Government of India ('GOI') has started entering into Social Security agreements with various countries. Social Security Agreements entered by GOI, aims at achieving equality on the principles of reciprocity and is intended to benefit the employees and employers of both countries. The salient features of the agreement are:

- The employees of the home country deputed by their employers, on short-term assignment for a pre-determined period of up to 60 months, to the host country need not remit social security contribution in that country.
- Export of pension due under the legislations of one country to the other country, where the member might choose to live, is possible.
- Totalisation of the contribution periods earned while in service in both the countries for the purpose of deciding eligibility to benefits is possible under certain circumstances.
- The employers are saved from making double social security contributions for the same set of employees, thereby enhancing the competitiveness of their products and services.

Till date the Government of India has notified two agreement which have come into force, as follows:-

1. Social Security Agreement with Belgium- Effective from 1st September 2009.
2. Social Security Agreement with Germany- Effective from 1st October 2009.

Various rules and guidelines are available on the following link http://epfindia.nic.in/Index.htm.

DRP is optional Remedy:

CBDT vide its notification F. No. 142/22/2009-TPL (Pt. II) has clarified that it is the choice of the assessee whether to file an objection before the Dispute Resolution panel against the draft assessment order or not to exercise this option and file an appeal later before CIT (Appeals) against the assessment order passed by the Assessing Officer. Therefore, DRP is an optional remedy.

Income-tax (Dispute Resolution Panel) Rules, 2009:

Vide notification No. 84/2009 dated 20th November 2009, CBDT has introduced the rules to regulate the procedure of the Dispute Resolution Panel (DRP). DRP is an alternative procedure introduced for the cases involving transfer pricing adjustment. The rules describes, in detail, application process, forms and other procedure to be followed while making an application to DRP.

Agreement for Avoidance of Double Taxation entered by India *Double Taxation Avoidance Agreements (DTAA) entered/ notified by the Government are provided in the following table for quick reference:-*		
Country With	**Effective Date**	**Withholding tax rates for Royalties (R), Fees for Technical Services (FTS) & Dividend (D) / Amendment**
Tajikistan	April 1 2010	Dividend - 5 per cent or 10 per cent as may be applicable Interest - 10 per cent Royalties and FTS - 10 per cent
Luxembourg	April 1 2010	Dividend - 10 per cent Interest - 10 per cent Royalties and FTS - 10 per cent
Finland (Revised)*	Awaited	Dividend - 10 per cent Interest - 10 per cent Royalties and FTS - 10 per cent
Myanmar	April 1 2010	Dividend - 5 per cent
		Interest - 10 per cent
		Royalties and FTS - 10 per cent
** CBDT Press Release 402/92/2006MC(03 of 2010) dated 15.01.2010.*		

C. WEALTH TAX ACT:

The following major amendments on the lines similar to those made under the Income Tax Act, 1961 are proposed.

(a) To include within the definition of 'case' the proceedings of assessment or reassessment which may be initiated on the basis of search u/s.37A or requisition u/s.37B, which can be admitted by the Settlement Commission.

(b) To extend the time for passing an order by the Settlement Commission in respect of an application made on or after 1^{st} June, 2010, from 12 months to 18 months from the end of the month in which application is made.

(c) To provide power to High Court to condone delay in filing appeals beyond prescribed period.

These amendments will take effect from 1st June, 2010.

II. INDIRECT TAX PROPOSALS

A. SERVICE TAX

1. Rate of Service Tax:

No change in Rate of service tax. Basic rate of service tax is retained at 10% for all taxable services.

2. New Services Liable to Service Tax:

i) Service of permitting commercial use or exploitation of any event organized by a person or organization.

ii) Use of Copyrights on (a) cinematographic films and (b) sound recording.

iii) (a) health check up undertaken by hospitals or medical establishments for the employees of business entities; and
(b) health services provided under health insurance schemes offered by insurance companies.

Provided if the payment for such health services is made directly by the business entity or the insurance company to the hospital or medical establishment.

iv) Service provided for maintenance of medical records of employees of a business entity.

v) Service provided by Electricity Exchanges.

vi) Certain additional services provided by a builder to the prospective buyers such as providing preferential location or external or internal development of complexes on extra charges. However, service of providing vehicle-parking space would not be subjected to tax.

vii) Service of promoting of a 'brand' of goods, services, events, business entity etc.

viii) The promotion, marketing or organizing of games of chance, including lottery.

The above changes will come into effect from a date to be notified, after the enactment of Finance Bill, 2010.

3. Alteration in the Scope of Existing Services Taxable to Service Tax:

i) The scope of air passenger transport service is being expanded to include domestic journeys, and international journeys in any class.

ii) At present, levy of service tax on Information Technology Software Service is limited only if such service is used for furtherance of business or commerce. The scope of the taxable service is being expanded to cover all cases irrespective of its use.

iii) 'Commercial training or coaching' service, would include any training or coaching, which is provided for a consideration, whether or not for profit. This change is being given retrospective effect from 01.07.2003.

iv) Exemption pertaining to sports Sponsorship removed.

v) Service tax would be charged under 'Construction of complex service', unless the entire consideration for the property is paid after the completion of construction (i.e. after receipt of completion certificate from the competent authority).

vi) Amendments are being made in the definition of the 'Renting of immovable property service' to,-

(a) provide explicitly that the activity of 'renting' itself is a taxable service. The change has been given retrospective effect from 01.06.2007; and

(b) levy service tax on rent of vacant land where there is an agreement or contract between the lessor and lessee for undertaking construction of buildings or structures on such land for furtherance of business or commerce during the tenure of the lease.

The said amendment will supercede the effect of Delhi High Court decision in case of Home Solution Retail India Ltd. & Others wherein the Delhi High Court has stuck down the levy of Service Tax on renting of immovable property.

vii) All services provided entirely within the airport/port premises would be classified under Airport services/Port services and an authorization from the airport/port authority would not be a pre-condition for taxing these services.

viii) Taxable service value under ULIP Services would be higher of:

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

(b) the maximum amount of fund management charges fixed by the Insurance Regulatory and Development Authority (IRDA).

The above changes will come into effect from a date to be notified, after the enactment of Finance Bill, 2010.

4. Services Exempted from Service Tax:

a) Statutory taxes charged by the foreign governments are being excluded from taxable value for levy of service tax under the Air passenger transport service.

b) Services relating to 'Erection, Commissioning or Installation' of,-

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

c) Pre-packaged I.T. software, with the license for right to its use subject to specified conditions.

d) Exemption on transportation by road is being extended to food grains and pulses.

e) Indian news agencies under 'Online Information and Database Retrieval Service' subject to specified conditions.

f) 'Technical Testing and Analysis Service' and 'Technical Inspection and certification service' provided by Central and State seed testing laboratories, and Central and State seed certification agencies.

g) Transmission of electricity.

The above changes will come into effect immediately.

5. Withdrawal or Modification of Exemptions:

a) Exemption from service tax on ‘Service provided in relation to transport of goods by rail’ is being withdrawn. The levy will come into effect from 01.04.2010.

b) Exemption from service tax, presently available to Group Personal Accident Insurance Scheme provided by Govt. of Rajasthan to its employees, under General Insurance Service is being withdrawn.

c) The exemption from service tax on ‘Commercial training or coaching service’ is being restricted to vocational training courses in the designated Trades notified under the Apprentices Act, 1961.

The above changes, except at S. No.1, will come into effect immediately.

6. Other Amendments :

a) Bill proposes to clarify that no penalty shall be imposed where service tax along with interest has been paid before issuance of notice by the department under this sub-section. This amendment will come into effect from a date of enactment of the Finance Bill, 2010.

b) The term ‘business entity’ has been proposed to be defined to include an association of persons, body of individuals, company or firm but not an individual. This amendment will come into effect from a date to be notified after the enactment of Finance Bill, 2010.

7. Amendments in Rules and Notifications:

a) In the Export of Services Rules, 2005, the condition prescribed i.e. ‘such service is provided from India and used outside India’ is being deleted.

b) Export of Services Rules, 2005 and Taxation of Services (Provided from Outside India and Received in India) Rules, 2006 are being amended so as to move some of the specified taxable services from one category to another.

c) Chartered Accountants, Cost Accountants and Company Secretaries can now fully perform services from India and still avail the benefit of export of service rules.

The above change will come into effect immediately.

8. Other Clarifications :

Commission paid to Managing Director / Directors of companies whether whole-time or independent is not chargeable to service tax either under Business Auxiliary Services or Management Consultancy services. However, consultancy or advisory services provided by the Director in personal capacity will be chargeable to tax if they are being compensated separately.

B. EXCISE DUTY :

Major Proposals

1. The standard rate of excise duty of 8% on non-petroleum products is being increased to 10% with a few exceptions.

2. **Excise Duty reduced on the following item:**

   i) LED lights/lighting fixtures from 8% to 4%.

   ii) Replaceable kits for all household type water filters (except those operating on RO technology) from 8% to 4%.

   iii) Medicinal and Toilet Preparations Act 16% to 10%.

3. **Excise Duty increased on the following item:**

   i) Large cars, Multi Utility Vehicles and Sports Utility Vehicles etc. and chassis thereof increased from 20% to 22%

   ii) Motor Spirit (petrol) and HSD (diesel) increased by Re.1 per litre.

4. **Excise Duty fully exempted extended to the following item:**

   i) Apiary, horticultural, dairy, poultry, aquatic & marine produce and meat as well as processing thereof.

   ii) Self-loading/self-unloading trailers & semi trailers for Agricultural Purposes.

   iii) Additional specified raw materials for the manufacture of rotor blades for wind operated electricity generators.

   iv) Articles of bedding wholly made of quilted textile materials are fully exempted from excise duty.

5. **Withdrawal of Exemptions/Concessions**

   Microprocessor for computers (other than motherboard), Floppy disk drive, Hard disk drive, flash drive, CD/DVD and Combo Drive meant for external use will now attract excise duty of 4%.

6. **Clean Energy Cess**

   Clean Energy Cess is being imposed on coal, lignite and peat produced in India.

C. CUSTOM DUTY

Major Proposals

1) Basic Custom Duty reduced on the following items:

i) long pepper From 70% to 30%.

ii) ‘Asafoetida’ (heeng) from 30% to 20% on.

2) Full exemptions to the following items:

i) Bio-polymer/bio-plastics (HS Code 39139090) used for manufacture of bio-degradable agro mulching films, nursery plantation & flower pots.

ii) Parts for the manufacture of battery chargers and hands-free headphones.

3) Basic Custom Duty increased on the following items:

i) Crude petroleum and Motor Spirit (petrol) and HSD (diesel) increased from Nil to 5% and 2.5% to 7.5% respectively.

ii) Serially numbered gold bars (other than tola bars) and gold coins from Rs.200 per 10 grams to Rs.300 per 10 grams .

iii) Other forms of Gold from Rs.500 per 10 grams to 750 per 10 grams.

iv) Silver from Rs.1000 per kg to Rs.1500 per kg.

v) Platinum From Rs.200 per 10 grams to Rs.300 per 10 grams.

vi) At present, Electrical energy is fully exempt from customs duty. Electrical energy supplied from a Special Economic Zone to the Domestic Tariff Area and non - processing areas of SEZ would attract duty of 16% ad valorem.

vii) Specified Medical equipments from 4% to 5%.

4) Concessions rate of 5% on.

i) Machinery items, instruments, appliances required for initial setting up of solar power generation projects or facilities.

ii) Monorail projects for urban transport.

III. OTHER SIGNIFICANT PROPOSALS

a. **Goods and Service Tax** likely to be implemented by April 2011.

b. **Direct Tax Code likely** to be implemented by April 2011.

c. **Simplification of Income Tax Return filing Procedure**

New SARAL-II Form for Individual salaried taxpayers to be notified.

d. **Centralized Processing of Returns**

The Finance Bill, 2010 proposes to implement two more centres in line with Bengaluru for central processing of returns.

e. **Interest subvention of 2% on pre-shipment Export Credit** for certain exports such as handlooms, textiles, gem, and jewellery and marine products extended by one year to 31st March 2011.

f. **Interest subvention of 1% on housing loans** up to Rs.10 lakhs where the cost of the house does not exceed Rs.20 lakhs has been extended by one year to 31st March 2011.

g. **New banking licenses to private sector**

RBI is considering giving some additional banking licenses to private sector players and Non Banking Financial Companies (NBFC) if they meet the RBI's eligibility criteria.

h. **Interest subvention of 1% to farmers**

Incentive of additional one per cent interest subvention to farmers who repay short-term crop loans as per schedule for fiscal year 2010-11.

i. **Symbol for Indian Rupee**

A symbol for Indian rupee will be introduced which will represent the Indian currency with the other country's currency.

j. **Source of Government Revenue**

Disinvestment of public sector's shares to fetch Rs.40,000 Crore and the auction of 3G spectrum to telecom sector to fetch Rs.35,000 crore.

k. E-loan - Home loans fraud to be curbed

To curb the home loan fraud, a new electronic registry facility to store title and borrower details will be started. So whenever a bank processes a loan it can find out whether the title deed is clear and no other lender has a claim on it.

l. No extension of benefits to Industrial Undertakings in STPI Units

Under the existing provisions Industrial Undertakings in STPI Units are eligible for certain benefits upto 31st March, 2011. The Bill does not propose to extend the benefits to the said units beyond March 2011. This would prove beneficial to the developers of existing IT SEZ's as their space and capacity is still unutilized.

m. New Pension Scheme (NPS)

NPS is a defined pension scheme open to any Indian citizen between the age of 18-55. In Defined Contribution Scheme the individual invests a certain amount in a pension scheme till he retires. At retirement he is allowed to withdraw the money that is accumulated or buy an immediate annuity from an insurance company to generate a regular income or do both.

The Bill proposes to provide a gift to potential savers below a certain savings level. It is proposed to give Rs.1,000/- per year for three year to savers who deposit less than Rs.12,000/- per year and start their account in 2010-11. In other words the Bill proposes to provide direct subsidy to the people whose savings are less.

n. Food processing sector gets special status and is allowed to raised funds through ECBs

IV. RECENT POLICY ANNOUNCEMENTS :-

1 INBOUND INVESTMENT :

(A) Important Recent Developments in Inbound Investment Policy:

In relation to Foreign Direct Investments:

- FDI in Commodity Exchange:

  The government has laid down the following guidelines for foreign investment in Commodity Exchanges:

  i. A composite ceiling for foreign investment of 49% is allowed with prior Government approval, subject to the following conditions:
     a. Investment under the Portfolio Investment Scheme should be limited to 23%
     b. Investment under the FDI Scheme should be limited to 26%.

  ii. No foreign investor/entity including persons acting in concert will hold more than 5% of the equity in these companies.

  In order to allow the Commodity Exchanges to divest foreign equity and comply with the above guidelines, the Government of India has extended the time limit from 30-06-09 to 31-03-10. Accordingly, the Commodity Exchanges shall furnish a compliance report informing the foreign investment in the Commodity Exchange as on 30.9.2009 along with details of equity structure, to the Department of Industrial Policy & Promotion, Department of Consumer Affairs, Foreign Investment Promotion Board, the Forward Market Commission and SEBI.

- FDI in a Small Scale Industrial Undertaking (SSI)/Mirco and Small Enterprise (MSE) :

  - A SSI, prior to 2006, was defined in terms of: (i) investment in fixed assets in plant and machinery and (ii) equity participation (both domestic and foreign).
  - The Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, has removed the ceiling for equity participation (both domestic and foreign)
  - Thus now MSE are defined solely on the basis of investment in plant & machinery (for MSE engaged in manufacturing) and equipment (for MSE engaged in providing or rendering of services).
  - Accordingly, the present policy on FDI has been amended to permit FDI in MSE subject to only the sectoral equity caps, entry routes and other relevant sectoral regulations.

- FDI in an Industrial Undertaking manufacturing items reserved for SSI/MSE:

  It has been clarified that, any industrial undertaking which is not an MSE, whether with or without FDI, manufacturing items reserved for manufacture in the MSE sector (presently 21 items) as per the Industrial Policy, would require to fulfill the following conditions:

  (a) Obtain an Industrial License under the Industries (Development & Regulation) Act, 1951, for manufacture of the reserved items.
  (b) Apart from fulfillment of certain general conditions, the undertaking will have to export a minimum of 50% of the new or additional annual production of the MSE reserved items to be achieved within a maximum period of three years.
  (c) The export obligation will be applicable from the date of commencement of commercial production.
  (d) Such an industrial undertaking would also require prior approval of the Government (FIPB) where foreign investment is more than 24% in the equity capital.

In relation to Foreign Technology Collaborations:

The Government of India has reviewed the extant policy and it has been decided to permit, with effect from 16-12-2009, payments for royalty, lumpsum fee for transfer of technology and payments for use of trademark/brand name on the automatic route i.e. without any approval of the Government of India subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time.

In relation to External Commercial Borrowings:

- All-in-cost ceilings under the approval route for the ECB's where loan agreement have been signed on or after January 1, 2010 has been revised as follows:

Serial No	Average Maturity Period	All in cost Ceilings over six months LIBOR
1.	3 yrs and up to 5 yrs	300 basis points
2.	More than 5 yrs	500 basis points

- The facility of buy back of FCCB both under the automatic route and approval route has been discontinued w.e.f. January 1, 2010

- The current policy under which corporate engaged in "Development of Integrated Township" is permitted to avail of External Commercial Borrowings, under the approval route, has been further extended up till December 31, 2010.

- Eligible borrowers in the telecommunication sector are now allowed to avail of ECB for the purpose of payment for Spectrum allocation as follows:
    - Those proposing to fund the payment directly out of the proceeds of the ECBs can avail of the ECBs under the automatic route;
    - Those proposing to fund the payment initially out of Rupee resources and refinancing the same with long term ECB can avail of the ECBs under the approval route. The ECB in this case should be raised within 12 months from the date of payment of final installment to the Government. Also the Banks in India are not permitted to provide any form of guarantees for this purpose
- NBFC exclusively engaged in the financing of infrastructure sector are permitted to avail of ECB under the approval route only from multilateral/regional financial institutions and Government-owned development financial institutions for on-lending to borrowers in the infrastructure sector. These NBFC have, with effect from 9th December, 2009, been permitted to avail of ECB from any recognized lender under the approval route.
- It has now been provided that Residents who want to avail automatic route of approval, i.e. for borrowings in Foreign Exchange up to USD 500 million or its equivalent, should not have at any time violated any of the provisions of the regulations of Borrowing or Lending in Foreign Exchange and also that no investigation should be pending against them for contravention of the provisions of these regulations

<u>In relation to Establishment of Branch Office (BO) / Liason Office (LO) in India by Foreign Entities:</u>

The Government has placed in public domain, the following eligibility criteria and procedural guidelines for establishment of Branch Office and Liaison Office by foreign entities in India:

- **<u>Eligibility Criteria:-</u>**

  An application from a foreign entity to establish Branch / Liaison Office in India would be considered on the basis of the following two criteria:

  a) Basic Criteria:-

     i) Reserve Bank Route:-

        The applications wherein the Principal business of the foreign entity fall under sectors where 100% FDI is permissible under the automatic route, will be considered by the RBI.

ii) Government Route:-

The applications wherein the Principal business of the foreign entity fall under sectors where 100% FDI is not permissible under the automatic route, will be considered by the Reserve Bank, in consultation with the Government of India.

b) Additional Criteria:-

i) Branch Office:

- Track Record:- a profit making track record during the immediately preceding five financial years in the home country.
- Net Worth (total of paid-up capital and free reserves, less intangible assets):- not less than USD 100,000 or its equivalent.

ii) For Liaison Office:

- Track Record:- a profit making track record during the immediately preceding three financial years in the home country.
- Net Worth (total of paid-up capital and free reserves, less intangible assets):- not less than USD 50,000 or its equivalent.

Applicants that do not satisfy the eligibility criteria and are subsidiaries of other companies may submit a Letter of Comfort from their parent company, subject to the condition that the parent company satisfies the eligibility criteria as prescribed.

- **Procedural Guidelines:-**

The procedural guidelines for establishment of Branch Office and Liaison Office by foreign entities in India have been notified in respect of the following:

a. For establishment of additional offices or undertaking additional activities.
b. For extension of the validity period of the approval of Liason Offices.
c. For winding up of Branch / Liason Offices.

- **Application Procedure:-**

  - Application for establishing a BO/LO has to be made to designated AD Category-I bank in Form FNC. However, applications from foreign banks and insurance companies will continue to be received directly by the RBI.

- Further, the powers in respect of the following have also been delegated to AD Category-I banks:
  - i. Submission of Annual Activity Certificate
  - ii. Extension of validity period of Liaison Offices (except in the case of LO of foreign banks and insurance companies)
  - iii. Closure of Branch Office(s)/Liaison Office(s).

In relation to acquisition and transfer of immovable property in India:-

For the purpose of acquisition and transfer of immovable property in India, the definition of Person of India Origin has now been expanded to include any individual whose mother or grandmother was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955 (57 of 1955). Thus as a result of this amendment, the definition of Person of India Origin includes any individual who or either of whose father or mother or whose grandfather or grandmother was a citizen of India.

(B) Important Recent Developments in Outbound Investments:

In realtion to Indian Depository Receipts (IDRs):

For issue of IDRs by foreign companies in India, Companies (Issue of Indian Depository Receipts) Rules, 2004 have been notified by Ministry of Corporate Affairs. In order to facilitate the issue, purchase, possession, transfer and redemption of IDRs amendments have been made to the Foreign Exchange Management Act. Some of the salient features of IDRs are as follows:

- The IDRs issued shall be denominated in Indian Rupees
- **Issuer**:

  Eligible companies resident outside India can issue IDRs through a Domestic Depository.
- **Investor**:
  - Foreign Institutional Investor (FII) and Non-Resident Indians (NRI) may also invest, purchase, hold and transfer IDRs of eligible companies resident outside India and issued in the Indian capital market, subject to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000
  - NRIs are allowed to invest in the IDRs out of funds held in their NRE / FCNR(B) account.

  - Financial/banking companies having presence in India, either through a branch or subsidiary intending to raise funds through issuance of IDRs, need have to obtain approvals of the sectoral regulator(s) before the issuance of IDRs.

- **Issue Proceeds**:

  The proceeds of the issue of IDRs shall be immediately repatriated outside India by the eligible companies issuing such IDRs.

- **Fungibility:**

  Automatic fungibility of IDRs is not permitted

- **Redemption:**
  - IDRs shall be redeemable into underlying equity shares only after the expiry of one year period from the date of issue of the IDRs.
  - At the time of redemption / conversion of IDRs into underlying shares, the Indian holders (persons resident in India) of IDRs shall comply with the provisions of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004
  - The following guidelines shall be followed, on redemption of IDRs:

  i. Listed Indian companies and Indian Mutual Funds, registered with SEBI, may either sell or continue to hold the underlying shares subject to certain conditions

  ii. Other persons resident in India including resident individuals are allowed to hold the underlying shares only for the purpose of sale within a period of 30 days from the date of conversion of the IDRs into underlying shares.

  iii. The FEMA provisions shall not apply to the holding of the underlying shares, on redemption of IDRs by the FIIs including SEBI approved sub-accounts of the FIIs and NRIs

<u>In relation to Investments Overseas by an Indian Party engaged in Financial Service Sector:</u>

A retrospective amendment was introduced w.e.f. 6th September, 2006 with regards to an Indian Party engaged in financial services sector in India and making investment in an entity outside India. The Indian parties now have to fulfill additional conditions as follows:

- It has to earn net profit during the preceding three financial years from financial service activities;

- It has to be registered with the regulatory authorities in India for conducting financial service activities

- It has to obtain approval from concern regulatory authorities both in India and abroad, for venturing into such activity;

- It has to fulfill the prudential norms relating to capital adequacy as prescribed by the concerned regulatory authorities in India.

(C) Other Important Recent Developments under FEMA:

In relation to Diamond Industry:

- Firms and companies with track record of at least 2 years (3 years previously) in import/ export of diamonds/ coloured gemstones/ diamond and coloured gemstones studded jewellery/ plain gold jewellery and the average annual turnover of Rs. 3 crores or above (Rs.5 crores or above previously) during preceding three licensing years are now permitted to open Diamond Dollar Accounts.

- Presently, advance remittance without any limit and without a bank guarantee or standby letter of credit for import of rough diamonds into India can be made to eight mining companies by eligible importers. With effect from 29th December, 2009 Namibia Diamond Trading Company (PTY) Limited has also been added to this list. Accordingly, the names of the nine mining companies to whom advance remittance as above can be made are:

  i. De Beers UK Limited
  ii. RIO TINTO, UK
  iii. BHP Billiton, Australia
  iv. ENDIAMA, E. P. Angola
  v. ALROSA, Russia
  vi. GOKHARAN, Russia
  vii. RIO TINTO, Belgium
  viii. BHP Billiton, Belgium
  ix. Namibia Diamond Trading Company (PTY) Limited (NDTC).

In relation to Expatriates :

- The following persons are now permitted to credit the whole salary payable to them to the foreign currency bank account maintained by them provided that income tax is paid on the entire salary accrued in India:
    - A citizen of foreign state, resident in India, being an employee of foreign company;
    - or a citizen of India, employed by a foreign company outside India

    And in either case on deputation to the office/branch/ subsidiary/ joint venture in India of such foreign company
- Also a citizen of foreign state, resident in India, being an employee of an Indian company are now permitted to open, hold and maintain a foreign currency account with a bank outside India. They are also permitted to credit the whole salary received in India in Indian Rupees to such account for services rendered to such Indian Companies provided that income tax is paid on the entire salary accrued in India.

In relation to Service Importers:

The limit for issuance of guarantee by AD Category -I Banks to non-resident service providers on behalf of resident customer who is service importer has been increased from USD 100,000 to USD 500,000. However, this revised limit is not applicable in case of a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments

In relation to EEFC Account:

It has been clarified that all categories of foreign exchange earners, including SEZ developers, are allowed to credit up to 100% of their foreign exchange earnings to their EEFC Account

Other Important Developments:

- Persons resident in India are now also permitted to trade in currency futures contract on recognized stock exchanges in the currency pairs of Euro-INR, Japanese Yen-INR, Pound Sterling-INR along with existing permission in USD-INR

- The limit for taking Indian currency notes outside India (other than to Nepal and Bhutan), by a person Resident in India, has been increased from INR 5,000 to INR 7,500 per person.

- The limit for bring into India Indian currency notes while coming back to India (other than from Nepal and Bhutan), by a person resident in India who had gone out of India on a temporary visit has been increased from INR 5,000 to INR 7,500 per person.

- Diplomatic missions are now permitted to credit the visa fees collected in India in Indian rupees by way of transfer from the rupee account to the accounts maintained in foreign currency, in addition to proceeds of inward remittances received from outside India through normal banking channels.

- An application to RBI, for remittance of the assets of Indian companies under liquidation, under the provisions of the Companies Act, 1956, should be supported by a report from the Registrar of Companies with regards to compliance of the provisions of the Companies Act, 1956.

- The following persons are required to follow the amended guidelines under the Prevention of Money Laundering (Amendment) Act, 2009 and have in place a revised policy framework, as approved by their Board, on ‘Know Your Customer’, ‘Anti-Money Laundering’ and ‘Combating the Financing of Terrorism measures’:-

  a. In respect of money changing activities - All authorized persons and their sub-agents / franchisees.

  b. In respect of Money Transfer Service Scheme - All authorized persons who are Indian agents and their sub-agents.

KHANDELWAL JAIN & CO.

H.O.: *6-B, Pil Court, 6th Floor, 111, M. K. Road, Churchgate, Mumbai - 400 020.*
Tel.: 4311 5000 Fax: (91-22) 4311 5050
Email : mumbai@kjco.net

R.O.: *12-B, Baldota Bhavan, 5th Flr., 117, M. K. Rd., Churchgate, Murnbai - 400 020.*
Tel.: 4311 6060 Fax: (91.22) 4311 6060
E-mail : kjco@vsnl.com

BRANCHES :

Aurangabad : *First Floor, City Pride Building, Mondha Naka Signal, Jalna Road, Aurangabad – 431 001.*
Tel. : (91-240) 2331 967, 2353 372 Fax : (91-240) 2354 844
E-mail: aurangabad@kjco.net

Chandigarh : *2372, Sector-22C, Chandigarh – 160 022.*
Cell : +91-9815069846
E-mail: chandigarh@kjco.net

New Delhi : *221, Hans Bhavan, Bahadur Shah Zafar Marg, Near I.T.O. Office, New Delhi – 110 002.*
Tel. : (91-11) 2337 0091 / 0892 / 8795 Fax : (91-11) 2337 8794
E-mail: de1hi@kjco.net

Visakhapatnam : *Plot No.134, Sector-5, M.V.P. Colony, Visakhapatnam – 530 017.*
Tel. : (91-0891) 2531 184
E-mail : vizag@kjco.net