AMENDMENTS

FINANCE ACT 2009

for CA PCC/IPCC

(relevant for May'10 and Nov'10 attempt)

Amendments Finance Act 2009

Amendment of section 2.

1. In section 2 of the Income-tax Act,—

(*a*) **Sec 2(15):Charitable objects redefined:** For the purposes of the Income-tax Act, "charitable purpose" has been defined in section 2(15) of the Income-tax Act to include (a) relief of the poor, (b) education, (c) medical relief and, (d) 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.

It is now proposed to amend clause (15) of section 2 so as to separately list

- the preservation of environment (including watersheds, forests and wildlife) and
- preservation of monuments or places or objects of artistic or historic interest

so that they would be excluded from the applicability of the aforesaid conditions which are applicable to the "advancement of any other object of general public utility".

(*b*) **Sec 2(22AAA):Electoral trust:** *an "electoral trust" means a trust so approved by the Board in accordance with the scheme made in this regard by the central Government.*

Sec 13B - Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if—

(a) such electoral trust *distributes* to any political party, during the said previous year, ***95%*** *of the aggregate donations* received by it during the said previous year *along with the surplus*, if any, brought forward from any earlier previous year; and

(b) such electoral trust functions in accordance with the rules made by the Central Government."

Sec 80GGB & 80GGC – Donations to an electoral trust are now eligible for a deduction

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(*c*) **Sec 2(23):Definition of a Firm:** the definition of a firm has been amended to includethe limited liability partnership firm as a 'firm' under the Income Tax Act, and the term 'partner' will include the partner of a limited liability partnership firm.

(d) **Sec 2(29BA): Definition of "manufacture",** with its grammatical variations, means 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 and distinct object or article or thing with a different chemical composition or integral structure;

(*e*) **Sec 2(48): Zero Coupon Bonds:** *of the said section defines the expression "zero coupon bond" as a bond issued by any infrastructure capital company or infrastructure capital fund or public sector company on or after the 1st day of June, 2005, Now bonds issued by the* ***"scheduled bank"*** *will also be treated as zero coupon bonds*

Sec 36(1)(iiia) - *pro rata deduction for the discount on issue will now also be available to such scheduled banks*

Amendment of section 10.

2. Sec 10: Exempted incomes

(*a*) **Sec 10(10C):Exemption for compensation receivable at the time of voluntary retirement** to the extent of Rs 500,000 once in a lifetime is available to an employee seeking voluntary retirement in pursuance of an approved scheme. The excess over Rs 5 lacs is taxable. There was a view taken that on the taxable excess the assessee can take a relief u/s 89(1). However after the amendment the assessee who has claimed an exemption u/s 10(10C) can not claim relief u/s 89(1) (*b*) **Sec 10(23C):Exemption to educational, medical and other eligible institutions:** ***Extension of time limit for filing applications for tax exemption under section 10(23C)*** – the section stipulates that income of institutions specified under its various sub-clauses shall be exempt from income-tax. In certain cases, approvals are required to be taken from prescribed authorities, in the prescribed manner, to become eligible for claiming exemption.

Under the existing provisions, any institution (having 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.

In practice, an eligible institution has to anticipate its annual receipts to decide whether the application for exemption is required to be filed or not. This has often led to avoidable hardship.

In order to mitigate this hardship it is proposed to extend the time limit for filing such application to the 30th day of September in the succeeding financial year. It is proposed to provide this relaxation for the financial year 2008-09 and subsequent years. In other words, where the gross receipts of a trust or institution exceeds rupees one crore in the financial year 2008-09, it can file the application for exemption uptill 30th September, 2009.

(*c*) **Sec 10(23D): Exemption to income of approved Mutual funds**- The expression "public sector banks" has been defined in the Explanation to section 10(23D). Reserve Bank of India has categorized a new sub-group called "other public sector banks**".** The Central Government holds more than 51 per cent shareholding in IDBI Bank Limited which has been categorized under "other public sector banks" by RBI.

Since "other public sector banks", has not been included in the expression "public sector banks" as defined in the Explanation to section 10(23D), it is proposed to amend the relevant provisions of the Income-tax Act, 1961 to do so.

This amendment will take effect from 1st April, 2010 and will, accordingly, apply in relation to assessment year 2010-11 and subsequent assessment years.

(*d*) **Sec 10(44): Exemption to income of new pension funds**

Tax benefits for New Pension System- The New Pension System (NPS) has become operational since 1st January, 2004 and is mandatory for all new recruits to the Central Government service from 1st January, 2004. Since then it has been opened up for **employees** of State Government, private sector and **self-employed** (both organised and unorganized). **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.**

With a view to ensure that tax treatment of savings under this system is in synchronised with the "exempt-exempt-taxed" (EET) method and that there is no incidence of taxation at the accumulation stage, it is proposed to make the NPS Trust a complete pass-through insofar as taxation is concerned. Therefore, it is proposed to,—

(i) **Insert Sec 10(44)**- of the Income-tax Act so as to provide that any income received by any person on behalf of the New Pension System Trust established on 27th day of February, 2008 under the provisions of the Indian Trust Act of 1882 shall be exempt from Income-tax;

(ii) **Amend section 115-O** to provide that any dividend paid to the NPS Trust shall be exempt from Dividend Distribution Tax;

(iii) **No STT:** amend Chapter VII of Finance (No. 2) Act, 2004 to provide that all purchases and sales of equity and derivatives by the NPS Trust will also be exempt from the Securities Transaction Tax; and

(iv) **Amend section 197A** to provide that the NPS Trust shall receive all income without any tax deducted at source.

The tax benefit under section 80CCD of the Income-tax Act, 1961 was hitherto available to "employees" only. However, the NPS now has been extended also to "self-employed". Therefore, it is proposed to amend sub-section (1) of section 80CCD so as to extend the tax benefit thereunder also to "self-employed" individuals.

It is also proposed to amend the Explanation to the said section to provide that for the purposes of the said section 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.

These amendments will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to assessment year 2009-10 and subsequent years.

Amendment of section 10AA.

3. Sec 10AA: In section 10AA of the Income-tax Act, for the words "by the assessee" occurring at the end, the words "by the undertaking" shall be substituted with effect from the 1st day of April, 2010.

Deduction = 100% of [Profits of the business of the *undertaking* x (Export turnover of the undertaking of such articles or things or computer software of the *undertaking* ÷ Total Turnover of the business carried on by the ~~assessee~~ *undertaking*.)]

Clarification regarding computation of exempted profits in the case of units in Special Economic Zones (SEZs)

Under sub-section (7) of section 10AA of the Income-tax Act, the exempted profit of a SEZ unit is the profit derived from the export of articles or things or services and same is required to be calculated as under :

> *"the profit derived from the export of articles or things or services (including computer software) 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 assessee."***

Simply stated, it means that the exempted profit of the SEZ unit is equal to

Profits of the business of the unit × export turnover of the unit ÷ Total turnover of the business carried on by the assessee

This method of computation of the profits of business with reference to the total turnover of the assessee is perceived to be discriminatory in so far as those assessees are concerned who were having multiple units in both the SEZ and the Domestic Tariff Area (DTA) vis-a-vis those assessees who were having units in only the SEZ. With a view to removing the anomaly, it is proposed to amend the provisions of sub-section (7) of section 10AA of the Income-tax Act so as to provide that the deduction under section 10AA shall be computed with reference to the ***total turnover of the undertaking.***

This amendment will take effect from the 1st day of April, 2010 and will accordingly, apply to assessment year 2010-11 and subsequent assessment years.

For Example: if the assessee has two buisnesses one for export of diamonds for which he has a sale of Rs 40 lacs and profit of Rs 3 lacs and Money brought into India uptil 30/09/10 is Rs 30 lacs. He further has a business of manufacturing and selling cycle parts in India for which the turnover is Rs 60 lacs.

The deduction under earlier law would be = 3 x 30/100 = 0.90 lacs

The deduction as per the new law is = 3 x 30/40 = 2.25 lacs

Amendment of section 10A & 10B

4. Extension of sunset clause for units in free trade zone under section 10A and for export oriented undertakings under section 10B

Under the existing provisions, the deductions under section 10A and section 10B of the Income-tax Act are available only up to the assessment year 2010-11.

It is proposed to amend sections 10A and 10B to extend the tax benefit under both these sections by one year i.e., the deduction will be available up to assessment year 2011-12.

Amendment of section 17.

5. Sec 17(2): Perquisites or Perks: In section 17 of the Income-tax Act, in clause (2), with effect from the 1st day of April, 2010,—

(a) **Sec 17(2)(vi) :**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.

Explanation.—For the purposes of this sub-clause,—

*(i) "**specified security**" means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and, where employees' stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme;*

*(ii) "**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;*

*(iii) the **value** of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised*

by the assessee as reduced by the amount actually paid by, or recovered from the assessee in respect of such security or shares;

*(iv) "**fair market value**" means the value determined in accordance with the method as may be prescribed;*

*(v) "**option**" means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;*

Value of Perk = FMV on *date of exercising the option* (-) amount paid by the employee

(b) **Sec 49(2AA):** provides that where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (vi) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause.

Example: A company X grants option to its employee R on 1st April, 2007 to apply for 10000 shares of the company at a pre-determined price of Rs. 50/- per share with date of vesting of the option being 1st April, 2009 and exercise period being 1st April, 2009 to 31st March, 2012.
Employee R exercises his option on 31st Jan, 2010 [FMV Rs 80/share] and shares are allotted/transferred to him on 3rd Feb 2010[FMV Rs 101/share]. On the date of vesting of the option, fair market value of the share was Rs. 85/- per share. The aforesaid share are sold by the assessee on 31/03/2010 for Rs 140 per share

Ans The tax implication of above situation will be as under:-
Since shares are allotted or transferred on or after 1st April, 2009, provision of Sec 17(2)(vi) are attracted.
Value of perk is (Rs. 80 (-) Rs. 50) X 10,000 = Rs. 300,000/-.

Capital Gains

FVC [10,000 x 140]	*= 1400,000*
Less: Expenses	*= Nil*
NFVC	*= 1400,000*
Less:	
COA(Sec 49(2AA))	*= (800,000)*
STCG	*= 600,000*

Period of holding will start from the date the shares are allotted till the date they are transferred

(c) **Sec 17(2)(vii):** Any amount transferred by the employer in excess of Rs 100,000 to the *approved superannuation fund* of the employee during the PY will be taxable in the hands of the employee as a perk u/s 17(2)(vii). An approved superannuation fund is one which is and continues to be approved by the commissioner of Income Tax.

Example: *X & Co a firm transfers a sum of Rs 120,000 in the superannuation fund of its employee Mr Z. In this case Rs 20,000 will be taxed as a perk in the hands of the employee Mr Z.*

Analysis:
Payment into the fund -

1. Employers' Contribution - *Taxable if in excess of Rs 100,000*
2. Employee's Contribution - *eligible for deduction u/s 80C*
3. Interest on accumulated balance - *Exempt*

Payment from the fund:
Sec 10(13) exempts payments from the superannuation fund provided -

a) on the death of a beneficiary ; or
b) to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement ; or
c) by way of refund of contributions on the death of a beneficiary ; or
d) by way of refund of contributions to an employee on his leaving the service in connection with which the fund is established otherwise than by retirement at or after a specified age or on his becoming incapacitated prior to such retirement, to the extent to which such payment does not exceed the contributions made prior to the commencement of this Act and any interest thereon;

Payment of superannuation sum on resignation not eligible for exemption under section 10(13): Amount received from superannuation fund on resignation before specified age is not eligible for exemption under section

10(13). Payment on resignation will be exempt only if it is after the specified age in the SAP scheme/rules. **Yogesh Prabahkar Modak [2004] (HC)**

NOTE:

i. Amount transferred by the employer *to the Gratuity fund* of the employee is not taxable in the hands of the employee. Amount received from the gratuity fund is taxable subject to Sec 10(10)

ii. Amount transferred by the employer *to the provident funds* is discussed later in the notes

(d) Sec 17(2)(viii): Sec 17(2)(vi) other fringe benefits has been renumbered as Sec 17(2)(viii)

(i) Motor car facility, Free or concessional ticket given by transport employer, gifts in kind, Free credit cards, free membership fees of health clubs & social clubs & free holidays till AY 2009-10 were taxable in the hands of the employee only if the employer was subject to FBT, however from AY 2010-11 FBT has been abolished thus Rule 3 has been amended vide Notification No. 94/2009/ F.No.142/25/2009-S O (TPL) Dated 18-12-2009 and these perks will always be taxable in the hands of the employees

- Sec 17(2)(iii) - Motor car facility, Free or concessional ticket given by transport employer,
- Sec 17(2)(viii) - gifts in kind, Free credit cards, free membership fees of health clubs & social clubs & free holidays

(ii) For Motor Car facility the amended Rule 3 has made the following changes

a. Small car limits changed from~~1200~~ to 1800pm

b. Big Car limits changed from ~~1600~~ to 2400pm

c. Driver limits changed from ~~600~~ to 900pm

d. Limit of ~~400~~ changed to 600pm

Amendment of section 28.

6. Sec 28: Business Income: In section 28 of the Income-tax Act, after clause (*vi*), the following clause shall be inserted with effect from the 1st day of April, 2010, namely :—

*"**Sec 28 (vii) -** any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD;".*

<u>Related amendments</u>

(a) **Insertion of new section 35AD.**

After section 35AC of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2010, namely :—

Sec 35AD: Deduction in respect of expenditure on specified business.—

(1) An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him :

Provided that the expenditure incurred, wholly and exclusively, for the purposes of any specified business, shall be allowed as deduction during the previous year in which he commences operations of his specified business, if—

(a) the expenditure is incurred *prior to the commencement of its operations;* and

(b) the amount is *capitalised in the books of account* of the assessee on the date of commencement of its operations.

(2) This section applies to the specified business which fulfils all the following conditions, namely :—

(i) it is *not set up by splitting up, or the reconstruction*, of a business already in existence;

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

(iii) where the business is of the nature referred to in sub-clause (*iii*) of clause (*c*) of sub-section (8), such business,—

(a) is *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) has been *approved by the Petroleum and Natural Gas Regulatory Board* established under sub-section (1) of section 3 of the Petroleum and Natural Gas Regulatory Board Act, 2006 and notified by the Central Government in the Official Gazette in this behalf;

(c) has made not less than *1/3rd* 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) fulfils any other condition as may be prescribed.

(3) The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA under the heading "*C.— Deductions in respect of certain incomes*".

(4) No deduction in respect of the expenditure referred to in sub-section (1) shall be allowed to the assessee under any other section in any previous year or under this section in any other previous year.

(5) The provisions of this section shall apply to the specified business referred to in sub-section (2) if it commences its operations,—

(a) on or after the 1st day of April, 2007, where the specified business is in the nature of laying and operating a cross-country natural gas pipeline network for distribution, including storage facilities being an integral part of such network; and

(b) on or after the 1st day of April, 2009, in all other cases not falling under clause (*a*).

(6) The assessee carrying on the business of the nature referred to in clause (*a*) of sub-section (5) shall be allowed, in addition to deduction under sub-section (1), a further deduction in the previous year relevant to the assessment year beginning on the 1st day of April, 2010, of an amount in respect of expenditure of capital nature incurred during any earlier previous year, if—

(a) the business referred to in clause (*a*) of sub-section (5) has commenced its operation at any time during the period beginning on or after the 1st day of April, 2007 and ending on the 31st day of March, 2009; and

(b) no deduction for such amount has been allowed or is allowable to the assessee in any earlier previous year.

(7) The provisions contained in sub-section (6) of section 80A and the provisions of sub-sections (7) and (10) of section 80-IA shall, so far as may be, apply to this section in respect of goods or services or assets held for the purposes of the specified business.

(8) For the purposes of this section,—

(a) an "associated person", in relation to the assessee, means a person,—

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

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

(iii) 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

(iv) who guarantees not less than ten per cent of the total borrowings of the assessee;

(b) "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;

(c) "specified business" means the any one or more of the following business, namely :—

(i) setting up and operating a cold chain facility;

(ii) setting up and operating a warehousing facility for storage of agricultural produce;

(iii) laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

(d) any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if—

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

(ii) such machinery or plant is imported into India from any country outside India; and

(iii) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee;

(e) where in the case of a specified business, any machinery or plant or any part thereof previously used for any purpose is transferred to the specified business and the total value of the machinery or plant or part so transferred does not exceed twenty per cent of the total value of the machinery or plant used in such business, then, for the purposes of clause (*ii*) of sub-section (2), the condition specified therein shall be deemed to have been complied with;

(f) any expenditure of capital nature shall not include any expenditure incurred on the acquisition of any land or goodwill or financial instrument.'.

Investment-linked tax incentive for specified business

The Income-tax Act provides for a number of profit-linked exemptions/deductions. Such benefits are inefficient, inequitable, impose higher compliance and administrative burden, result in revenue loss, increase litigations and lead to competitive demand for similar tax benefits. Further, these benefits also encourage diversion of profits from the taxed sector to the exempt/untaxed sector. However, investment-linked incentives are relatively less distortionary in their impact.

With a view to creating rural infrastructure and environment friendly alternate means of transportation for bulk goods, it is proposed to provide investment-linked tax incentive by inserting a new section 35AD in the Income-tax Act for the following businesses :—

(a) setting up and operating cold chain facilities for specified products;
(b) setting up and operating warehousing facilities for storage of agricultural produce;
(c) 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.

The salient features of the new regime of investment-linked tax incentives are the following:—

(i) ***100 per cent deduction*** *would be allowed in respect of the whole of any expenditure of capital nature incurred,* ***wholly and exclusively****, for the purposes of the specified business during the previous year in which such expenditure is incurred.*

(ii) *The expenditure of capital nature shall not include any expenditure incurred on acquisition of any* ***land or goodwill or financial instrument.***

(iii) 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 day of April, 2007*** *and*

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

(iv) The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA;

(v) No deduction in respect of the expenditure in respect of which deduction has been claimed shall be allowed to the assessee under any other provisions of the Income-tax Act.

(vi) Any sum ***received or receivable 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 and chargeable to Income-tax under the head "profits and gains of business or profession".*

(vii) ***Any loss computed*** *in respect of the specified business shall not be set off except against profits and gains, if any, of any other specified business. To the extent the loss is unabsorbed the same will be carried forward for set off against profits and gains from any specified business in the following assessment year and so on.*

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

All ***capital expenditure*** *(other than on land, goodwill and financial instrument), to the extent capitalized in the books as on 1st April, 2009 will be fully allowed as a deduction in the computation of total income of the said* *business for the previous year 2009-10. This will be available in addition to any other capital expenditure (excluding land, goodwill and financial instrument) incurred during such previous year.*

It is also proposed to amend the provisions of section 43 and section 50B of the Income-tax Act to make consequential changes. These amendments are proposed to be made effective from the 1st day of April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent assessment years.

(b) Amendment of section 50B: provision for cost of computation of capital gains in case of slump sale.

Under the existing provisions any profits or gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be income of the previous year in which the transfer took place, further, in relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of such undertaking or division shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 and no regard shall be given to the provisions contained in the second proviso to section 48. For the purposes of this section "net worth" has been defined to be the aggregate value of the total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in its books of account.

Clause (b) of Explanation 2 of the said section to provide that for computing the net worth, the aggregate value of total assets shall be,

(i) in the case of *depreciable assets*, the written down value of the block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of sub-clause (c) of clause (6) of section 43;

(ii) in the *case of capital assets* in respect of which the whole of the expenditure has been allowed or is allowable as a deduction *under section 35AD* (relating to deduction in respect of expenditure on specified business and proposed to be inserted as a new section in the Income-tax Act, 1961), nil, and

(iii) in the case *of other assets*, the book value of such assets.

This amendment will take effect from the 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years. The proposed amendment is consequential in nature.

(c) Insertion of new section 73A - Carry forward and set off of losses by specified business.

- Sec 73A(1) provides that any loss, computed in respect of any specified business referred to in section 35AD (relating to deduction in respect of expenditure on specified business) shall not be set off except against profits and gains, if any, of any other specified business.
- Sec 73A (2) provides that where for any assessment year any loss computed in respect of the specified business referred to in the sub-section (1) has not been wholly set off under sub-section (1), such loss shall be carried forward to the following assessment year, and—
  - (i) it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and
  - (ii) if the loss can not be wholly so set-off, the amount of loss not so set-off shall be carried forward to the following assessment year and so on.(no time limit)

(d) **Insertion of Explanation 13 to Sec 43(1):** Explanation provides that the actual cost of any capital asset on which deduction has been allowed or is allowable to the assessee under section 35AD (relating to deduction in respect of expenditure on specified business and proposed to be inserted as a new section in the Income-tax Act, 1961) and shall be treated as 'nil'

Amendment of section 32.

7. Sec 32: Definition of Assets: The term "block of assets" has been defined in Sec 2(11) and in Explanation 3 Sec 32(1) of the Income-tax Act. However, these definitions are not identical and therefore they are subject to misuse. Thus after the amendment "block of assets" will derive its meaning only from clause (11) of section 2.

Amendment of section 35.

8. Sec 35(2AB): Weighted deduction for expenditure on scientific research to ~~companies engaged in manufacture of specified items~~ any business of manufacture or thing not being an article specified in XI the Schedule:

Under the existing provisions of the Income-tax Act, under sub-section (2AB) of section 35, weighted deduction of 150 per cent is allowed 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 Board and which has incurred expenditure (excepting on land and building) on in-house scientific research and development facility approved by the prescribed authority.

With a view to promoting research and development in all sectors of the economy, it is proposed to extend the benefit of weighted deduction to companies engaged in the business of manufacture or production of an article or thing except those specified in the Eleventh Schedule of the Income-tax Act.

CHART 3 :

In house Expenditure for Special Companies Sec 35 (2AB)

For Companies only engaged in Manufacture of any article or thing except the ones mentioned in the XI the schedule – Finance Act

No other assessee is covered u/s 35(2AB)

For Post commencement expenditure :

Expenditure on Land not allowed

Expenditure on Building - 100% of amount incurred

Other eligible expenditure

- Revenue expenditure - 150% of amount incurred (also refer to Chart 2)
- Capital expenditure - 150% of amount incurred (also refer to Chart 2)

For pre commencement expenditure :

- Expenditure on land is not allowed
- Expenditure on building - 100% of amount incurred
- Other eligible expenditure (Revenue or Capital) – 100% (also refer to Chart 2)

THE ELEVENTH SCHEDULE- LIST OF ARTICLES OR THINGS

1. Beer, wine and other alcoholic spirits.
2. Tobacco and tobacco preparations, such as, cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff.
3. Cosmetics and toilet preparations.
4. Tooth paste, dental cream, tooth powder and soap.
5. Aerated waters in the manufacture of which blended flavouring concentrates in any form are used.

   Explanation.—"Blended flavouring concentrates" shall include, and shall be deemed always to have included, synthetic essences in any form.]
6. Confectionery and chocolates.
7. Gramophones, including record-players and gramophone records.
8. Projectors.
9. Photographic apparatus and goods.
10. Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters.

    Explanation.—The expression "office machines and apparatus" includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work and for data processing (not being computers within the meaning of section 32AB).
11. Steel furniture, whether made partly or wholly of steel.
12. Safes, strong boxes, cash and deed boxes and strong room doors.
13. Latex foam sponge and polyurethane foam.
14. Crown corks, or other fittings of cork, rubber, polyethylene or any other material.
15. Pilfer-proof caps for packaging or other fittings of cork, rubber, polyethylene or any other material.

Amendment of section 36.

9. Sec 36(1)(viii): Deduction for transfer to special reserve: ***Special deduction under section 36(1)(viii) to National Housing Bank (NHB)***: [Section 36(1)(viii)] provides special deduction to financial corporations and banking companies of an amount not exceeding 20 per cent of the profits subject to creation of a reserve.

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, ARDBs, RRBs etc., for the development of housing in India. It also undertakes financing of slum projects, rural housing projects, housing projects for EWS and LIG categories etc. NHB is also a notified financial corporation under section 4A of the Companies Act.

A view has been expressed that NHB is not entited to the benefits of section 36(1)(viii) on the ground that it is not engaged in the long-term financing for construction or purchase of houses in India for residential purpose. **The proposed amendment seeks 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).**

Amendment of section 40(b).

10. Sec 40(b):Maximum limits for allowable salary, bonus, commission, remuneration to partners of a firm

Remuneration to partners in a firm

~~*Under the existing provisions of the Income-tax Act, the payment of salary, bonus, commission or remuneration (hereinafter referred to as "remuneration") to a working partner of a partnership firm is allowed as deduction if it is authorised by the partnership deed and subject to the overall ceiling of monetary limits prescribed under sub-clause (v) of clause (b) of section 40. The existing limits are as under :*~~

~~*(1) in case of a firm carrying on a profession—*~~

~~*(a)*~~	~~*on the first Rs. 1,00,000 of the book-profit or in case of a loss*~~	~~*Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;*~~
~~*(b)*~~	~~*on the next Rs. 1,00,000 of the book-profit*~~	~~*at the rate of 60 per cent;*~~
~~*(c)*~~	~~*on the balance of the book-profit*~~	~~*at the rate of 40 per cent;*~~

~~*(2) in the case of any other firm—*~~

~~*(a)*~~	~~*on the first Rs. 75,000 of the book-profit, or in case of a loss*~~	~~*Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;*~~
~~*(b)*~~	~~*on the next Rs. 75,000 of the book-profit*~~	~~*at the rate of 60 per cent;*~~
~~*(c)*~~	~~*on the balance of the book-profit*~~	~~*at the rate of 40 per cent;*~~

It is proposed to make upward revision of the existing limits of the remuneration. It is also proposed to prescribe uniform limits for both professional and non professional firms for simplicity and administrative ease. The revised limits are proposed to be as under :

(a)	*on the first Rs. 3,00,000 of the book-profit or in case of a loss*	*Rs. 1,50,000 or at the rate of 90 per cent of the book-profit, whichever is more;*
(b)	*on the balance of the book-profit*	*at the rate of 60 per cent;*

The proposed amendment will take effect from 1st April, 2010 and will, accordingly, apply in relation to assessment year 2010-11 and subsequent years.

Amendment of section 40A.

11. Sec 40A(3A): payment in a mode other than account payee cheque or draft: In section 40A of the Income-tax Act, in sub-section (3A), after the proviso, the following proviso shall be inserted **w.e.f 01/10/2009** namely :—

> '**Provided further** that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub-sections (3) and (3A) shall have effect as if for the words "twenty thousand rupees", the words "thirty-five thousand rupees" had been substituted.'.

Enhancement of limit for disallowance of expenditure made in the case of transporters

Under the existing provisions of the Income-tax Act, where an assessee incurs any expenditure, in respect of which payment in excess of Rs. 20,000 is made otherwise than by an account payee cheque or account payee bank draft, such expenditure is not allowed as a deduction.

Given the special circumstances of transport operators for incurring expenditure on long haul journeys, it is proposed to raise the limit of payment to such transport operators otherwise than by an account payee cheque or account *payee bank draft to Rs. 35,000 from the existing limit of Rs. 20,000. For this purpose a new proviso is proposed to be inserted after the proviso in sub-section (3A) of section 40A of the Income-tax Act.*

The existing limit for other categories of payments will remain at Rs. 20,000 subject to the exceptions declared in rule 6DD of the Income-tax Rules. ***The proposed amendment will apply to transactions effected on or after the 1st October, 2009.***

(a) **Payments made on a single day:** where the payment or the aggregate of payments made to a single person on a single day exceeds Rs 20,000 then the disallowance of such expenditure will be covered by Sec 40A. However it is important to note that Sec 40A(3) disallows payment for 'expenditure' in excess of Rs 20,000 made to one person on a single day, thus where the payment is for different bills then there will be no disallowance u/s 40A(3) even if the payment exceeds Rs 20,000 on a day. Thus for disallowance u/s 40A(3) the amount of the bill raised and the payment or payment(s) made to the person on a single day both exceed Rs 20,000.[1st proviso to Sec 40A(3A)]

Example:

a. An expenditure of Rs. 40,000 is incurred for purchase of stationary against Bill no 2 from M/s Sakra Ltd on 01/01/10. The assessee makes separate payments of Rs. 15,000, Rs. 16,000 and Rs. 9,000 all by cash, to the person concerned in a single day. *Since the aggregate amount of payment made to a person in a day, in this case, is Rs. 40,000. Since, the aggregate payment by cash exceeds Rs. 20,000, Rs. 40,000 will not be allowed as a deduction in computing the total income of the taxpayer in accordance with the proposed amendment.*
b. An expenditure of Rs. 40,000 is incurred for purchase of stationary against Bill No 1 & 2 from M/s Sakra Ltd on 01/01/10 and 01/02/10 for Rs 20,000 each. The assessee makes separate payments of Rs. 15,000, Rs. 16,000 and Rs. 9,000 all by cash, to the person concerned in a single day. *Since the aggregate amount of payment made to a person in a day, in this case, is Rs. 40,000 however since the payment is on account of two bills, none of which is in excess of Rs 20,000, thus the entire payment will be allowed.*
c. An expenditure of Rs. 40,000 is incurred for purchase of stationary against Bill No 1 & 2 from M/s Sakra Ltd on 01/01/10 and 01/02/10 for Rs 28,000 and Rs 12,000 respectively. The assessee makes separate payments of Rs. 15,000, Rs. 16,000 and Rs. 9,000 all by cash, to the person concerned in a single day. *Since the aggregate amount of payment made to a person in a day, in this case, is Rs. 40,000 however since the payment is on account of two bills, one of which exceeds Rs 20,000, thus only Rs 28,000 will be disallowed.*

(b) **Payment to transport operators on or after 01/10/2009- Finance Act 2009** has inserted the following proviso u/s 40A(3A) **w.e.f 01/10/2009** stating that in the case of payment made *to transport operators* for plying, hiring or leasing goods carriages, the limit of 20,000 will be changed to 35,000. *The amendment will apply to transactions effected on or after the 1st October, 2009.* [2nd proviso to Sec 40A(3A)]

Amendment of section 43.

12. **Sec 43(6):** '*Explanation 7.*—For the purposes of this clause, where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income-tax under the head "Profits and gains of business or profession", for computing the written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head "Profits and gains of business or profession" and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.'.

Definition of written down value under section 43(6)

Clause (ii) of sub-section (1) of section 32 provides that depreciation is to be allowed and computed at the prescribed percentage on the Written Down Value (WDV) of any block of assets. Sub-clause (b) of clause (6) of section 43 provides that WDV in the case of assets acquired before the previous year shall be computed by taking the actual cost to the assessee less all depreciation "actually allowed" to him under the Income-tax Act.

Rules 7A, 7B and 8 of the Income-tax Rules, 1962, deal with the computation of composite income where income is derived in part from agricultural operations and in part from business chargeable to tax under the Income-tax Act, 1961 under the head "Profits & Gains of Business". 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.

The Hon'ble Supreme Court in the case of CIT v. Doom Dooma India Ltd. (222 CTR 105) has held that in view of the language employed in sub-clause (b) of clause (6) of section 43 regarding depreciation "actually allowed", where any income is partially agricultural and partially chargeable to tax under the Income-tax Act, 1961 under the head "Profits & Gains of Business", the depreciation deducted in arriving at the taxable income alone can be taken into account for computing the WDV in the subsequent year.

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 per cent of such income shall be deemed to be income liable to tax. As a result of the Court decision on depreciation to be "actually allowed" for computing WDV, the resultant computation of depreciation is as per the following illustration :—

	Rs.
Sale proceeds of made tea -	*1,000*
Less : Expenses -	
Depreciation - (10 per cent of Rs. 1,000)	*(100)*
Others expenses -	*(300)*
Composite income -	*600*
Income subject to charge under the Income-tax Act,	
1961 by application of rule 8 (40 per cent of 600) -	*240*
Income not chargeable to income-tax	
(60 per cent of 600) -	*360*

According to the interpretation of the Court, the WDV of the fixed asset for the immediately succeeding year is to be taken at Rs. 960 (Rs. 1,000 minus Rs. 40 being depreciation allocated for business income) and not Rs. 900 (Rs. 1,000 minus depreciation of Rs. 100 allowed for determining composite income). Thus the depreciation for which deduction is allowed to the assessee while computing its agricultural income is to be ignored for computing the WDV of the asset according to the Court ruling.

The above interpretation is not in accordance with the legislative intent. WDV is required to be computed by deducting the full depreciation attributable to composite income. Hence in the above illustration, the WDV of the fixed asset for the immediately succeeding year is to be taken at Rs. 900 and not 960 as held by the Supreme Court. The ambiguity in this case has arisen on account of the interpretation of the meaning of the phrase "actually allowed" in sub-clause (b) of clause (6) of section 43.

It is therefore proposed to provide that in the cases of 'composite income', notwithstanding that the assessee was not required to compute a part of his income for the purposes of Income-tax Act for any previous year, depreciation shall be computed as if the total composite income of the assessee is chargeable under the Income-tax Act and such depreciation shall be deemed to have been "actually allowed" to the assessee.

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

Amendment of section 50C.

13. Sec 50C: In section 50C of the Income-tax Act, **w.e.f 01/10/2009** ***Does Sec 50C apply to transactions where sale is on power of attorney(agreement to sell)?*** **Provisions for deemed valuation in certain cases of Transfer – Finance Act 2009**

The existing provisions of section 50C provide 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. However, the present scope of the provisions does not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney.

With a view to preventing the leakage of revenue, it is proposed to amend the section 50C so as 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.

Further, it is proposed to insert a new Explanation so as to clarify the meaning of the term 'assessable'.

This amendment will take effect from **1st October, 2009** and shall accordingly apply in relation to transactions undertaken on or after such date.

‘Explanation 2.—For the purposes of this section, the expression “assessable” means 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.’.

Example: The assessee agrees to sell the property on a power of attorney for Rs 25 Lacs. Th property is not to be registered in the name of the transferee. The market value of the property is Rs 1.20 crore. The value adopted for stamp duty is Rs 35 lacs on the date of the transfer. Is Sec 50C Applicable? If yes what is the FVC?

Amendment of section 56.

14. In section 56 of the Income-tax Act, in sub-section (2),—

1. Gifts arising **in any other case** i.e Personal gifts like birthday gifts etc will be income if
    a. in cash during the previous year if the *aggregate amount* received during the *previous year* from *all persons* by an *individual or HUF* if in *excess of Rs 50,000* then *fully taxable* as income from Other Sources except if received
        i. on *marriage* (from anyone), or
        ii. under a *will* (from anyone), or
        iii. from a *relative* (on any occasion), or
        iv. from any fund or institution or *university* or other *educational institution* or *hospital* or *other medical institution* referred to u/s 10(23C) or
        v. from a *local authority* referred to u/s 10(20) or
        vi. from any trust or institution registered under section 12AA *only where gift in cash is received on or after 01/10/2009*
    b. in kind –
        i. ***Before 01/10/2009*:** as per Sec 56(2)(vi) – fully exempt
        ii. ***On or after 01/10/2009*: Finance Act 2009** has inserted a new section 56(2)(vii) for gifts received on or after 01/10/2009. For gifts received in cash the treatment remains the same as for cash gifts received before the aforesaid date, however the gifts in kind will now be taxable as discussed below
            1. **Immovable property (land or building):** the value of any property received without consideration or for inadequate consideration will also be included in the computation of total income of the recipient.
                - Without consideration: and the stamp duty value of such property exceeds fifty thousand rupees, the *whole of the stamp duty* value of such property shall be taxed as the income of the recipient.
                  For example if the assessee receives a gift of land where the stamp duty value is Rs 58,000 then the entire amount of Rs 58,000 will be income. However if the amount was Rs 43,000 then nothing will be treated as income.
                - Inadequate Consideration: If an immovable property is received for a consideration which is less than the stamp duty value of the property and the difference between the two exceeds fifty thousand rupees , the difference between the stamp duty value of such property and such consideration shall be taxed as the income of the recipient.

                  For example if the assessee buys a piece of land for Rs 30,000 where the stamp duty value is Rs 58,000 then the difference between the SDV and the price paid = 28,000 which does not exceed 50,000 thus nothing is taxable. Where however the stamp duty value was Rs 140,000 then the difference = 110,000 exceeds Rs 50,000 thus the entire amount of Rs 110,000 is taxable as income from other sources.

Note: "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

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 cases

a) Where the value determined by the valuation officer is more than the SDV then the Assessing officer shall take the original SDV for computing the amount of income u/s 56,

b) Where the value computed by the valuation officer is less than the stamp duty value then he may take either the original stamp duty value or the value of the valuation officer, at his discretion, for computing the income u/s 56

2. **Property (other than land or building) being *shares and securities; jewellery; archaeological collections; drawings; paintings; sculptures; or any work of art:*** the value of these 'properties' received without consideration or for inadequate consideration will also be included in the computation of total income of the recipient.

- Without consideration: and the ***aggregate*** fair market value of such property or properties exceeds fifty thousand rupees, the *whole of the fair market value* of such property shall be taxed as the income of the recipient.
  For example if the assessee receives a gift of shares where the FMV is Rs 58,000 then the entire amount of Rs 58,000 will be income. However if the amount was Rs 43,000 then nothing will be treated as income.
- Inadequate Consideration: If such property is received for a consideration which is less than the fair market value of the property and the difference between the two exceeds fifty thousand rupees, the *difference* between the ***aggregate*** fair market value of such property and such consideration, shall be taxed as the income of the recipient.
  For example if the assessee buys shares for Rs 30,000 where the FMV is Rs 58,000 then the difference between the FMV and the price paid = 28,000 which does not exceed 50,000 thus nothing is taxable. Where however the FMV was Rs 140,000 then the difference = 110,000 exceeds Rs 50,000 thus the entire amount of Rs 110,000 is taxable as income from other sources.

Note: the value of movable property shall be the fair market value as on the date of receipt in accordance with the method prescribed; and

Exceptions: Gifts of movable or immovable property ***received***[1] in the following cases will not be taxable

i. on *marriage* (from anyone), or
ii. under a *will* (from anyone), or
iii. from a *relative* (on any occasion), or
iv. from any fund or institution or *university* or other *educational institution* or *hospital* or *other medical institution* referred to u/s 10(23C) or
v. from a *local authority* referred to u/s 10(20). Or
vi. from any trust or institution registered under section 12AA.

Explanation to Sec 56(2)(vi)- also applicable for 56(2)(vii) — For the purposes of this clause, "relative" means—

(i) spouse of the individual;
(ii) brother or sister of the individual;
(iii) brother or sister of the spouse of the individual;
(iv) brother or sister of either of the parents of the individual;
(v) any lineal ascendant or descendant of the individual;
(vi) any lineal ascendant or descendant of the spouse of the individual;
(vii) Spouse of the person referred to in clauses (ii) to (vi).

[1] Also applies to property purchased for inadequate consideration

Note: Relative does not include nephews, nieces & cousins i.e gifts received from these are taxable if in excess of Rs 50,000 during the year

Example: Discuss whether the following are income in the hands of the recipient if the gifts are received during the PY 2009-10

i. **X, on his marriage, receives a gift from his friend Y for Rs. 60000 on 10/09/09**

ii. **X, on his marriage, receives a gift from his friend Y for Rs. 60000 on 09/10/09**

iii. **X, on his marriage, receives a Television worth Rs. 60,000 from his employer. It is not the general policy of the company to give such a gift to their employees on their marriage**

iv. **X, on his marriage, receives a Television worth Rs. 60,000 from his client. X is a Lawyer who is fighting a case for the client.**

v. **X , on his marriage, receives a Television worth Rs. 60,000 from his friend**

vi. **X , on his marriage, receives a jewellery worth Rs. 60,000 from his relative**

vii. **X , on his marriage anniversary, receives a jewellery worth Rs. 60,000 from his friend**

viii. **X , on his marriage anniversary, receives jewellery worth Rs. 60,000 from his relative**

ix. **X receives a sum of Rs 70,000 from ABC Society, a trust registered u/s 12AA as help for his treatment.**

Example: X purchased a painting of MF Hussain from his friend for Rs 700,000 on 01/05/09. The market value of the painting(A) was Rs 50,00,000, he further purchased jewellery(A) for 70,000 (MV 160,000) on 30/09/09. He further purchased/ received the following amounts after 01/10/09. Compute his income under the head other sources

i. **Purchased shares worth Rs 500,000 for Rs 610,000**
ii. **Received gift of painting(B) (MV 45,000)**
iii. **Purchased painting(C) for Rs 50 lacs (MV 50,45,000)**
iv. **Received gift of sculpture(A)(MV Rs 70,000)**
v. **Purchased sculpture(B) for Rs 25,000 (MV 75,000)**
vi. **Purchase a house property for Rs 40 lacs (SDV 37 lacs)**
vii. **Purchased land for Rs 35 lacs (SDV 45 lacs)**
viii. **Received gift of jewellery(B) worth Rs 25,000**
ix. **Purchased jewellery(C) worth Rs 20 lacs for 18.90 lacs**

Ans:

Assets received as gift

Painting (B)	*45,000*
Sculpture (A)	*70,000*
Jewellery (B)	*25,000*
Aggregate	***1,40,000 taxable***

Assets purchased(other) Cost FMV

Shares	*for adequate consideration*		
Painting(C)	*50,00,000*	*50,45,000*	
Sculpture(B)	*25,000*	*75,000*	
Jewellery(C)	*18,90,000*	*20,00,000*	
Aggregate	*69,15,000*	*71,20,000*	
Since the difference is more than 50,000.			***2,05,000 taxable***
Assets purchased(L&B)	*Cost*	*SDV*	
House	*for adequate consideration*		
Land	*3500,000*	*45,00,000*	***10,00,000 taxable***
Total taxable as per Sec 56(2)(vii)			***13,45,000 taxable***

Example: X purchased a painting of MF Hussain from his friend for Rs 700,000 on 01/05/09. The market value of the painting(A) was Rs 50,00,000, he further purchased jewellery(A) for 70,000 (MV 160,000) on 30/09/09. He further purchased/ received the following amounts after 01/10/09. Compute his income under the head other sources

i. **Purchased shares worth Rs 500,000 for Rs 610,000**
ii. **Received gift of painting(B) (MV 45,000) from his friend on his marriage**
iii. **Purchased painting(C) for Rs 50 lacs (MV 50,45,000)**
iv. **Received gift of sculpture(A)(MV Rs 70,000) from his father**
v. **Purchased sculpture(B) for Rs 25,000 (MV 75,000) from his father**
vi. **Purchase a house property for Rs 40 lacs (SDV 40.40 lacs)**
vii. **Purchased land for Rs 35 lacs (SDV 45 lacs)**
viii. **Received gift of jewellery(B) worth Rs 25,000**
ix. **Purchased jewellery(C) worth Rs 20 lacs for 18.90 lacs from his brother**

Ans:

Assets received as gift			
Painting (B) on marriage			-
Sculpture (A)- from relative			-
Jewellery (B)			*25,000*
Aggregate			***not taxable does not exceed 50,000***
Assets purchased(other)	*Cost*	*FMV*	
Shares	*for adequate consideration*		
Painting(C)	*50,00,000*	*50,45,000*	
Sculpture(B)	*- from relative*		
Jewellery(C)	*- from relative*		
Aggregate			***not taxable does not exceed 50,000***
Assets purchased(L&B)	*Cost*	*SDV*	
House	*40,00,000*	*40,40,000*	***not taxable as diff does not exceed 50,000***
Land	*3500,000*	*45,00,000*	***10,00,000 taxable***
Total taxable as per Sec 56(2)(vii)			***10,00,000 taxable***

Amendment of section 49.

15. In section 49 of the Income-tax Act,—

(*a*) **Sec 49(4):** shall be inserted **w.e.f 01/10/2009**, namely

"(4) Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under clause (*vii*) of sub-section (2) of section 56, the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause (*vii*)."

Since gifts of assets in kind is also now to be treated as income u/s 56(2)(vii), the cost of acquisition of such asset in the hands of the recipient of the gift will be the value of gift treated as income

SUMMARY

Allotment	*At the time of allotment*	*At the time of subsequent transfer by way of gift or irrevocable trust by the employee*	*At the time of subsequent transfer by the employee by any other mode*
On or after 01/04/2009	*Perk = MV on date of exercising of option (less) amount recovered from employee*	~~Nothing is taxable as the gift is exempt provide that the allotment under ESOP or ESOS is made in pursuance of a scheme framed by the Central Government~~	*Capital Gains is taxable* ▪ *FVC = money receivable* ▪ *Cost of acquisition = Market value at the time of exercising the option (c) [Sec 49(2AA)]* ▪ *Period of Holding = from date of allotment [Sec 2(42A)(hb)]*

TREATMENT OF ASSETS RECEIVED WITHOUT CONSIDERATION OR FOR INADEQUATE CONSIDERATION by an Individual or HUF

a.Received before 01/10/2009 – without consideration i.e nothing is paid for acquiring the asset.

Asset	In the hands of the transferor [X]	In the hands of the transferee [Y]	In case of any subsequent transfer of the asset by the transferee [Y]
a) **Land or building**	Exempt u/s 47(iii)	Sec 56(2)(vii) - NA	**COA** = cost to previous owner (i.e cost paid or payable by X)[Sec 49(1)] **POH** = includes period of holding of the previous owner[Sec 2(42A)] **Indexation:** from the year the asset is received
b) **Shares & securities, jewellery, drawings, paintings, archeological collections, sculptures and other similar work**	Exempt u/s 47(iii)	Sec 56(2)(vii) - NA	
c) **Other assets – Laptop, camera, TV, motor car etc**	Not taxable - Personal assets are exempt u/s 2(14)	Sec 56(2)(vii) - NA	

b. Received before 01/10/2009 – for inadequate consideration i.e where the selling price is less than the market value on the date of transfer.

Asset	In the hands of the transferor [X]	In the hands of the transferee [Y]	In case of any subsequent transfer of the asset by the transferee [Y]
a) **Land or building**	Transfer is assessable and Capital gains or loss will be computed in the hands of X. As per	Sec 56(2)(vii) - NA	**COA** = cost paid or payable for the asset (not the SDV or the Market value) **POH** = Starts from the date

	Sec 50C the Stamp Duty value[SDV] will be taken as the full value of consideration [FVC]		the asset is acquired till the date of transfer [Sec 2(42A)] **Indexation:** from the year the asset is received/acquired
b) **Shares & securities, jewellery, drawings, paintings, archeological collections, sculptures and other similar work**	Transfer is assessable and Capital gains or loss will be computed in the hands of X. FVC = money received or receivable	Sec 56(2)(vii) - NA	
c) **Other assets – Laptop, camera, TV, motor car etc**	Not taxable - Personal assets are exempt u/s 2(14)	Sec 56(2)(vii) - NA	

c.Received on or after 01/10/2009 – without consideration i.e nothing is paid for acquiring the asset.

Asset	In the hands of the transferor [X]	In the hands of the transferee [Y]	In case of any subsequent transfer of the asset by the transferee [Y]
a) **Land or building**	Exempt u/s 47(iii)	**A. Sec 56(2)(vii) is not applicable:** If received on marriage, under will, from relative, local authority, educational or medical institute or Charitable trust u/s 12AA – Sec 56(2)(vii) not applicable **B. Sec 56(2)(vii) is applicable** if received by any other mode and SDV on the date of receipt of asset will be taxable income from other sources if it exceeds Rs 50,000	**COA** = cost to previous owner [Sec 49(1)] **COA** = SDV on date of receipt[Sec 49(4)]
		POH = in both cases includes period of holding of the previous owner if acquired by gift or will [Sec 2(42A)] **Indexation:** from the year the asset is received	
b) **Shares & securities, jewellery, drawings, paintings, archeological collections, sculptures and other similar work**	Exempt u/s 47(iii)	**A. Sec 56(2)(vii) is not applicable:** If received on marriage, under will, from relative, local authority, educational or medical institute or Charitable trust u/s 12AA **B. Sec 56(2)(vii) is applicable** if received by any other mode and FMV on the date of receipt of asset will be taxable income from other sources if aggregate amount is in excess of Rs 50,000	**COA** = cost to previous owner [Sec 49(1)] **COA** = FMV on date of receipt[Sec 49(4)]
		POH = in both cases includes period of holding of the previous owner if acquired by gift or will [Sec 2(42A)] **Indexation:** from the year the asset is received	
c) **Other assets –**	Not taxable - Personal	Sec 56(2)(vii) – NA as these	Not taxable - Personal

Laptop, camera, TV, motor car etc	assets are exempt u/s 2(14)	are not covered by the definition of the word 'Property' under that section	assets are exempt u/s 2(14)

d. Received on or after 01/10/2009 – for inadequate consideration i.e where the selling price is less than the market value on the date of transfer.

Asset	In the hands of the transferor [X]	In the hands of the transferee [Y]	In case of any subsequent transfer of the asset by the transferee [Y]
a) **Land or building**	Transfer is assessable and Capital gains or loss will be computed in the hands of X. As per Sec 50C the Stamp Duty value[SDV] will be taken as the full value of consideration [FVC]	**A. Sec 56(2)(vii) is not applicable:** If received on marriage, under will, from relative, local authority, educational or medical institute or Charitable trust u/s 12AA – Sec 56(2)(vii) not applicable **B. Sec 56(2)(vii) is applicable** if received by any other mode and SDV on the date of receipt of asset less cost paid will be taxable income from other sources if difference is more than 50,000	**COA** = Cost paid or payable for acquiring the asset **COA** = SDV on date of receipt[Sec 49(4)]
		POH = in both cases will start from the date the asset is acquired **Indexation:** from the year the asset is received	
b) **Shares & securities, jewellery, drawings, paintings, archeological collections, sculptures and other similar work**	Transfer is assessable and Capital gains or loss will be computed in the hands of X. FVC = money received or receivable	**A. Sec 56(2)(vii) is not applicable:** If received on marriage, under will, from relative, local authority, educational or medical institute or Charitable trust u/s 12AA **B. Sec 56(2)(vii) is applicable** if received by any other mode and FMV on the date of receipt of asset less cost paid will be taxable income from other sources if the difference is in excess of Rs 50,000	**COA** = cost to previous owner [Sec 49(1)] **COA** = FMV on date of receipt [Sec 49(4)]
		POH = in both cases will start from the date the asset is acquired **Indexation:** from the year the asset is received	
c) **Other assets – Laptop, camera, TV, motor car etc**	Not taxable - Personal assets are exempt u/s 2(14)	Sec 56(2)(vii) – NA as these are not covered by the definition of the word 'Property' under that section	Not taxable - Personal assets are exempt u/s 2(14)

Discuss the treatment in the hands of X and Y for the following transactions

Ex. 1. **X transfers his Land, which he had bought on 15/02/05 for Rs 5 lacs, to Y on 23/12/09 without consideration.[FMV as on 23/12/09 is Rs 7.30 Lacs SDV is Rs 7 Lacs]**

Ans. : **In hands of X:** Transfer 'without consideration' would refer to transfer by way of gift. Thus transfer by way of 'gift' is exempt in the hands of X for the PY 2009-10. Neither profit nor loss will be taken into consideration.

In the hands of Y as per the newly inserted Sec 56(2)(vii) Rs 7 Lacs (i.e the SDV) will be taxable as 'income from other sources'.

- Cost of acquisition to Y - Rs 7 lacs will be the cost of acquisition of the land in the hands of Y as per Sec 49(4) and
- The period of holding will start from 15/02/05 as per Explanation (b) to Sec 2(42A)

Ex. 2. **X transfers his Land, which he had bought on 15/02/05 for Rs 5 lacs, to Y on 23/12/09 on Y's marriage. [FMV as on 23/12/09 is Rs 7.30 Lacs SDV is Rs 7 Lacs]**

Ans. : **In hands of X:** Transfer 'without consideration' would refer to transfer by way of gift. Thus transfer by way of 'gift' whether on marriage or otherwise, is exempt in the hands of X for the PY 2009-10. Neither profit nor loss will be taken into consideration.

In the hands of Y as per the newly inserted Sec 56(2)(vii) receipt on marriage, under a will, from a relative, from educational or medical institute , from a local authority and from a trust registered u/s 12AA, is not chargeable to tax.

- Cost of acquisition – as per Sec 49(1) cost of land to Y will be cost of the asset to the previous owner = Rs 5 Lacs and
- The period of holding of Y will start from 15/02/05.

Ex. 3. **X transfers his Land, which he had bought on 15/02/05 for Rs 5 lacs, to Y on 23/12/09 for Rs 6.25 lacs consideration.[FMV as on 23/12/09 is Rs 7.30 Lacs SDV is Rs 7 Lacs]**

Ans. : **In hands of X:** Transfer 'for consideration' would be assessable in the hands of X u/s 45. While computing the Capital gains or loss in the hands of X the FVC will be as per Sec 50C

FVC = 700,000

Less: COA =(658,333) 500,000 x 632/480

LTCG = 41,667

In the hands of Y as per the newly inserted Sec 56(2)(vii) Rs 7lacs - 6.25lacs = 75,000 *(which is more than 50,000)* will be taxable as income from other sources.

- Cost of acquisition as per Sec 49(4) cost to Y will be SDV i.e Rs 7 Lacs and
- The period of holding of Y will start from 23/12/09.

Ex. 4. **X transfers his Land, which he had bought on 15/02/05 for Rs 5 lacs, to Y on 23/12/09 for Rs 6.25 lacs consideration *X is the brother of Y*.[FMV as on 23/12/09 is Rs 7.30 Lacs SDV is Rs 7 Lacs]**

Ans. : **In hands of X:** Transfer 'for consideration' would be assessable in the hands of X u/s 45. While computing the Capital gains or loss in the hands of X the FVC will be as per Sec 50C

FVC = 700,000

Less: COA =(658,333) 500,000 x 632/480

LTCG = 41,667

In the hands of Y as per the newly inserted Sec 56(2)(vii) nothing will be taxable since it is receipt from a 'relative'

- Cost of acquisition as per Sec 49 cost to Y will be money paid or payable i.e Rs 6.25 Lacs and
- The period of holding of Y will start from 23/12/09.

Ex. 5. **In Ex 4, if Y transfers the land to Z on 15/03/10 for Rs 8.50 lacs[FMV 7.30 Lacs & SDV 7 lacs].**

Ans. : **In hands of Y:** Transfer 'for consideration' would be assessable in the hands of X u/s 45. While computing the Capital gains or loss in the hands of Y

FVC = 850,000

Less: COA =(625,000)

STCG = 125,000

In the hands of Z as per the newly inserted Sec 56(2)(vii) since transfer is for adequate consideration nothing is taxable.

- Cost of acquisition as per Sec 49 cost to Z will be money paid or payable i.e Rs 8.50 Lacs and

- The period of holding of Y will start from 15/03/10.

Ex. 6. **X transfers his jewellery, which he had bought on 15/02/05 for Rs 5 lacs, to Y on 23/12/09 without consideration.[FMV as on 23/12/09 is Rs 7.30 Lacs]**

Ans. : **In the hands of X** Transfer 'without consideration' would refer to transfer by way of gift. Thus transfer by way of 'gift' is exempt in the hands of X for the PY 2009-10. Neither profit nor loss will be taken into consideration.

In the hands of Y as per the newly inserted Sec 56(2)(vii) Rs 7.30 Lacs will be taxable as income from other sources.

- Cost of acquisition - Rs 7.30 lacs will be the cost of the jewellery in the hands of Y as per Sec 49(4)
- Period of holding for Y will start from 15/02/05

Ex. 7. **In Ex 6 if Y transfers the jewellery to Z on 15/03/10 for Rs 8.50 lacs[FMV 8 Lacs].**

Ans. : Since in this case Y has transferred the capital asset (Jewellery) for adequate consideration receivable in monetary terms, the transfer is by way of sale and capital gains shall be computed in the hands of Y for the PY 2009-10. In the hands of Z Sec 56(2)(vii) will not be applicable as it is purchased for adequate consideration. Cost of acquisition for Z is Rs 8.50 lacs

Ex. 8. **X transfers his jewellery, which he had bought on 15/02/07 for Rs 5 lacs, to Y on 23/12/09 for Rs 6.50 Lacs.[FMV as on 23/12/09 is Rs 7.30 Lacs]**

Ans. : **In the hands of X** Transfer 'without adequate consideration' would be transfer. Capital gains will be taken into consideration in the hands of X[Rs 6.50 – 5 = 1.50 STCG] .

In the hands of Y as per the newly inserted Sec 56(2)(vii) Rs 7.30 – 6.50 = Rs 0.80 lacs(since it is more than 50,000) will be taxable as income from other sources.

- Cost of acquisition - Rs 7.30 lacs will be the cost of the jewellery in the hands of Y as per Sec 49(4)
- Period of holding for Y will start from 23/12/2009

Ex. 9. **X leaves his jewellery , which he had bought on 15/02/05 for Rs 5 lacs ,to his son Y in his will. X dies on 23/12/09.**

Ans. : **In the hands of X** - Transfer is by way of will. Thus transfer by way of 'will' is exempt in the hands of X u/s 47(iii) for the PY 2009-10. Neither profit nor loss will be taken into consideration.

In the hands of Y as per the newly inserted Sec 56(2)(vii) receipt under will is not covered thus nothing is taxable in the hands of Y.

- Cost of acquisition - Rs 5 lacs will be the cost of the jewellery in the hands of Y as per Sec 49(1)since receipt under will is a mode referred to in that section
- Period of holding for Y will start from 15/02/2005 as per explanation (b) to Sec 2(42A), the period of hlding of the previous owner will also be taken into consideration.

Insertion of section 56(2)(viii) & 57(iv)

16. **Sec 56(2)(viii):** income by way of interest received on compensation or on enhanced compensation shall be taxable as income from other sources
17. **Sec 57(iv):** 50% of the income u/s 56(2)(viii) is allowed as a deduction and no deduction shall be allowed under any other clause of this section.

Substitution of new section for section 145A.

18. Rationalization of provisions for taxation of interest received on delayed compensation or enhanced compensation

The existing provisions of Income-tax Act provide that 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.

Further, the Hon'ble Supreme Court, in the case of Rama Bai v. CIT (181 ITR 400) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to taxpayers.

With a view to mitigating the hardship, section 145A has been amended to provide that the interest received by an assessee on compensation or 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.

Further, it is proposed to insert clause (viii) in sub-section (2) of section 56 to provide that income by way of interest received on compensation or on enhanced compensation referred to in sub-section (2) of section 145A shall be assessed as "income from other sources" in the year in which it is received.

This amendment will take effect from 1st April, 2010 and shall accordingly apply in relation to assessment year 1998-99 and subsequent assessment years.

Amendment of section 80A.

19. Sec 80A: In section 80A of the Income-tax Act,—

(a) **Sec 80A(4) inserted by Finance Act 2009 w.r.e.f 01/04/2003:** where a deduction is claimed by the assessee for the profits under section 10A or section 10AA or section 10B or section 10BA or in any provisions of this Chapter under the heading "C-*Deductions in respect of certain incomes*", then the amount of such profits and gains shall not be allowed under any other provisions of this Act for such assessment year and shall in no case exceed the profits and gains of such undertaking or unit or enterprise or eligible business, as the case may be.

(b) **Sec 80A(5) inserted by Finance Act 2009 w.r.e.f 01/04/2003:** Where the assessee *fails to make a claim in his return of income* for any deduction under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading "*C.—Deductions in respect of certain incomes", no deduction* shall be allowed to him thereunder.

(c) **Sec 80A(6) inserted by Finance Act 2009 w.r.e.f 01/04/2003:** : provides that notwithstanding anything to the contrary contained in section 10A or section 10AA or section 10B or section 10BA or in any provisions of Chapter VIA under the heading "C-Deductions in respect of certain incomes", where

(i) any goods or services held for the purposes of the undertaking or unit or enterprise or eligible business are transferred to any other business carried on by the assessee *or*

(ii) where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the undertaking or unit or enterprise or eligible business *and*,

(iii) the consideration, if any, for such transfer as recorded in the accounts of the undertaking or unit or enterprise or eligible business does not correspond to the market value of such goods or services as on the date of the transfer, *then*

(iv) for the purposes of any deduction under this Chapter, the profits and gains of such undertaking or unit or enterprise or eligible business shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date.

The Explanation as proposed in the said sub-section provides that (i) in relation to any goods or services sold or supplied, market value means 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; (ii) in relation to any goods or services acquired, market value means 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. The said Explanation is clarificatory in nature.

Amendment of section 80CCD.

20. Sec 80CCD: In section 80CCD of the Income-tax Act,—

Clause 30 of the Bill seeks to amend section 80CCD of the Income-tax Act relating to deduction in respect of contribution to pension scheme notified by the Central Government.

The existing provisions contained in the sub-section (1) of said section provides that where an assessee being an individual, employed by the Central Government or any other employer on or after 1st January, 2004, who has paid or deposited any amount in his account under a pension scheme notified or as may be notified by the Central Government, there shall be allowed a deduction in the computation of his total income of the whole of the amount, paid or deposited by him as does not exceed ten per cent of his salary in the previous year.

It is proposed to amend the said sub-section so as to allow deductions under the aforesaid section to any other assessee in addition to an assessee, being an individual, employed by the Central Government or any other employer on or after the 1st day of January, 2004.

The deduction amount will be

(i) In case of the individual being an employee – 10% of his salary in the previous year; and
(ii) in any other case, 10% of his gross total income in the previous year;";

It is further proposed to amend said section so as to insert a new sub-section (5) which provides 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.

These amendments will take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent years.

Amendment of section 80DD.

21. Sec 80DD: In section 80DD of the Income-tax Act, in sub-section (1), in the proviso, for the words "seventy-five thousand rupees", the words "one hundred thousand rupees" shall be substituted with effect from the 1st day of April, 2010.

Deduction for medical treatment of a dependent suffering from disability

Section 80DD of the Income-tax Act provides for a deduction to an individual or HUF, who is a resident in India, in respect of the following :—

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

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

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.

It is proposed to increase the limit for severe disability to Rs. 1 lakh. However, the limit for ordinary disability is proposed to be retained at the existing level of Rs. 50,000.

The above amendment shall be made effective from the 1st day of April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent years.

Amendment of section 80E.

22. Sec 80E: In section 80E of the Income-tax Act, in sub-section (3), with effect from the 1st day of April, 2010,

(a) **"higher education"** means any course of study 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 authorised by the Central Government or State Government or local authority to do so;

(b) **"relative",** in relation to an individual, means the spouse and children of that individual or the student for whom the individual is the legal guardian.'.

Deduction in respect of interest on loan taken for higher education

Section 80E of the Income-tax Act 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 higher education in specified fields of study.

Under the existing provisions, 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.

With the objective of fostering human capital formation in the country, it is proposed to amend the provisions of section 80E of the Income-tax Act so as to extend its scope 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.

This amendment will take effect from 1st day of April, 2010 and shall accordingly, apply in relation to assessment year 2010-11 and subsequent years.

Amendment of section 80G.

23. In section 80G of the Income-tax Act, in sub-section (5),***Donations to Certain Funds, Charitable Institutions, etc.***

(a) Section 80G of the Income-tax Act, 1961 provides for a deduction in respect of donations to certain funds, charitable institutions, etc., subject to, inter alia, the condition that such institutions and trusts are establish for 'charitable purpose'.

Consequent to the amendment of sub-section (15) of section 2 by the Finance Act, 2008 a number of organizations have ceased to be charitable for the purposes of the Income-tax Act. However, such institutions and trusts continued to collect donation during the financial year 2008-09 for funding relief work for floods in Bihar and other public purposes. The donors made these donations under a bona fide belief that they would be entitled to benefit under section 80G. With a view to mitigate hardship to the donors, it is proposed to give a onetime relaxation and amend sub-section (5) of section 80G of the Income-tax Act so as to provide that where an institution or fund has been approved under clause (vi) of sub-section (5) of section 80G for the previous year beginning on the 1st day of April, 2007 and ending on the 31st day of March, 2008, such institution or fund shall, notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been,—

(a) established for charitable purposes for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009;

(b) approved under the said clause (vi) for the previous year beginning on the 1st day of April, 2008 and ending on the 31st day of March, 2009.

This amendment will take effect from 1st day of April, 2009 and shall accordingly, apply in relation to assessment year 2009-10 only.

(b) Further as per Sec 80G(6) the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax. 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.

Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the bona fide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

Therefore, it is proposed to omit the proviso to clause (vi) of sub-section (5) of section 80G ***to provide that the approval once granted shall continue to be valid in perpetuity***.

Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund.

This amendment will take effect from **1st day of October, 2009**. Accordingly, existing approvals expiring on or after 1st October, 2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1st October, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

Amendment of section 80-IA.

24. In section 80-IA of the Income-tax Act,—

a. Under the existing provisions contained in the clause (iv) of sub-section (4) of said section a deduction is allowed to an undertaking which, - (a) is set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1st April, 1993 and ending on 31st March, 2010; (b) starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1st April, 1999 and ending on 31st March, 2010; (c) undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1st April, 2004 and ending on 31st March, 2010. **It is proposed to amend sub-clauses (a), (b) and (c) of the said clause so as to extend the time limit from 31st March, 2010 to 31st March, 2011.** These amendments will take effect retrospectively from 1 st April, 2009.

b. It is further proposed to amend sub-clause (b) of clause (v) of sub-section (4) of said section which provides that an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant, if such undertaking begins to generate or transmit or distribute power before 31 st March, 2008 are eligible for deduction. **It is proposed to amend the said sub-clause so as to extend the date to begin generation, transmission or distribution of power from 31st March, 2008 to 31st March, 2011.** This amendment will take effect retrospectively from 1st April, 2008.

c. It is also proposed to omit clause (vi) of sub-section (4) of said section which provides for deduction to any undertaking carrying on the business of laying and operating a cross-country natural gas distribution network, including pipelines and storage facilities being an integral part of such network. In view of the said amendment, it is also proposed to make amendments, with respect to sub-section (1) and sub-section (3) of the said section, which are consequential in nature. This amendment is consequential in nature. This amendment will take effect from 1st April, 2010 and will, accordingly, apply in relation to assessment year 2010-11 and subsequent assessment years.

d. It is also proposed to amend the Explanation to said section to clarify that nothing contained in the said section shall apply 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 Central or State Government) and executed by the undertaking or enterprise referred to in sub-section (1) of said section. This amendment will take effect retrospectively from 1st April, 2000 and will, accordingly, apply in relation to the assessment year 2000-01 and subsequent years.

Amendment of section 80-IB.

25. In section 80-IB of the Income-tax Act,—

(c) **Sec 80IB(9): Deduction in respect of profits and gains from undertakings engaged in commercial production of mineral oil and natural gas**

Sub-section (9) of section 80-IB of the Income-tax Act, 1961 provides for deduction in respect of profits and gains derived from commercial production or refining of mineral oil. The deduction under this sub-section is available to an undertaking for a period of seven consecutive assessment years including the initial assessment year—

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

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

However, no deduction under this sub-section is available to an undertaking which begins refining of mineral oil on or after the 1st day of April, 2009 unless such undertaking fulfils all the following conditions as provided in the third proviso to this sub-section, namely :—

(i) It is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least forty-nine per cent of the voting rights;

(ii) It is notified by the Central Government in this behalf on or before the 31st day of May, 2008; and

(iii) It begins refining not later than the 31st day of March, 2012.

Under the existing provisions, it is incumbent on refineries in the private sector to commence refining of mineral oil on or before the 31st March, 2009. The notice given to private sector entrepreneurs to complete the execution of their refinery project was extremely short. As a result, entrepreneurs who had undertaken substantial investment in anticipation of the tax holiday suffered serious financial setback. Therefore, it is proposed to amend the provisions of sub-section (9) so as to allow them a further period of three years i.e., **up to the 31st March, 2012 to begin refining of mineral oil and avail of the tax benefit. The new terminal date will be the same for both the public and the private sector.**

Further, it is also proposed to amend the Income-tax Act so as to extend the tax holiday under sub-section (9) of section 80-IB of the Income-tax Act, **which was hitherto available in respect of profits arising from the commercial production or refining of mineral oil, also to natural gas from blocks which are licensed under the VIII Round of bidding for award of exploration contracts (hereafter referred to as "NELP-VIII") under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 and begin commercial production of natural gas on or after the 1st day of April, 2009.**

The term "undertaking" in sub-section (9) has not been defined. Therefore, in the context of mineral oil, the meaning of the term **"undertaking"** has been the subject-matter of considerable dispute. The taxpayers have been holding the view that every well in a block licensed constitutes a single "undertaking" and accordingly the tax holiday is available separately for each such well. However, this view is against the legislative intent. Accordingly, it is proposed to amend sub-section (9) by inserting an Explanation so as to clarify that for the purposes of claiming deduction under sub-section (9**), all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by Central or a State Government in any other manner, shall be treated as a single "undertaking".** This amendment is proposed to take retrospective effect from the 1st April, 2000 and will, accordingly, apply in relation to assessment year 2000-01 and subsequent years. This definition of "undertaking" will be applicable both in relation to mineral oil and natural gas.

(d) **Sec 80IB(10): deduction given for developers of housing projects**

The objective of this tax concession 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 benefits.

a. With a view to clarify accordingly, an Explanation has been inserted after Sec 80IB(10) to provide that deduction under this section shall not be available to any undertaking which executes the housing project as a works contract awarded by any other person (including Central or State Government). This amendment will take effect retrospectively from the 1st day of April, 2001 and shall accordingly, apply in relation to assessment year 2001-02 and subsequent assessment years.

b. Further, the objective of the tax benefit for housing projects is to build housing stock for low and middle income households. This has been ensured by limiting the size of the residential unit to 1000 sq ft (in cities other than Delhi or Mumbai) or 1500sq ft(if the house is in Delhi or Mumbai). However, this is being circumvented by the developer by entering into agreement to **sell multiple adjacent units** to a single buyer. Finance Act 2009 has amended the section to provide that 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, and where the person is an individual, no other residential unit in such housing project is allotted to any of the following person :

    a. Spouse or minor children of such individual;

    b. The Hindu undivided family in which such individual is the karta;

    c. 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.

This amendment will take effect from the 1st day of April, 2010 and shall accordingly, apply in relation to assessment year 2010-11 and subsequent years.

(e) **Sec 80IB(11A)**: in sub-section (11A), with effect from the 1st day of April, 2010,—

The Deduction u/s 80IB(11A) shall now also be available to as assessee engaged in the business of Meat and meat products or poultry or marine or dairy products (except in the business of processing, preservation and packaging of meat or meat products or poultry or marine or dairy products if it begins to operate such business before the 1st day of April, 2009.)

Amendment of section 80U.

26. The limit where the assessee is suffering from a severe disability is now raised to Rs 100,000. The limit of 50,000 remians the same.

Amendment of section 115BBC.

27. In section 115BBC of the Income-tax Act, in sub-section (1), with effect from the 1st day of April, 2010

<u>Anonymous donations:</u>

Sec 115BBC(1) provides that where any

i. Charitable trusts /institutions referred to u/s 11 or
ii. Universities and other educational institutions referred to u/s 10(23C)(iiiad) and 10(23C)(vi) or
iii. Hospitals and other medical institutions referred to u/s 10(23C)(iiiae) and 10(23C)(via)
iv. Notified funds or institutions referred to u/s 10(23C)(iv) or
v. Notified trusts or institutions established wholly for public religious purposes or wholly for public religious or public charitable institutions referred to u/s 10(23C)(v)

…receive any anonymous donation, then such anonymous donation shall be taxable in the hands of the recipient as per the rules laid down u/s 115BBC.

i. Sec 115BBC prescribe for such anonymous donations to be taxed at the maximum marginal rate i.e. 30%. However taxability would depend upon the purpose for which the trust or institution have been formed [Sec 115BBC(2)]

    a. Where the trust has been formed *wholly for religious purposes*, then the provisions of Sec 115BBC shall not apply i.e. anonymous donations are *not* taxable @ 30%, in the hands of a trust or institution wholly for religious purposes and are included in normal income of such trust.

    b. Where a trust or institution is created *partly for charitable and partly for religious purposes,* then the provisions of Sec 115BBC shall be applicable only on such anonymous donations received with a specific direction towards a *medical* or *educational* institutions run by such entities shall be taxable as follows

Tax payable = 30% x (total anonymous donations received less (5% of total donations or 100,000 whichever is higher)

For example: if the total donations received are 50,00,000 out of which anonymous donations are 500,000 then tax payable u/s 115BBC

= 30% (500,000 – (5% of 50,00,000 or 100,000 whichever is higher)

= 30% (500,000 – (250,000 or 100,000 whichever is higher)

= 30% (500,000 – 250,000)

= 30% 250,000

= 75,000

c. Where a trust is created *wholly for charitable purposes,* then such anonymous donations are fully taxable at the maximum marginal rate i.e. @ 30% and are not eligible for exemption u/s 11.

Tax payable = 30% x (total anonymous donations received less (5% of total donations or 100,000 whichever is higher)

For example: if the total donations received are 10,00,000 out of which anonymous donations are 500,000 then tax payable u/s 115BBC

= 30% (500,000 – (5% of 10,00,000 or 100,000 whichever is higher)

= 30% (500,000 – (50,000 or 100,000 whichever is higher)

= 30% (500,000 – 100,000)

= 30% 400,000

= 120,000

ii. 'Anonymous donation' is defined as a voluntary contribution where the recipient does not maintain any records of the name, address of the donor in its books.[Sec 115BBC(3)]

Sec 13(7) : provides that exemption provided u/s 11 or 12 shall *not* be applicable in respect of any money received by way of anonymous donations covered by Sec 115BBC.

(*c*) **Deduction to donors:** People making donations to charitable trust are eligible for a deduction from their Gross Total Income u/s 80G. The deduction is available to the donor and not to the trust. It is available only if the donee trust has applied for and received registration u/s 80G

Amendment of section 140.

54. In the case of a limited liability partnership, by the designated partner thereof, or 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, by any partner thereof.".

Insertion of new section 167C.

59. Sec 167C. Liability of partners of limited liability partnership in liquidation.—Notwithstanding anything contained in the Limited Liability Partnership Act, 2008 where any tax due from a limited liability partnership in respect of any income of any previous year or from any other person in respect of any income of any previous year during which such other person was a limited liability partnership cannot be recovered, in such case, every person who was a partner of the limited liability partnership at any time during the relevant previous year, shall be *jointly and severally* liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the limited liability partnership.".

Amendment of section 208.

71. Enhancement of the limit for payment of advance tax Under the existing provisions of section 208 of the Income-tax Act, liability for payment of advance tax during a financial year arises when the amount of such tax payable during that year is five thousand rupees or more. This limit was fixed in 1996.

With a view to providing for inflation adjustment, it is proposed to raise the threshold limit for payment of advance tax from the present Rs ~~5,000~~ to Rs 10,000.

The proposed amendment will take effect from the 1st April, 2009. Accordingly, advance-tax for the financial year 2009-10 would be payable only if the **advance tax liability is Rs. 10,000 or more**.

RATES FOR DEDUCTION OF TAX AT SOURCE IN CERTAIN CASES														
	Section 192:	***Section 193 :***	***Sec 194:***	***Section 194A:***	**Section 194B:**	***Section 194BB :***	***Section 194D:***	***Section 194G:***	***Section 194H:***	**Section 194I:**	***Section 194J:***	***Section 194LA***	**Section 194C(1)**	**Se 194 2)**
1. Rate of TDS: Finance Act 2009 – No education cess or SHEC is leviable on the rate of TDS for the PY 2009-10 except for payments to *Non residents* Surcharge is not leviable except on payment made to a foreign company u/s 195	**Tax will be computed on salary income at average rate i.e the rate arrived at by dividing the total tax by the total income.**	10% (no surcharge or cess). ***Finance Act 2009***	10% (no surcharge or cess). ***Finance Act 2009***	10% (no surcharge or cess). ***Finance Act 2009***	1. where payment is made *to a resident* - 30% (no surcharge or cess) 2. Where payment is made *to a foreign company* – 30%+surchage @ 2.5% (where total payment exceeds 1 crore) + cess (3%) **3.** Where payment is made to a *any other non resident* – 30.90% (as cess on TDS rate is leviable on payment to non residents)	*Same as for Sec 194B*	10% (no surcharge or cess). ***Finance Act 2009***	10% (no surcharge or cess). ***Finance Act 2009***	10% (no surcharge or cess). ***Finance Act 2009***	***Refer note below***	10% (no surcharge or cess). ***Finance Act 2009***	10% (no surcharge or cess). ***Finance Act 2009***	**Refer note below**	**Refe note belo**

1. Sec 194I

	For	For other assets
Before 01/10/09	10%	Where recipient is Ind or HUF – 15% Other – 20%
On or after 01/10/09	2%	10%

2. Sec 194C

Sec 194C(1) - to contractor			Sec 194C(2) – to sub contractor		
	Advertisement contracts	Other Contracts		Advertisement contracts	Other Contracts
Before 01/10/09	1%	2%	**Before 01/10/09**	1%	1%
On or after 01/10/09	If recipient is Ind/HUF–1% Others – 2%	If recipient is Ind/HUF–1% Others – 2%	**On or after 01/10/09**	If recipient is Ind/HUF–1% Others – 2%	If recipient is Ind/HUF–1% Others – 2%

No surcharge or cess is applicable for all rates from 01/04/2009

1. **Other Conditions:**
   a) **Finance Act 2009:**
      a. **Suspense account:** if the sum is credited to suspense account, etc., then also tax at source needs to be deducted.
      b. **Cost of materials:** Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation to section 194C, tax shall be deducted at source on the invoice value excluding the value of material if such value is mentioned separately in the invoice, or on the whole of the invoice value if the value of material is not mentioned separately in the invoice.
   b) **Personal payments:** No individual of HUF is liable to deduct TDS for any sum paid for personal use
   c) **Payment to small transport sub contractor:**
      a. **Before 01/10/09:** Payer contractor need not deduct TDS if the following conditions are fulfilled
         - ✓ Payee must be a sub contractor <u>being an individual</u>
         - ✓ He does not own more than 2 goods carriages as explained u/s 44AE.
         - ✓ He is engaged in the business of plying , hiring or leasing goods carriages
         - ✓ The sub contractor must give a declaration to the person responsible for deducting tax at source in the form prescribed (15I), within the prescribed time and verified in the prescribed manner
         - ✓ The person responsible for paying the charges to the sub contractor must furnish to the prescribed income tax authority or person authorized by such authority such particulars as may be prescribed in the form and within the time as may be prescribed.
      b. **On or after 01/10/09:** if the recipient is a transport operator (maybe an individual, firm, company or any other person) and he or it furnishes a PAN to the deductor, no TDS will be deductible. For this purpose the transport operator is a person who is in the business of plying, hiring or leasing goods carriages. The payer will in this case be required to intimate the PAN details of the payee to the Income tax department in the prescribed format

'Works contract' defined by Finance Act 2009 w.e.f 01/10/09:

"work" shall include—

(*a*) advertising;

(*b*) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;

(*c*) carriage of goods or passengers by any mode of transport other than by railways;

(*d*) catering;

(*e*) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but *does not include* manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer.

Services like beauty salon, barbershop, car rental, laundry/Valet, health club etc rendered by the Hotel to its customers does not come within the meaning of "work" for Sec 194C thus no TDs will be deductible on the same **CBDT v East India Hotel Ltd [2009[(HC)**

Outsourcing contracts: There is ongoing litigation as to whether TDS is deductible under section 194C on outsourcing contracts and whether outsourcing constitutes work or not. To bring clarity on this issue, it is proposed to provide that "work" shall not include

a) 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'. This will however not apply to a contract which does not entail manufacture or supply of an article or thing (e.g., a construction contract).

b) The amendment also includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, within the definition of 'work'. It is further proposed to provide that in such a case TDS 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, TDS shall be deducted on the whole of the invoice value.

The amendments will be effective from the 1st day of October, 2009. Accordingly, the proposed amendments will apply to credits or payment effected on or after 1st October, 2009.

Improving compliance with provisions of quoting PAN through the TDS regime

Statutory provisions mandating quoting of Permanent Account Number (PAN) of deductees in Tax Deduction at Source (TDS) statements exist since 2001 duly backed by penal provisions. The process of allotment of PAN has been streamlined so that over 75 lakh PANs are being allotted every year. Publicity campaigns for quoting of PAN are being run since the last three years. The average time of allotment of PAN has come down to 10 calendar days. Therefore, non-availability of PAN has ceased to be an impediment. In a number of cases, the non-quoting of PANs by deductees is creating problems in the processing of returns of income and in granting credit for tax at deducted at source, leading to delays in issue of refunds.

In order to strengthen the PAN mechanism, it is proposed to make amendments in the Income-tax Act 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—

(i) the rate prescribed in the Act;

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

(iii) at the rate of 20 per cent.

TDS would be deductible at the above-mentioned rates will also apply in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN. Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

These provisions will also apply to non-residents where TDS is deductible on payments or credits made to them. To ensure that the deductor knows about the correct PAN of the deductee it is also proposed to provide for mandatory quoting of PAN of the deductee by both the deductor and the deductee in all correspondence, bills and vouchers exchanged between them.

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

Important CIRCULARS

1. New Return Forms for Assessment Year 2009-10 - Circular No. 3/2009, Dated 21-5-2009

The Central Board of Direct Taxes have, vide Notification S.O. No. 866(E), dated 27th March notified the following new forms for assessment year 2009-10 :—

(i) ITR-1 return of income for individuals having income from salary/pension/family pension and not having any other income except income by way of interest chargeable to income-tax under the head Income from other sources;

(ii) ITR-2 return of income for individuals and Hindu Undivided Families (HUFs) not having any income under the head Profits or gains of business or profession;

(iii) ITR-3 return of income for individuals and HUFs being partners in firms and not carrying out business or profession under any proprie-torship;

(iv) ITR-4 return of income for individuals and HUFs having proprietory business or profession;

(v) ITR-5 combined form for return of income and fringe benefits for Firms/Association of Persons/Body of Individuals;

(vi) ITR-6 combined form for return of income and fringe benefits for companies (other than companies claiming exemption under section 11;

(vii) ITR-7 combined form for return of income and fringe benefits for persons including companies required to furnish return under section 139(4A) or section 139(4B) or section 139(4C) or section 139(4D);

(viii) ITR-8 stand alone form for return of fringe benefits for persons who are not required to furnish return of income but are required to furnish return of fringe benefits.

The above return forms are available at http//www.incometaxindia.gov.in.

2. Rule 12 of the Income-tax Rules, 1962 (hereinafter referred to as 'the said rule') provides for the form and the manner in which the Income-tax return is required to be furnished.

3. Sub-rule (3) of the said rule provides that return of income/fringe benefits can be furnished in any of the following manners :—

(i) furnishing the return *in a paper form*;

(ii) furnishing the return *electronically under digital signature*;

(iii) transmitting the data in the return *electronically* and thereafter submitting the verification of the return *in Form ITR-V*;

(iv) furnishing a *bar-coded return* in a paper form.

4. Sub-rule (5) of the said rule provides that the return of income/fringe benefits for assessment year 2008-09 or any earlier assessment years shall be furnished in the appropriate form as applicable in that assessment year.

5. Mandatory e-filing of returns electronically for companies and Firms(covered by Sec 44AB)—

(a) it shall be mandatory for the *firms to whom provisions of section 44AB are applicable* and for the *companies* (other than the companies claiming exemption under section 11) to furnish the return of income/fringe benefits electronically in the manner mentioned at (ii) or (iii) of paragraph 3;

(b) the return of income/fringe benefits in Form ITR-7 by charitable/religious trusts, political parties and other non-profit is to be furnished in the paper form only; and

(c) all *other taxpayers* have the option to furnish the return of income/fringe benefits in any of the manner mentioned in paragraph 3.

6. No documents need to be attached with the new forms:

The returns required to be furnished in above-mentioned Forms (except in ITR-7) shall not be accompanied by any attachments/annexures. Thus, taxpayers should not enclose with these return forms any statement showing the computation of income or tax, copies of balance-sheet, profit and loss account, TDS/ TCS certificates, proof of payment of advance tax or self-assessment tax.

However, these documents shall have to be *produced before the Assessing Officer on demand by him*. The Chief Commissioners of Income-tax/Commissioners of Income-tax must ensure that documents if any, annexed with these returns or Form ITR-V are detached at the time of receiving these returns/ITR-V and are returned to the taxpayers immediately.

7. **Following clarifications are also issued in respect of certain issues arising from furnishing the returns in the above-mentioned forms :**

   (i) **Report u/s 44AB not to be submitted along with the return forms:** An assessee should *obtain* the report of audit from an accountant under section 44AB of the Act, on or before the due date of the furnishing of the return and should fill out the relevant columns of the return forms on the basis of such report. However, the report of audit should not be attached with the return or furnished separately any time before or after the due date. The assessee should retain the report with himself. If called for by any income-tax authority during any proceeding under the Act, it shall be incumbent upon the assessee to furnish/produce the same in original.

   No penalty under section 271B shall be initiated or levied for not furnishing the tax audit report on or before the due date. However, if the audit report has not been obtained before the due date, provisions of section 271B shall continue to be attracted.

   (ii) **No other report to be attached to the new forms other than a report u/s 92E:** These returns are not to be accompanied with any other document including any statutory form or report of audit (other than the report under section 92E), which is otherwise required to be furnished before the due date or along with the return for making any claim. The provisions of the law shall be deemed to have been complied with in respect of the requirement of the filing of the attachments or documents or reports along with the return.

   No penalty shall be initiated/levied for not furnishing such documents if such documents were otherwise obtained before the specified date, if any, provided in the statute. All these documents should be retained by the taxpayers. If called for by any income-tax authority during any proceeding under the Act, it shall be incumbent upon the assessee to furnish/produce the same, in original.

   The report as required under section 92E of the Income-tax Act **should not be furnished along with the return**. However, it should be separately furnished before the date specified in rule 10E.

8. **In case return of income is furnished under a digital signature by the assessee or the ERI:** As stated in paragraph 5 above, it is mandatory for a company and a firm liable to audit under section 44AB of the Act, to furnish the return electronically. However, electronic filing is optional for other categories of taxpayers. The e-Return has to be furnished at http://incometaxindiaefiling.gov.in. Further, *it is advisable, though not mandatory*, to use a digital signature for electronically furnishing the return.

   (i) **If the return is electronically furnished under a digital signature**, the tax-payer is not required to furnish the Form ITR-V with the Income-tax Department as a follow up to the electronic transmitting of data in the return.

   (ii) Similarly, any return which is **digitally signed by the assessee and filed with an E-Return Intermediary (ERI)**, who, in turn, submits the return to the Income-tax Department under his digital signature, will also be deemed to have been filed under a digital signature of the assessee and no Form ITR-V is required to be submitted.

   In such cases, the *date of electronic transmission of the data* in the return *shall be the date of furnishing the return*.

9. **If return of income is furnished electronically without using the digital signature:** However, if the assessee does not use a digital signature for electronically transmitting the data, he is required to follow-up the electronic transmission of the data by submitting the Form ITR-V with the Income-tax Department as verification of the electronic filing of the return.

   (i) In such a case, the date of transmitting the data electronically will be the date of furnishing the return if the Form ITR-V is furnished within 60 days after the date of transmitting the data electronically.

   (ii) In case, Form ITR-V, is furnished after the above-mentioned period, it will be deemed that the return in respect of which the Form ITR-V has been filed was never furnished and *it shall be incumbent on the assessee to electronically re-transmit the data and follow it up by submitting the new Form ITR-V within 60 days.*

10. **ITR V (paper return):** Since the Form ITR-V is bar-coded, assessee is advised not to fold the same and post it in A4 size envelope.

    (i) The assessee shall furnish the Form ITR-V to the Income-tax Department by mailing it to "Income-tax Department CPC, Post Box No. - 1, Electronic City Post Office, Bangalore - 560 100, Karnataka" within 60 days after the date of transmitting the data electronically.

(ii) The Post Box shall deliver all the Form ITR-V to the Centralized Processing Centre (CPC) of the Income-tax Department in Bangalore.

(iii) Upon receipt of the Form ITR-V, the CPC shall send an e-mail acknowledging the receipt of Form ITR-V.

(iv) The e-mail shall be sent in due course to the e-mail address furnished by the taxpayers in his return.

(v) No Form ITR-V shall be received in any other office of the Income-tax Department or in any other manner.

11. All returns filed electronically shall be processed, on priority basis, only at the Centralized Processing Centre of the Income-tax Department in Bangalore.

12. Credit for TCS or TDS for electronic returns: Since no documents are required to be furnished along with the return of income, the credit for Tax Deducted at Source (TDS), Tax Collected at Source (TCS), advance tax and self-assessment tax (hereinafter collectively referred to as 'pre-paid taxes') shall be allowed *on the basis of information relating to pre-paid taxes furnished* in the relevant schedules of the return forms subject to matching with the information provided by the deductor, collector and the banks.

(i) Therefore, taxpayers are advised to ensure that the information relating to pre-paid taxes is complete in all respect and correct.

(ii) With a view to enabling the *matching of information* relating to pre-paid taxes furnished by the taxpayers, the Income-tax Department has created a system of Unique Transaction Number (UTN) and Challan Identification Number (CIN). Assessees must ensure that the deductor and the collector have provided them with separate UTNs in respect of *each* TDS and TCS transaction.

(iii) Similarly, they must also ensure that the UTN for every TDS and TCS claim in the return is correctly filled in.

(iv) Similarly, they must ensure that they correctly fill in the CIN in respect of payments of advance tax and self-assessment tax.

Further, no disallowance of claim for pre-paid taxes shall be made by the Assessing Officer only on the ground that the TDS/TCS certificates and challans have not been furnished along with the return of income or Form ITR-V.

13. The return of income in Form No. ITR-1 to Form No. ITR-8 for assessment year 2009-10 *have been notified which require, amongst other, the quoting of the relevant UTN for every TDS or TCS claim made by the assessee.* Therefore, the credit for any TDS or TCS claim will be allowed, amongst others, if the assessee quotes the relevant UTN for every TDS and TCS claim and the said UTN matches with the UTN in the database of the Income-tax Department.

With a view to enabling the processing of returns relating to financial year 2007-08 (assessment year 2008-09) and enabling the assessee to receive the UTN for TDS and TCS transactions in the financial year 2008-09 (relevant for assessment year 2009-10), the following procedure will be followed :—

(a) National Securities Depository Limited (NSDL) *shall assign* an UTN for every TDS and TCS transaction record in financial years 2007-08 and 2008-09 reported in the quarterly returns received by it.

(b) NSDL will create a facility *to e-mail the UTN file to the deductor* if the e-mail address of the deductor is available with them. In addition, they will also create a facility for the *deductor to download* the UTN file.

(c) Upon receipt of the UTN, *the deductor will inform the UTN to the deductee*.

i. In cases where the UTNs are available to the deductor before the issue of the TDS/TCS certificate to the deductee, the deductor will indicate the UTNs on the certificate.

ii. However, if the UTNs are not available to the deductor before the issue of TDS/TCS certificate, the deductor shall, subsequently, send a consolidated statement of all TDS/TCS transactions indicating the UTNs.

(d) NSDL will also create a facility to allow *independent viewing of the UTNs by the deductee*. As a result, even if the UTNs are not received by the deductee from the deductor, they can be directly obtained from the NSDL database and quoted while making claims of TDS and TCS in the return of income.

14. In the past, instances have come to the notice of the Board that in spite of specific directions contained in the Instructions for filling the return forms, the practice of accepting returns, along with annexures is still continuing. Taxpayers have in the past also complained that staff and officials in certain stations are refusing to accept returns which are not accompanied with annexures. These practices are against the expressed policy of the Government and are not in consonance with the legal provisions. Therefore, it is emphasized that Chief Commissioners of Income-tax must ensure strict compliance with the provisions of law. It may be reiterated that all annexures accompanying the Income-tax return forms should be detached and returned to the taxpayers by the receiving official.

15. The contents of this circular are for strict compliance by all officers and staff of the Income-tax Department. Any violation by the officers and staff of Income-tax Department will be seriously viewed.

2. Circular No 5/2008 Dt 14/07/2008: E- payment of Tax:

A company and every other person covered by Sec 44AB (i.e Individual, firm, HUF, AOP, BOI, AJP if covered by 44AB) are compulsorily required to pay Income tax electronically . Electronically shall mean, payment of tax(Including advance tax & TDS) by way of

a. internet banking facility of the authority bank. The assessee can make the payment through the account of any other person however the challan for making the payment must clearly indicate the PAN number of the assessee on whose behalf the payment is made. or

b. credit or debit cards; or

3. Section 194J of the Income-tax Act, 1961 - Deduction of tax at source - Fees for professional or technical services - Applicability of provisions under section 194J, in the case of transactions by the Third Party Administrators (TPAs) with hospitals etc.CIRCULAR NO. 8/2009 [F.NO. 385/08/2009-IT(B)], DATED 24-11-2009

1. A number of representations have been received from various stakeholders regarding applicability of provisions under section 194J of Income-tax Act, 1961 on payments made by Third Party Administrators (TPAs) to hospitals on behalf of insurance companies for settling medical/insurance claims etc. with the hospitals. The services rendered by hospitals to various patients are primarily medical services and, therefore, provisions of section 194J are applicable on payments made by TPAs to hospitals etc.
2. Further for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including Cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.
3. In view of above, all such past transactions between TPAs and hospitals fall within provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee in default in respect of such tax and also liable for charging of interest under section 201(1A) and penalty under section 271C.

Important Notifications

1. SECTION 10(15)(*iv*) OF THE INCOME-TAX ACT, 1961 - EXEMPTION OF - INTEREST PAYABLE BY PUBLIC SECTOR COMPANY ON SPECIFIED BONDS/DEBENTURES - NOTIFICATION NO. 9/2009 [S.O. 99(E)], DATED 7-1-2009

The Central Government hereby specifies the issue

- of tax free bonds by India Infrastructure Finance Company Limited,
- carrying an interest rate of upto maximum 8 % pa,
- aggregating to an amount of 10,000 crore rupees only,
- to be issued by India Infrastructure Finance Company Limited, New Delhi during the financial year 2008-09,
  …..for the purpose of the said section :

Provided that the benefit under the said section shall be admissible only if the holder of such bonds registers his or her name and the holding with the said Corporation.

2. Income-tax (Third Amendment) Rules, 2009 - Amendment in New Appendix 1 - NOTIFICATION NO. 10/2009, DATED 19-1-2009

New commercial vehicle which is acquired on or after the 1st day of January, 2009 but before the 1st day of April, 2009 and is put to use before the 1st day of April, 2009 for the purposes of business or profession depreciation rate = 50%

3. Section 10(22B) of the Income-tax Act, 1961 - Exemptions - News agency - Notified news agency - Notification No. 23, dated 5-3-2009

The Central Government hereby specifies the **The Press Trust of India Limited, New Delhi** as a news agency set up in India solely for collection and distribution of news, for the purposes of the said clause for the assessment year **2009-2010 to 2011-2012.**

4. NOTIFICATION NO. 44/2009, DATED 20-5-2009

In exercise of the powers conferred by clause (22B) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the **United News of India, New Delhi** as a news agency set up in India solely for collection and distribution of news for the purposes of the said clause for the assessment years **2009-2010 to 2011-2012.**

5. COST INFLATION INDEX FOR F.Y. 2009-10 - NOTIFICATION NO. 67 /2009, DATED 9-9-2009 – is 632

6. AMENDMENT IN ELECTRONIC FURNISHING OF RETURN OF INCOME SCHEME, 2007- NOTIFICATION NO. 70/2009, DATED 22-9-2009

Qualifications of an e-Return Intermediary.

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

- (a) it must be a *public sector company* as defined u/s 2(36A) or *a company in which public is substantially interested* as defined u/s Sec 2(18) of the Income Tax Act and any *subsidiary* of those companies; or
- (b) A *company incorporated in India,* including a bank, having a net worth of rupees one crore or more; or
- (c) a firm of Chartered Accountants or Company Secretaries or Advocates, if it has been allotted a permanent account number; or
- (d) a *Chartered Accountants* or *Company Secretaries* or *Advocates* or *Tax Return Preparers*, if he has been allotted a permanent account number; or
- (e) a *Drawing or Disbursing Officer* (DDO) of a Government Department.

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

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

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

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

7. SECTION 80C(2)(xv) OF THE INCOME-TAX ACT, 1961 - DEDUCTION IN RESPECT OF SUBSCRIPTION TO NATIONAL HOUSING BANK TERM DEPOSIT SCHEME - NOTIFIED SCHEME- NOTIFICATION NO. 3/2009 [S.O. 21(E)], DATED 5-1-2009

The Central Government hereby specifies the National Housing Bank (Tax Saving) Term Deposit Scheme, 2008 for the purposes of the said clause.

8. NOTIFICATION NO. 2/2009, DATED 5-1-2009 – amendment to Rule 5D & 5E

The scientific research association shall, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax or Director of Income-tax containing -

(*i*) a detailed note on the research work undertaken by it during the previous year;
(*ii*) a summary of research articles published in national or international journals during the year;
(*iii*) any patent or other similar rights applied for or registered during the year;
(*iv*) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such programme";

The university, college or other institution shall, by the due date of furnishing the return of income under sub-section (1) of section 139, furnish a statement to the Commissioner of Income-tax or Director of Income-tax containing -

(i) a detailed note on the research work undertaken by it during the previous year;
(ii) a summary of research articles published in national or international journals during
(iii) the year;
(iv) any patent or other similar rights applied for or registered during the year;
(v) programme of research projects to be undertaken during the forthcoming year and the financial allocation for such programme";ed3

9. NOTIFICATION NO. 13/2009, DATED 22-1-2009 –

It is hereby notified for general information that the organization **The Institute of Chartered Accountants of India, New Delhi**, has been approved by the Central Government for the purpose of clause (*iii*) of sub-section (1) of section 35 of the Income-tax Act, 1961 (said Act), read with rules 5C and 5E of the Income-tax Rules, 1962 (said Rules) **with effect from 1-4-2006** in the category of **'other Institution'** partly engaged in research activities subject to the following