AMENDMENTS BROUGHTS IN THE FINANCE (No. 2) Act, 2009
Amendments made in Income-tax Act

RATES OF INCOME-TAX FOR ASSESSMENT YEAR 2010-11

1. Rates of Income Tax

(A) In the case of every Individual or Hindu undivided family or AOP/BOI (other than a co-operative society) whether Incorporated or not, or every artificial Judicial person

I. The basic exemption limit for above persons other than those specified in items II and III below has been increased from Rs. 1,50,000 to Rs. 1,60,000. In such cases, the rates of income tax on total income shall be as follows:

Upto Rs. 1,60,000	Nil
Rs. 1,60,001 to Rs. 3,00,000	10%
Rs. 3,00,0 01 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

II. In the case of every individual, being a woman resident in India, and below the age of sixty-five years at any time during the previous year, the exemption limit has been raised from Rs. 1,80,000 to Rs. 1,90,000. The rates of income tax on total income in such cases shall be ac follows :

Upto Rs. 1,90,000	Nil
Rs. 1, 90,001 to Rs. 3,00,000	10%
Ks. 3,00.001 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

III. In the case of every individual, being a resident in India, who is of the age of 65 years or more at any time during the previous year, the exemption limit has been raised from Rs. 2,25,000 to Rs. 2,40,000. The rates of income tax on total income in such cases shall be as follows:

Upto Rs. 2,40,000	Nil
Rs. 2,40,0 01 to Rs. 3,00,000	10%
Rs. 3,00,001 to Rs. 5,00,000	20%
Above Rs. 5,00,000	30%

Note : No surcharge Is payable as It hns been abolished for above persons. 'Education Cess' @ 2%, and 'Secondary and Higher Education Cess (SHEC)' @ 1% on Income tax shall be chargeable.

(B) In the case of every co-operative society

(1) where the total income does not exceed Rs.10,000	10% of the total income;
(2) where the total Income exceeds Rs. 10,000 but does not exceed Rs. 20,000	Rs.1,000 plus 20% of the amount by which the total income exceeds Rs. 10,000
(3) where the total income exceeds Rs. 20,000	Rs. 3000 plus 30% of the amount by which the total income exceeds Rs.20,000.

No surcharge shall be levied in the case of a co-operative society,

'Education Cess' @ 2% and S11EC @ 1% on income tax shall be chargeable.

(C) In case of any firm (including limited liability partnership) — 30%.

No surcharge shall be levied in the case of a firm.

'Education Cess' @ 2% and SIIEC @ 1% on income tax shall be chargeable. (D) In the case of a company

(i) For domestic companies: 30%, surcharge @ 10% on tax payable shall be levied where total income of the company exceeds one crore rupees.

(ii) For foreign company: 40%, surcharge @ 2.50% on tax payable shall be levied where total income of the foreign company exceeds one crore rupees.

'Education Cess' @ 2%, and 'Secondary and Higher Education Cess' @ 1% on income tax (inclusive of surcharge if applicable) shall be chargeable.

Marginal relief only in case of a company asscssce

Marginal relief: Marginal relief shall be available and the total amount payable as income-tax and surcharge on total income exceeding Rs. 1 crore shall not exceed the total amount payable as income-tax on a total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

Example

Total Income (Rs.)	Tax on total income excluding surcharge	Surcharge due to marginal relief	Tax including surcharge but excluding EC and SHEC	Tax including surcharge, EC and SHEC
1,01,00,000	30,30,000	70,000	31,00,000	31,93,000
1,03,00,000	30,90,000	2,10,000	33,00,000	33,99,000
1,04,00,000	31,20,000	2,80,000	34,00,000	35,02,000
1,04,46,000	31,33,800	3,12,200	34,46,000	35,49,380
1,04,47,000	31,34,100	3,12,900	34,47,000	35,50,410
1,04,48,000	31,34,400	3,13,440 (No marginal relief)	34,47,840	35,51,280

Working Notes: Although surcharge is 10% of tax, but marginal relief will be calculated as Tax on income exceeding Rs. 1 crore plus surcharge cannot exceed the income which is in excess of Rs. 1 crore.

		Rs.
1.	Income exceeding Rs. 1 crore	1,00,000
	Tax on Rs. 1,00,000	30,000
	Balance income	70,000

Hence surcharge shall be 10% of Tax i.e. 3,03,000 or Rs. 70,000 whichever is less

2.	Income exceeding Rs. 1 crore	3,00.000
	Tax on Rs. 3,00,000	90,000
	Balance income	2,10,000

Hence surcharge shall be 10% of Tax i.e. 3,09,000 or Rs. 2,10,000 whichever is less

3.	Income exceeding Rs. 1 crore	4,00.000
	Tax on Rs. 4,00,000	1.20,000
	Balance income	2,80,000

Hence surcharge shall be 10% of Tax i.e. 3,12,000 or Rs. 2,80.000 whichever is less

4.	Income exceeding Rs. I crorc	4,46.000
	Tax on Rs. 4,46,000	1,33,800
	Balance income	3,12,200

Hence surcharge shall be 10% of Tax i.e. 3,13,380 or Rs. 3,12,200 whichever is less

5.	Income exceeding Rs. 1 crore	4,47.000
	Tax on Rs. 4,47,000	3,12,900
	Balance income	1,34,100

Hence surcharge shall be 10% of Tax i.e. 3,13,410 or Rs. 3,12,900 whichever is less

6.	Income exceeding Rs. 1 crore	4,48,000
	Tax on Rs. 4,48,000	1,34,400
	Balance income	3.13.600

Hence surcharge shall be 10% of Tax i.e. 3,13,440 or Rs. 3,13,600 whichever is less i.e. Rs. 3,13,440.

No marginal relief is available in case of education cess and SHEC.

Amendments relating to Definitions

2. Preservation of environment (including watersheds, forests and wildlife) and "preservation of monuments or places or objects of artistic or historic interest" included within the ambit of provisions relating to 'charitable purpose' by separating these from advancement of general public utility in the Income Tax Act [Section 2(15)] [W.r.e.f. assessment year 2009-10]

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.

Section 2(15) has been amended 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 of commercial activities being taxed which are applicable to the "advancement of any other object of general public utility".

3. Meaning of Electoral Trust given by inserting section 2(22AAA) (W.e.f. A.Y. 2010-11)

See para 4 below.

4. Contribution to Electoral Trust also eligible for 100% deduction under section 80GGH and 80GGC besides contribution to political parties [Section 2(22AAA), 2(24)(iia), 13B, 80GGB and 80GGC] [W.e.f. assessment year 2010-11]

Section 80GGB and section 80GGC of the Income-tax Act, 1961 provide for deduction in respect of contributions given to political parties by companies and any person respectively.

Under section 293A of the Companies Act, 1956 no company, which has been in existence for less than three financial years, shall contribute any amount or amounts, directly or indirectly: (i) to any political party; or (ii) for any political purpose to any person, provided that the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed 5% of its average net profits determined In accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years. Further, a resolution authorising the making of such contribution has to be passed at a meeting of the Board of directors (not by circular resolution).

With a view to reforming the system of funding of political parties, the Finance Act has amended section 80GGB and section 80GGC of the Income-tax Act, 1961 to provide that donations to electoral trusts shall also be eligible for 100% deduction in the computation of the total income of the donor.

Consequential changes

(i) Section 2(24)(iia) of the Income-tax Act relating to voluntary contribution has been amended to provide that donations to such electoral trusts shall be treated as income of the trusts.

(ii) A new section 13B has been inserted to provide exemption to such Electoral Trust if the following conditions are satisfied:

  (a) The electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951, during 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 in this regard by the Central Government.

(iii) Meaning of electoral trust: "electoral trust" has been defined in the newly inserted clause (22AAA) of section 2 which means a trust so approved by the Board in accordance with the icheme made in this regard by the Central Government.

5. Taxation of Limited Liability Partnership (LLP) on the same lines us the taxation scheme currently prevalent for general partnerships, I.e. taxation In the hands of the entity and exemption from tax In the hands of Its partners (Sections 2(23), 140,167C and 40(A)| [W.e.f. A.Y. 2010-11]

The Limited Liability Partnership Act, 2008 has como Into effect In 2009, LLP Rules (except tome rules dealing with conversion) and forms have been notified w.o.f. 1-4-2009.

The Finance (No. 2) Act, 2009 has made the following changes/amendments w.e.f. A.Y. 2010-11 to make taxation provisions applicable to such limited liability partnership:

(a) Substitution of section 2(23): Section 2(23) has been substituted by the new clause to provide that :

  (i) "firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;

  (ii) "partner" shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include,—

    (a) any person who, being a minor, has been admitted to the benefits of partnership; and

    (b) a partner of a limited liability partnership as defined in the Limited Liability Partnership Act, 2008;

  (iii) "partnership" shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008.

Thus, a "limited liability partnership" and a general partnership will be accorded the same tax treatment.

(b) Amendment in section 140 relating to signing of income-tax return: The LLP Act provides for nomination of "designated partners" who have been given greater responsibility. The Act has amended section 140 to provide that the designated partner shall sign the income tax return of an LLP, 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, any partner shall sign the return.

(c) Insertion of section 167C: Like section 179 which is applicable for a private limited company, section 167C has been inserted to provide that 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.

As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) In the Act, the conversion from a general partnership firm to an LLP will have no tax Implications If the rights and obligations of the partners remain the same after conversion and If there Is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply.

(d) Remuneration to partners in a firm including limited liability partnership: 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% of the book-profit, whichever is more;
(b) On the next Rs. 1,00,000 of the book-profit	At the rate of 60%;
(c) On the balance of the book-profit	At the rate of 40%;

(2) In the case of any other firm —	
(a) On the first Rs. 75,000 of the book-protit, or in case ol a loss	Rs. 50,000 or at the rate of 90% of the book-profit, whichever is more;
(b) On the next Rs. 75,000 of the book-profit	At the rate of 60%;
(c) On the balance of the book-profit	At the rate of 40%;

The Act has made upward revision of the existing limits of the remuneration. Further, uniform limits have been prescribed for both professional and non-professional firms for simplicity and administrative ease. The revised limits are 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% of the book-profit, whichever Is more;
(b) On the balance of the book-profit	At the rate of 60%.

6. Definition of the term "manufacture" [Section 2(29BA)] [W.e.f. A.Y. 2009-2010]

A number of tax concessions under the Income-tax Act are provided for encouraging manufacture of articles or things. However, the term "manufacture" has not been defined in the statute. Therefore, it has been the subject matter of dispute and resultant judicial review in a number of cases. In order to remove any kind of ambiguity which may still persist in this regard, the Act has inserted a new clause (29DA) in section 2 so as to provide that—

'manufacture', with all its grammatical variations, shall mean a change in a nonliving physical object or article or thing:

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

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

7. Zero Coupon Bonds can also be issued by a Schedule Bank [Section 2(48), 36(1)(iiia) and 194A(3)(x)[[W.r.e.f. A.Y. 2009-10]

The following changes have been made in this regard:

(a) Amendment of section 2(48): Under the existing provision of section 2(48), only infrastructure capital company or infrastructure capital fund or public sector company are empowered to issue zero coupon bonds when they are authorized to do so.

With a view to empower the scheduled banks including nationalized banks to issue zero coupon bonds to source their long term funds, the Act has amended section 2(48) so as to include the scheduled banks as an eligible person to issue zero coupon bonds.

(b) Amendment in section 36(1)(iiia): Consequential amendment has been made in Explanation to section 36(1)(iiia) to provide that scheduled bank shall also be eligible to write off the discount on issue of zero coupon like other entities.

(c) Amendment in section 194A(3)(x): Section 194A(3)(x) has been amended to provide that no TDS shall be deductible while paying income of Zero Coupon Bond.

Changes relating to incomes which do not form part of total income [Section 10]

8. Double benefit under section 10(1OC) and section 89 not allowed (Section 10(10C) and section 89) [W.e.f. A.Y. 2010-11]

Very often, a person receives arrears or advance of salary due to him. Since arrears and advance salary is liable to tax, the total income (including such arrears and advance) is assessed at a rate higher than that at which it would otherwise have been assessed if the total income did not include arrears and advance of salary. In other words, arrears and advance salary result in bracket creeping and higher tax burden. With the view to mitigating this excess burden, the provisions of section 89 of the Income-tax Act provide for backward spread of the arrears and forward spread of the advance.

Under the voluntary retirement scheme, the retiree employee receives lump-sum amount in respect of his balance period of service. Such amount is in the nature of advance salary. Section 10(10C) provides for an exemption of Rs. 5 lakhs in respect of such amount. This exemption is provided to mitigate the hardship on account of bracket creeping as a result of the receipt of the amount in lump sum upon voluntary retirement. However, some taxpayers have claimed both the benefit under section 10(10C) and section 89. The courts have also upheld their claims. To nullify the judgement of Courts, the following changes have been made in this regard:

(a) Insertion of proviso to section 89: With the view to preventing the claim of double benefit, the Act has inserted a proviso to section 89 to provide that no relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in case of a public sector company referred to in section 10(10C)(i), a scheme of voluntary separation, if an exemption in respect of such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under section 10(10C) in respect of such, or any other, assessment year.

(b) Insertion of third proviso to section 10(10C): Correspondingly, the Act has inserted a third proviso to section 10(10C) to provide that where any relief has been allowed to any assessee under section 89 for any assessment year in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to such, or any other, assessment year.

9. Extension of time limit to 30th September for filing application for approval under section 10(23C) for fund or trust or institution or any university or other educational institution or any hospital or other medical institution [Section 10(23C)] [For the financial year 2008-09 and subsequent years]

Section 10(23C) stipulates that income of institutions specified under its various sub-clauses (fund or trust or institution or any university or other educational institution or any hospital or other medical institution) shail be exempt from income tax. For trusts or institutions covered under section IO(23C)(iv), (v), (vi) and (via), 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 the Act has extended the time limit for filing such application to the 30th day of September in the succeeding financial year. This relaxation has been provided 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 2008-2009, it can file the application for exemption up till 30th September 2009.

10. Amendment to section 10(23D) of the Income Tax Act, 1961- Incorporating "Other Public Sector Banks" under the expression "Public Sector Bank" (Section IO(23D)[W.e.f.A.Y.2010-11]

Income of a mutual fund set up by a Public Sector Bank is exempt under section 10(23D). 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% 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), the Act has amended the relevant provisions of the Income-tax Act, 1961 to do so. Hence, income of a mutual fund set up by other public sector banks shall also be exempt.

11. Tax benefits for New Pension System - extended also to "self-employed", and tax treatment of savings under this system as "exempt-exempt-taxed" (Section 10(44), 115-0,197A and 80CCD] (W.r.e.f. A.Y. 2009-10)

The New Pension System (NPS) has become operational since 1-1-2004 and is mandatory for all new recruits to the Central Government service from 1-1-2004. 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 27-2-2008 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, the Act has made the NPS Trust a complete pass-through in so far as taxation is concerned. Therefore, the following changes amendments have been made in this regard,—

1. Benefit allowable to NPS Trust:

The following changes/amendments have been made to provide benefit to NPS Trust :

(a) Insertion of section 10(44): Section 10(44) has been inserted in 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 27-2-2008 under the provisions of the Indian Trust Act of 1882 shall be exempt from income tax.

(b) Amendments of section 115-O: The Act has inserted sub-clause (ii) to section 115-0(1 A) to provide that any dividend paid to the NPS Trust shall be exempt from Dividend Distribution Tax.

(c) STT not chargeable to NPS Trust: The Act has amended Chapter VII of Finance (No. 2) Act, 2004 to provide that all purchases and sales of equity and derivatives by the NPS Trust will be exempt from the Securities Transaction Tax.

(d) Amendment of section 197A: The Act has inserted sub-section (IE) to section 197A to provide that the NFS Trust shall receive all income without any tax deducted at source.

2. Amendment in section 80CCD: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, the Act has also amended sub-section (1) of section 80CCD so as to extend the tax benefit thereunder also to "self-employed" individuals.

Further, in the case of an employee of Central Government or of any other employer, the deduction of employees' contribution shall be limited to 10% of his salary. Whereas in the case self-employed persons, it shall be limited to 10% of his Gross Total Income in the previous year.

The Act has also inserted sub-section (5) to section 80CCD 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.

12. Extension of sunset clause for units in free trade zone under section 10A and for export oriented undertakings under section 10B by one year i.e., the deduction will be available up to assessment year 2011-12 [Section 10Aand 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. The Act has amended 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 or for a period of 10 years whichever expires earlier.

13. Clarification regarding computation of exempted profits in the case of units in Special Economic Zones (SEZs) — Computed with reference to the total turnover of the "undertaking" instead of "the business carried on by the assessee" [Section 10AA][W.e.f. A.Y. 2010-11)

Under section 10AA(7) 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 exempted profit of the SEZ unit is equal to

$$\text{Profits of the business of the unit} \times \frac{\text{Export turnover of the unit}}{\text{Total turnover of the business carried on by the assessee}}$$

(Now changed to total turnover of the undertaking)

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 remove the anomaly, the Act has amended the provisions of section 10AA(7) 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.

14. Special provisions relating to voluntary contributions received by electoral trust [Section 13B] [W.e.f. A.Y. 2010-11]

See para 4 above.

Changes under the head "Salaries"

15. Fringe Benefit Tax abolished and the fringe benefits to be taxed as perquisites in the hands of the employees [Section 17(2)] [W.e.f. A.Y. 2010-11]

The Finance Act, 2005 introduced a new levy, namely, Fringe Benefit lax (FBT) on the value of certain fringe benefits. The provisions relating to levy of this tax are contained in Chapter XH-H (sections 115W to 115WL) of the Income Tax Act, 1961. The Act has abolished FBT w.e.f. assessment year 2010-11. For the purpose, the following changes have been made in this regard.

(a) New section 115WM inserted: The Act has inserted a new section 115WM to abolish the fringe benefit tax.

(b) Restoration of taxation of the fringe benefit as perquisites in the hands of the employee: The Act has made the following changes:

(i) Amendinent of section 17(2) relating to meaning of perquisites: Sub-clause (vi) to section 17(2) has been substituted so as to provide that perquisite shall include 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.

For this purpose, 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.

The "fair market value" will mean the value determined in accordance with the method as may be prescribed by the Board.

(ii) Sub-clause (vii) to section 17(2) has been inserted to provide that perquisite shall also include the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds Rs. 1,00,000.

(iii) Sub-clause (viii) to section 17(2) has been inserted to provide that perquisite shall also include the value of any other fringe benefit or amenity as may be prescribed.

(c) Substitution of section 49(2AA) by New sub-section (2AA) to determine cost of acquisition of ESOP for computing capital gain: The Act has subtitled subsection (2AA) of section 49 by a new sub-section (2AA) to provide that where the capital gain arises from the transfer of specified security or sweat equity shares referred to in section 17(2)(vi), 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. Explanation.—For the purposes of this sub-clause,—

(a) "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 therefore, includes the securities offered under such plan or scheme;

(b) "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;

(c) 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;

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

(e) "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.

Changes under the head "Profits and gains of business or profession"

16. Clause (vii) to section 28 inserted [W.e.f. A.Y. 2010-11]

See para 19 below.

17. Aligning the definition of "block of asset" [Explanation 3 to section 32(1)] [W.e.f. A.Y. 2010-11]

The term "block of assets" has been defined in section 2(11) and in Explanation 3 to section 32(1) of the Income-tax Act. However, these definitions are not identical and therefore they are subject to misuse. Accordingly, Explanation of section 32(1) has been amended so as to delete the definition of "block of assets" provided therein. Consequently, "block of assets" will derive its meaning only from section 2(11) and Explanation 3 shall contain the meaning of assets which shall be applicable for electricity undertakings only.

18. Weighted deduction for in-house research and development 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 (Section 35(2AB)) [W.e.f. A.Y. 2010-11]

Under the existing provisions of the Income-tax Act, under section 35(2AB), a weighted deduction of 150%, 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, the Act has extended the benefit of weighted deduction to companies engaged in the business of manufacture or production of any article or thing except those specified in the Eleventh Schedule of the Income-tax Act.

19. Investment-linked tax incentive for specified business - cold chain facilities, warehousing facilities for storage of agricultural produce, and cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities [Section 35AD, 28(vii) and 73A] [W.e.f. A.Y. 2010-11]

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, the Act has provided investment-linked tax incentive by inserting new sections viz. section 35AD, section 28(vii) and section 73A 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 cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

I. Salient features of section 35AD: The salient features of the new regime of investment-linked tax incentives under section 35AD are the following:

(i) 100%, 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.

However, the expenditure incurred, wholly and exclusively, for the purpose 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 capitalized in the books of account of the asscsscc on the date of commencement of its operations.

(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 1-4-2007 and

(b) In any other case, if such business commences its operation on or after 1-4-2009.

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

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

(b) it is not set up by the trimester to the specified business of machinery or plant previously used fur any purpose. However, 20% value of the total plant and machinery can be second hand.

(c) Where the assessee is carrying on business of the nature referred to clause (iii)(a) above, then 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;

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

(d) fulfils any other condition as may be prescribed.

Further the assessee carrying on such business shall be allowed, in addition to deduction 100% of capital expenditure incurred during the year, a further deduction in the previous year relevant to the assessment year beginning on 1-4-2010, of an amount in respect of expenditure of capital nature incurred during any earlier previous year, if—

(a) such business has commenced its operation at any time during the period beginning on or after 1-4-2007 and ending on 31-3-2009; and

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

Associated person in relation to the assessee, means a persons—

(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 26% 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 than110% of the total borrowings of the assessee.

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

(vi) 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.

(vii) The provision contained In newly inserted section 80A(6) relating to Inter unit/business transfer and the provisions of section 80-lA(7) relating to audit and sub-section (10) relating to transaction with the other assessee, who is closely connected with assessee shall also be applicable for this section.

2. Insertion of clause (vii) to section 28: 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 ns income of the assessee and chargeable to income tax under the head "Profits and gains of business or profession".

3. Insertion of section 73(1) for set of off loss of the specified business: Any loss computed in respect of the specified business sluiJI not he set off except against profits and gains, if any, of any other specified business. To the extent the loss is unabsorbcd 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.

4. Clause (vi) to section 80-IA(4) deleted: Profit-linked deduction provided under section 80-IA to the business of laying and operating a cross-country natural gas distribution network specified in clause (vi) to section 80-IA(4) will be discontinued.

5. Section 50B relating to slump sale amended: While computing the net worth in case of slump sale for the purpose of computing capital gain, 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, its cost shall be taken as Nil.

6. Explanation 13 inserted to section 43: As per Explanation 13, the actual cost of any capital asset on which deduction has been allowed or is allowable to the asscssee under section 35AD, shall be treated as 'nil',—

(a) in the case of such assessee; and

(b) in any other case if the capital asset is acquired or received,—

  (i) by way of gift or will or an irrevocable trust;

  (ii) on any distribution on liquidation of the company; and

  (iii) by such mode of transfer as is referred to in clauses (i), (iv), (v), (vi), (vib), (xiii) and (xiv) of section 47.

20. Special deduction under section 36(1)(viii) allowed to National Housing Bank of an amount not exceeding 20% of the profits subject to creation of a reserve [Section 36(1)(viii)[W.e.f. A.Y. 2010-11]

Section 36(1)(viii) provides special deduction to financial corporations and banking companies of an amount not exceeding 20% 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 entitled 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 amendment has been made in clause (b) of Explanation to section 36(1)(viii) 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).

21. Commodities Transaction Tax not operationalised (Section 36(1)(xvi)) [W.r.e.f. A.Y. 2009-10]

The provisions for levy of Commodities Transaction Tax were introduced by Chapter VII of Finance Act, 2008. However, the levy has not yet been operationalised. In view of the recommendations of the Prime Minister's Economic Advisory Council, a new section 121A in Chapter VII of Finance Act, 2008 has been inserted to provide that the Chapter relating to levy of Commodities Transaction Tax shall not apply on or after 1-4-2009.

The Act has made it consequential amendment in clause (xvi) in sub-section (1) of section 36 of the Income-tax Act by omitting the said clause, where CTT was allowable as deduction.

22. Remuneration to partners in a firm including limited liability partnership [Section 40(b)] [W.e.f. A.V. 2010-11]

See para 5 above.

23. Enhancement of limit for disallowance of expenditure made otherwise than by an account payee cheque or account payee bank draft for plying, hiring or leasing goods carriages in the case of transporters to Rs. 35,000 from the existing limit of Rs 20,000 (Section 40A(3) and (3A)| (applicable to transactions effected on or after 1-10-2009)

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 for plying, hiring or leasing goods carriages, the Act has inserted proviso 2 to section 40A(3) and (3A) in order 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.

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.

24. How to compute written down value where 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" [Explanation 1 to Section 43(6)] [W.e.f. A.Y. 2010-11]

Section 32(1)(iii) 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 C1T vs. Doom Doonia India Ltd 222 CTR 105 (SC) 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% of such income shall be deemed to be income liable to tax. As a result of the Court decision, the resultant computation of depreciation is as per the following illustration :

	Rs.
Sale proceeds of tea	2,000
Less: Expenses:	
Depreciation - (10% of Rs. 2,000)	(200)
Others expenses	(600)
Composite income	1,200
Income subject to charge under the Income-tax Act, 1961 by application of rule 8 (40% of 1,200)	480
Income not chargeable to income-tax (60% of 1,200)	720

According to the interpretation of the Court, the W.D.V. of the fixed asset for the immediately succeeding year is to be taken at Rs. 1,920 (Rs. 2,000 minus Rs. 80 being depreciation allocated for business income) and not Rs. 1,800 (Rs. 2,000 minus depreciation of Rs.200 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 W.D.V. 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.

Therefore Explanation 7 has been inserted in section 43(6) to provide that 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.

25. Amendments In section 44AA relating to maintenance of account and in section 44AB relating to audit of accounts (Sections 44AA and 44AB) (W.e.f. A.Y. 2011-12]

See para 26 below.

26. Special provision for computing profits and gains of a business other than business covered under section 44AE (Section 44AD, 44AA(2), 44AB and 44AF) (W.e.f. A.Y. 2011-12)

The existing provisions of the Income tax Act provide for taxation of Income on presumptive basis In the case of construction business, Income from goods carriages and business of retail trade.

Section 44AD prescribes a method of presumptive taxation for asscssccs engaged In the business of civil construction or supply of labour for civil construction In which a sum equal to eight percent of the gross receipts Is deemed to be the profits and gains from business. Section 44AE provides presumptive provisions for the assessees engaged in the business or plying, hiring or leasing upto ten goods carriages in which a prescribed sum per vehicle is deemed to he the presumptive income of the assesscc. Section 44AF prescribes a method of presumptive taxation for retail trade, under which the presumptive income is computed at the rate of a sum equal to 5% of the total turnover.

There has been a substantial increase in small businesses with the growth of transport and communication and general growth of the economy. A large number of businesses and service providers in rural and urban areas who earn substantial income are outside the tax-net. Introduction of presumptive tax provisions in respect of small businesses would help a number of small businesses to comply with the taxation provisions without consuming their time and resources. A presumptive income scheme for small taxpayers lowers the compliance cost for such taxpayers and also reduces the administrative burden e tax machinery.

In view of the above, The Act has expanded the scope of presumptive taxation to all business by substituting a new section 44AD. The salient features of the presumptive on scheme are as under :

(a) The scheme shall be applicable to individuals, HUFs and partnership firms excluding Limited liability partnership firms. Thus, the scheme is not applicable to LLP, a company assessee or AOP/BOI, etc. It shall also not be applicable to an assessee who is availing deductions under sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "C.-deductions in respect of certain incomes" in the relevant assessment year.

(b) The scheme is applicable for any business (excluding a business already covered under Sec. 44AE) which has maximum gross turnover/gross receipts of 40 lakhs.

(c) a sum equal to 8% of the total turnover or gross receipts of the assessee in the ".previous year on account of such business or as the case may be, a sum higher than the aforesaid sum claimed to have been earned by the eligible assessee shall be deemed to be the profits and gains of such business.

(d) Any deduction allowable under the provisions of section 30 to 38 shall be deemed to have been already given effect to and no further deduction under these sections shall be allowed. However, where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted from the income "computed above subject to the conditions and limits specified in section 40(b).

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

(f) An assessee opting for the above scheme shall be exempted from payment of 'advance tax related to such business under the current provisions of the Income-tax Act.

(g) An assessee opting for the above scheme shall be exempted from maintenance of books of accounts related to such business as required under section 44 AA of '" the Income-tax Act.

(h) An assesses with turnover below Rs 40 lakhs, who shows an income below the presumptive rate prescribed under these provisions, will, in case his total income exceeds the taxable limit, be required to maintain books of accounts as per section 44AA(2) and also get them audited and furnish a report of each such audit as required under section 44AB.

(i) The existing section 44AF will be made inoperative for the assessment year beginning on or alter 1-4-2011.

Consequential changes due to insertion of section 44 AI)

1. Insertion of section 44AA(2) for maintenance of accounts: Where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year he shall keep and maintain such books of account and other documents as may enable to the Assessing Officer to compute his total income in accordance with the provisions of the Act.
2. Insertion of clause (d) to section 44AB for audit of accounts: Every person carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year get his accounts of such previous year audited before the specified date and furnish by that the report of such audit in prescribed form.

27. Presumptive income for truck owners [Section 44AE] [W.e.f. A.Y. 2011-12]

Under the existing provisions of section 44AE, a presumptive scheme is available to assessees engaged in business of plying, hiring or leasing goods carriages. The scheme applies to an assessee, who owns not more than 10 goods carriages at any time during the previous year.

Under this scheme, which is optional to the assessee, a fixed amount of income per vehicle is taken at the rate of Rs. 3,500 p.m. per vehicle for owners of heavy goods vehicle, and Rs. 3,150 p.m. per vehicle for the owners of light goods vehicles. An assessee opting for this scheme is exempted from maintaining books of account to substantiate the income.

The Act has enhanced the presumed income per vehicle for the owners of—

(i) Heavy goods vehicle to Rs. 5,000 p.m.; and

(ii) Other than heavy goods vehicles to Rs. 4,500 p.m.

The Act has further provided an anti-avoidance clause stating that a prescribed fixed sum or a sum higher than the aforesaid sum claimed to have been earned by the assessee shall be deemed to be profits and gains of such business.

28. Presumptive income scheme for retail business merged with section 44AD [Section 44AF] [W.e.f. A.Y. 2011-12]

See para 26 above.

CHANGES UNDER THE HEAD "CAPITAL GAINS"

29. Cost of acquisition of assets in case of slump sale of business specified under section 35AD [Section 50B] [W.e.f. A.Y. 2010-11]

See para 19 above.

30. Cost of acquisition of sweat equity shares and the property acquired in a manner given under section 56(2)(vii) (Section 49(2AA) W.e.f. A.Y. 2010-11 and newly inserted section 49(4)] [W.e.f. 1-10-2009]

See para 15 above for cost of acquisition of sweat equity shares.

See para 32 below for cost of acquisition of the property acquired in a manner given under section 56(2)(vii).

31. Provisions for deemed valuation of immovable properly in certain cases of Transfer [Section 50C] (w.e.f. A.Y. 2010-11)

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 provision* docs not include transactions, which uru 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, the Act has amended 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, new Explanation 2 has been inserted to section 50C(2) so as to clarify the meaning of the term 'assessable'.

'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'.

CHANGES UNDER THE HEAD "INCOME FROM OTHER SOURCES"

32. Taxation of property acquired without consideration or for an inadequate consideration us 'income from other sources' (Section 56(2)(vii)) [W.e.f. 1-10-2009]

Section 56(vi) provides that any 'sum of money' (in excess of the prescribed limit of Rs. 50,000) received without consideration by an individual or HUF will be chargeable to income tax in the hands of the recipient under the head 'income from other sources'.

However, receipts of money (a) from relatives or (b) on the occasion of marriage or (c) under a will or inheritance or (d) in contemplation of death of payee or donor are outside the scope of the provisions of section 56(2)(vi) of the Income-tax Act.

Similarly, anything which is received in kind having 'money's worth' i.e. property is also outside the purview of the existing provisions.

The Act has amended section 56 of the Income-tax Act by inserting a new clause (vii) to section 56(2) w.e.f. 1-10-2009 to provide that the value of any property received without consideration or for inadequate consideration will nlso be Included in the computation of total income of the recipient. Such properties will include: (i) immovable property being land or building or both, (ii) shares and securities, (iii) jewellery, (iv) archaeological (v) drawings. (vi) paintings, (vii) sculptures (viii) any work of art.

In a case where an immovable property is received without consideration and the stamp duty value of such property exceeds Rs. 50.000, the whole of the stamp duty value of such property shall be taxed as the income of the recipient. 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 Rs. 50,000 (inadequate consideration), the difference between the stamp duty value of such property and such consideration shall be taxed as the income of the recipient.

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

In a case, where movable property is received without consideration and the aggregate fair market value of such property exceeds Rs. 50,000, the whole of the aggregate fair market value of such property shall be taxed as the income of the recipient. If a movable property is received for a consideration which is less than the aggregate fair market value of the property and the difference between the two exceeds Rs. 50,000. The difference between the fair market value of such property and such consideration shall be taxed as the income of the recipient.

It has also been provided that :

(i) The value of moveable property shall be the fair market value as on the date of receipt in accordance with the method prescribed; and

(ii) In the case of immovable property, the value of the property shall be the 'stamp duty value' of the property.

(iii) 'Relative' shall have the meaning assigned to it in the Explanation to clause (vi of section 56(2).

Further, section 56(2)(vii) shall not apply to any sum of money or any property received-

(a) from any relative; or

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

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

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

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

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

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

Consequential amendments

1. Section 2(24) relating to definition of income amended: .The Act has inserted clause (xv) to section 2(24) to provide that any sum of money or value of property referred to in section 56(2)(vii) shall also form part of income.
2. Cost of disquisition of the property required in a manner given under section 56(2)(vii): I he Act has incited sub-section (4) to section 49 to provide that where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under section 56(2)(vii), 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).

33. Interest received on delayed compensation or enhanced compensation shall be deemed to be income of the year in which it is received [Section 56(2)(viii), section 57(iv) and section 145A] (W.e.f. A.Y. 2010-11]

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 vs. CIT (1990) 181 ITR 400 (SC) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to tax payers.

With a view to mitigating the hardship, the following changes have been made in this regard:

(1) Clause (b) to section 145A inserted: The Act has amended section 145A 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.

(2) Interest on compensation or on enhanced compensation to be taxed under other sources: Clause (viii) in sub-section (2) of section 56 has been inserted to provide that income by way of interest received on compensation or on enhanced compensation referred to in sub-clause (b) of section 145A shall be assessed as "income from other sources" in the year in which it is received.

(3) 50% deduction to be allowed from such interest: Clause (iv) has been inserted to section 57 to provide that in the case of income of the nature referred to in section 56(2)(vii), a deduction of a sum equal to 50% of such income shall be allowed and no deduction shall be allowed under any other clause of this section.

Changes in the provisions relating to carry forward and set off of losses

34. Carry forward and set off of losses of a specified business (Newly inserted section 73A] (W.e.f. A.Y. 2010-11)

See para 19 above

Changes in the provisions relating to deduction allowable under Chapter VIA from gross total income

35. Amendment in Chapter VIA to prevent abuse of tax incentives [(Section 80A(4), (5) and (6) inserted]

The profit linked deductions in Chapter VIA are prone to considerable misuse. Further, since the scope of the deductions under various provisions of Chapter VIA overlap, the taxpayers, at times, claim multiple deductions for the same profits.

With a view to preventing such misuse, the Act has amended the provisions of section 80A of the Income-tax Act and has made following changes:

(1) Sub-section (4) has been inserted in 80A to prevent double deduction'.

(i) Deduction in respect of profits and gains shall not be allowed under any provisions of section 10A or section 10AA or section 1013 or section 10BA or under any provisions of Chapter VIA under the heading "C.-Deductions in respect of certain incomes" in any assessment year, if a deduction in respect of same amount under any of the aforesaid has been allowed in the same assessment year; and

(ii) The aggregate of the deductions under the various provisions referred to in (i) above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be.

(2) Sub-section (5) has been inserted in section 80A so as not to allow deduction if not claimed by the assessee: Where the assessec 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.

These amendments will take effect retrospectively from 1-4-2003, and will accordingly apply in relation to assessment year 2003-04 and subsequent years.

(3) Inter unit/undertaking transfer should be at market value: The Act has inserted subsection (6) to section 80A to provide that the transfer price of goods and services between the undertaking or unit or enterprise or eligible business and any other undertaking or unit or enterprise or business of the assessee shall be determined at the market value of such goods or services as on the date of transfer.

Further, the expression "market value" has been defined to mean,—

(a) in relation to any goods or services sold or supplied, 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;

(b) in relation to any goods or services acquired, 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.

This amendment will take effect from 1-4-2009 and will accordingly apply to all cases where the proceeding are pending before any authority on or after such date.

(4) Assessee not eligible for deduction under section 80-IA if he is executing a works contracts: With a view to preventing the misuse of the tax holiday under section 80-IA of the Income-tax Act, the Act has again amended the Explanation to the said section to clarify that nothing contained in the said section shall apply in relation to a business referred to in sub-section (4) of the said section which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by an undertaking or enterprise referred to section 80-IA thereof.

This amendment will take effect retrospectively from 1-4-2000 and will, accordingly, apply in relation to assessment year 2000-2001 and subsequent years.

36. Deduction, in respect of contribution to pension scheme of Central Government [Section 80CCD] [W.r.e.f. A.Y. 2009-10]

See para 11 above.

37. Deduction (or medical treatment of a dependent suffering from severe disability enhanced [Selection 80DD] [W.e.f. A.Y. 2010-11]

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:

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

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

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. The Act has increased 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.

38. Deduction in respect of Interest on loan taken for higher education [Section 80E] [W.e.f.A.Y. 2010-11]

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 postgraduate course in applied sciences or pure sciences including mathematics and statistics.

With the objective of fostering human capital formation in the country, the Act has amended the meaning of higher education given under 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.

Meaning of "relative" enlarged: The Act has enlarged the definition of "relative" given in clause (e) of sub-section (3). As per the new definition "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.

39. Onetime relaxation to donations to certain Funds, Charitable Institutions, etc. covered under 'advancement of any other object of general public utility' for the previous year beginning on 1-4-2007 and ending on 31-3-2008 [Section 80G]

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'.

However, the proviso to sub-section (15) of section 2 provides that 'advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of (i) any activity in the nature of trade, commerce or business; or (ii) 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 a use or application or retention of the income from any such activity. Consequently 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 pin poses. 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, the Act in order to give a onetime relaxation has inserted clause (vii) 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 1-4-2007 and ending on 31-3-2008, 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 1-4-2008 and ending on 31-3-2009;

(b) approved under the said clause (vi) for the previous year beginning on 1-4-2008 and ending on 31-3-2009.

This amendment will take effect from 1-4-2009 and shall accordingly, apply in relation to assessment year 2009-10 only.

40. Section 80G approval granted and expiring on or after 1-10-2009 shall continue to be valid in perpetuity (Section 80G(5)(vi)] |W.e.f. 1-10-2009]

As per section 80G(5)(vi) of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rule, 1962. 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 fiilc 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, the Act has omitted 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 1-10-2009. Accordingly, existing approvals expiring on or after 1-10-2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1-10-2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

41. Contributions to an Electoral Trust also eligible for deduction under section 80GGB and 80GGC

See para 4 above.

42. Amendments in section 80-IA

(A) Extension of sunset clause for undertakings engaged in development of industrial park [Section 80-IA(3)] [W.e.f. A.Y. 2009-10]

Under the existing provisions, in case of an undertaking which develops, develops and operates or maintains and operates an industrial park, deduction under section 80-IA is available if it commences its business before 31-3-2009. The Finance (No. 2) Act, 2009 has extended the terminal date from 31-3-2009 to 31-3-2011.

(B) Extension of sunset clause for tax holiday under section 80-IA to extend the terminal date for commencing the activity of generation, transmission or distribution of power in case of an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant before 31-12-2005 [Section 80-IA(4)]

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

(i) Such company is formed before 30-11-2005 with majority equity participation by public sector companies for enforcing the security interest of the lenders to the company owning the power generating plant;

(ii) Such Indian company is notified by the Central Government before 31-12-2005; and

(iii) The undertaking begins to generate or transmit or distribute power before 31-3-2008.

The Act has amended sub-clause (b) of clause (v) of sub-section (4) of section 80-IA to extend the terminal date for commencing the activity of generation, transmission or distribution of power in case of such undertaking from 31-3-2008 to 31-3-2011.

This amendment will take effect retrospectively from 1-4-2008 and shall accordingly, apply in relation to assessment year 2008-09 and subsequent years.

Further, under section 80-IA, the provisions of clause (iv) of sub-section (4) provides for a deduction of profits and gains of an undertaking,—

(a) which is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1-4-1993 and ending on 31-3-2010;

(b) which starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1-4-1999 and ending on 31-3-2010;

(c) which undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1-4-2004 and ending on 31-3-2010.

The Act has amended clause (iv) of sub-section (4) of section 80-IA to extend the terminal date for a further period of one year upto 31-3-2011.

This amendment will take effect retrospectively from 1-4-2009 and shall accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

Further, section 80-IA(4)(vi) has been deleted, w.e.f. A.Y. 2010-11.

43. Deduction in respect of profits and gains from undertakings engaged in commercial production of mineral oil and natural gas - I he new terminal dale would be (he same for both the public and the private sector. All blocks licensed under a single contract shall he treated as a single "undertaking" [Section 80-IB(9)]

Sub-section (9) of section 80-IB of the Income Tax Act, 1961 I 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 undeitaking 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 1-4-2009 unless such undertaking fulfils all the following conditions as provided in the third proviso to this subsection, 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 percent of the voting rights;

(ii) It is notified by the Central Government in this behalf on or before 31-5-2008; and

(iii) It begins refining not later than 31-3-2012.

Under the existing provisions, it is incumbent on refineries in the private sector to commence refining of mineral oil on or before 31-3-2009. 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, the Act has amended the provisions of sub-section (9) so as to allow them a further period of three years i.e. upto 31-3-2012 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, the Act has inserted clause (iv) and clause (v) to section 80-1 B(9) of the Income Tax Act.

Clause (iv) has been inserted 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-VIM") under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10-2-1999 and begin commercial production of natural gas on or after the 1-4-2009.

Clause (v) has been inserted to provide that the deduction shall also be available to an assessee who is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after 1-4-2009.

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, the Act has amended 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 has been given retrospective effect from 1-4-2000 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.

44. Amendments in section 80-IB

(A) Rationalising the provisions of deduction under section SO-IB(IO) developing and building housing projects - Not to apply to any undertaking which executes the housing project as a works contract awarded by any other person (including Central or State Government) [Section 80-IB(10)]

Sub-section (10) of section 80-IB of the Income-tax Act, 1961 provides for 100% deduction of the profits derived by an undertaking from developing and building housing projects, This benefit is available subject to the following conditions:

(a) The project is approved by a local authority before 31-3-2007. (See amendment below).

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

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

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

(e) The project has to be completed within 4 years from the end of the financial year in which the project is approved by the local authority.

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.

With a view to clarify accordingly, the Act has inserted an Explanation after subsection (10) of section 80-IB so as to provide that nothing contained in this sub-section shall apply 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 1-4-2001 and shall accordingly, apply in relation to assessment year 2001-02 and subsequent assessment years.

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. However, this is being circumvented by the developer by entering into agreement to sell multiple adjacent units to a single buyer. Accordingly, the Act has inserted new clauses viz. clause (e) and (f) to section 80-IB(10) 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:—

(i) The individual or the spouse or minor children of such individual;

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

(iii) 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 1-4-2010 and shall accordingly, apply in relation to assessment year 2010-11 and subsequent years.

Further, as per the Finance (No. 2) Act, 2009 the deduction will be available if the project is approved by the local authority before 31-3-2008 instead of 31-3-2007.

(B) Deduction available under section 80-IB relating to undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables or integrated business of handling, storage and transportation of food grains also extended to certain other products [Section 80-IB(11A)] [W.e.f. A.Y. 2010-11]

Under the existing provisions of section 80-IB(11 A) deduction is available to an undertaking engaged in the business of processing, preservation and packaging of fruits or vegetables or integrated business of handling, storage and transportation of food grains. The Finance (No. 2) Act, 2009 has extended the benefits to an undertaking deriving profits from the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products.

The provisions of this section shall not apply to an undertaking engaged 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 1-4-2009.

44A. Quantum of deduction under section 80U increased in case of a person with severe disability [Section 80U] (W.e.f. A.Y. 2010-11)

Under the existing provisions of section 80U, deduction is allowed as under:

Rs. 50,000 in case of a person with disability.

Rs. 75,000 in case of a person with severe disability.

The Act has increased the deduction of Rs. 75,000 to Rs. 1,00,000 in case of a person with severe disability. However, the deduction of Rs. 50,000 in case of a person with disability remains unchanged.

CHANGES IN THE PROVISIONS RELATING TO REBATES AND RELIEF

45. No relief under section 89 where exemption has been claimed under section 10(10C) [Section 89] [W.e.f. A.Y. 2010-11]

See para 8 above.

Changes in the provisions relating to International Taxation

46. Empowering Central Government to enter into Tax Information Exchange agreement with specified non-sovereign territories (any specified territory outside India in addition to entering into agreement with foreign countries) [Section 90] [W.e.f. 1-10-2009]

Section 90 of the Income-tax Act empowers the Central Government to enter into Double Taxation Avoidance Agreement ('DTAA') with the Government of any othercountry outside India for granting double-taxation relief and facilitate exchange of information concerning avoidance or evasion of tax. The government now wishes to expand the scope of this cooperation by entering into a DTAA or TIEA (Tax Information Exchange Agreement) with non-sovereign jurisdictions.

In order to enable the government to enter into agreements with non-sovereign territories, the Act has made suitable amendments to section 90 of the Income Tax Act, 1961 and to the corresponding provisions under section 44A of the Wealth Tax Act so as to enable the government to notify such specified territories outside India.

47. Determination of arm's length price in cases of international transactions -CBDT to formulate safe harbour rules i.e. to provide the circumstances in which the Income-tax authorities shall accept the transfer price declared by the assessee -Resolving the controversy variation of 5% arm's length price - Effective from 1-10-2009 and shall accordingly apply in relation to all cases in which proceedings are pending before the Transfer Pricing Officer (TPO) on or after such date [Section 92C and newly inserted section 92CB]

Section 92C of the Income-tax Act provides for adjustment in the transfer price of an international transaction with an associated enterprise if the transfer price is not equal to the arm's length price. As a result, a large number of such transactions are being subjected to adjustment giving rise to considerable dispute. Therefore, the Act has empowered the Board **to formulate safe harbour rules** i.e. **to provide the circumstances in which the Income-tax authorities shall accept the transfer price declared by the assessee.** This amendment will take effect from 1-4-2009.

Further, the proviso to sub-section (2) of section 92C provides that **where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such** prices, **or, at the** option of **the assessee, a price which may vary from the arithmetical mean by an amount not exceeding 5% of such arithmetical mean.**

The above provision has been subject to conflicting interpretation by the assessee and the Income Tax Department. The assessee's view is that the arithmetical mean should be adjusted by 5% to arrive at the arm's length price. However, the department's contention is that if the variation between the transfer price and the arithmetical mean is more than 5% of the arithmetical mean, no allowance in the arithmetical mean is required to be made.

With a view to resolving this controversy, the Act has amended the proviso to section 92C w.e.f. 1-10-2009 to provide that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such price. However, if the arithmetical mean, so determined, is within 5% of the transfer price, then the transfer price shall be treated as the arm's length price and no adjustment is required to be made.

Changes in the provisions relating to "Taxation of Charitable Institutions"

48. Tax relief on anonymous donations for partly religious and partly charitable institutions, and wholly charitable institutions (Section 115BBC) [W.e.f. A.Y. 2010-11]

(A) Under the current provisions of section 115BBC, wholly religious entities are outside the purview of taxation of anonymous donations. Partly religious and partly charitable entitles have also been, exempted from the taxation of anonymous donations, except where the anonymous donation is made to an educational or medical institution run by such entity in which case such donations are taxed at the rate of 30%. In the case of wholly charitable entities, all anonymous donations arc taxed at the rate of 30%.

In order to mitigate the compliance burden, the Act has provided relief to such organizations by exempting a part of the anonymous donations from being taxed. The amendment will result in the following:

1. Anonymous donations received by wholly religious institutions shall remain exempt from tax.
2. In the case of partly religious and partly charitable institutions, anonymous donations directed towards a medical or educational institutions run by such entities shall be taxable @ 30% on the aggregate of anonymous donation received in excess of the higher of the following, namely:—

(A) 5% of the total donations received by the assessee, or

(B) Rs. 1,00,000.

3. In the case of wholly charitable institutions, anonymous donations shall be taxable @ 30% on the aggregate of anonymous donation received in excess of the higher of the following, namely

(B) 5% of the total donations received by the assessee, or

(C) Rs. 1,00,000.

(B) Meaning of charitable purpose' amended: See para 2 above.

CHANGES IN THE PROVISIONS RELATING TO "MINIMUM ALTERNATIVE TAX"

49. Minimum Alternate Tax - to increase the MAT rate to 15%, from the existing level of 10%, and tax credit allowed to be carried forward and set off up to the tenth assessment year immediately succeeding the assessment year [Sections 115JAA and 115JB][W.e.f. A.Y. 2010-11]

(a) Rate of tax in case of MA T increased to 15%.

Under the existing provisions of section 115JB of the Income Tax Act, a company is required to pay a minimum tax on its book profits, if the income-tax payable on the total income, as computed under the Act in respect of any previous year relevant to the assessment year is less than 10% of book profit. The Act has amended section 115JB(1) to increase the MAT rate to 15%, from the existing level of 10%.

(b) MAT credit to be carried forward upto the Tenth assessment year.

With a view to provide relief to the assessees, being companies, who pay Minimum Alternate Tax under section 115JB for any assessment year beginning on or after 1-4-2006, the Act has also amended the provisions of section 115JAA(3A) so as to provide that the amount of tax credit determined under section 115JAA(2A) shall be allowed to be carried forward and set off upto the tenth assessment year immediately succeeding the assessment year in which the tax credit becomes allowable under sub-section (1A) of the said section.

50. Minimum Alternate Tax - Clarification regarding add hack of 'provision for diminution in the value of asset', while computing book profits. [W.r.e.f. A.Y. 2001-02]

Section 1I5JB of the Income-tax Act provides for levy of minimum alternate tax (MAT) on the basis of book profits of a company. As per Explanation 1 alter sub-section (2), the expression "book profit" means net profit as shown in the profit and loss account prepared in accordance with the provisions of Part-II and Part-III of Schedule VI to the Companies Act, 1956 as increased or reduced by certain adjustments, as specified in that section.

The Act has inserted a new clause (i) in Explanation 1 after sub-section (2) of the said section so as to provide that If any provision for diminution in the value of any asset has been debited to the profit and loss account, it shall be added to the net profit as shown in the profit and loss account for the purpose of computation of book profit.

Similar amendment has been made in section 115JA of the Income-tax Act by way insertion of a new clause (g) in the Explanation after sub-section (2) of the said section.

The amendment to section 115JA has been made effective retrospectively from 1-4-1998 and will, accordingly, apply in relation to assessment year 1998-99 and subsequent years.

CHANGES IN THE PROVISIONS RELATING TO "DIVIDEND DISTRIBUTION TAX"

51. Dividend paid to the New Pension System Trust shall be exempt from Dividend Distribution Tax [Section 115-O] [W.r.e.f. A.Y. 2009-10]

See para 11 above.

CHANGES IN THE PROVISIONS RELATING TO "FRINGE BENEFIT TAX"

52. Fringe Benefit Tax not applicable from assessment year 2010-11 [Section 115WM]

See para 15 above.

CHANGES IN THE PROVISIONS RELATING TO "SEARCH AND SEIZURE"

53. Clarificatory amendment in section 132 and section 132A to conduct search and seizure operations [Section 132 and 132A] [W.r.e.f. 1-6-1994]

Section 132(1) of the Income-tax Act empowers income-tax authorities specified therein to authorise other income-tax authorities to conduct search and seizure operations. The authorities empowered to issue authorization are :

(i) Director General or Chief Commissioner;

(ii) Director or Commissioner; and

(iii) Such Joint Director or Joint Commissioner as are empowered by the Board to do so.

The Joint Director or Joint Commissioner are, in terms of the provisions of clause (28C) and clause

(28D) of section 2 of the Income-tax Act are understood to include Additional Director or Additional Commissioner. Based on this understanding in the Department, Additional Directors and Additional Commissioners have issued warrant of authorisation since the institution was created on 1-6-1994. However, the Courts have held that Joint Directors or Joint Commissioners referred to in section 132 of the Income-tax Act does not include "Additional. Director or Additional Commissioner" and therefore, the warrants of authorisation issued by the latter is illegal. Accordingly, all search and seizure operation have been declared to be illegal.

Therefore, the Act has made clarificatory amendment to section 132 to provide explicitly that Additional Director or Additional Commissioner always hud the power to issue warrant of authorisation under the said provisions.

Further, it is also clarified by amending the section 132 that Joint Commissioner or Joint Director always had the power to issue authorization. This amendment will take effect retrospectively from 1-10-1998.

Similarly, consequential amendments have been made in section 132A to include Additional Director or Additional Commissioner as an authorized Officer. This amendment will take effect retrospectively from 1-6-1994.

Rationalisation and simplification of administrative and compliance procedures

54. Signing of return of income of limited liability partnership [Section 140] [W.e.f. A.Y. 2010-11)

See para 5 above.

55. Power under section 143(1B) extended by one year due to delay in Centralized Processing of Returns.

The Income-tax department is in the process of setting up a Centralised Processing Centre (CPC) at Bengaluru for centralised processing of Income tax and Fringe benefits tax returns. For this purpose the Board had been empowered to relax, modify or adapt any provision of law relating to processing of returns subject to the condition that the notification for such relaxation, modification or adaptation is issued on or before 31-3-2009 and the said notification is laid on the table of the House. Since the centre has still not been operationalised, it is necessary to allow the Board a further period of one year i.e. up to 31-3-2010 to relax, modify or adapt any provision of law relating to processing of returns.

56. Provision for constitution of alternate dispute resolution mechanism for order of the Transfer Pricing Officer, and foreign company (Section 144C) (W.e.f. 1-10-2009]

The dispute resolution mechanism presently in place is time consuming and finality in high demand cases is attained only after a long drawn litigation till Supreme Court. Flow of foreign investment is extremely sensitive to prolonged uncertainty in tax related matter. Therefore, the Act has amended the Income-tax Act to provide for an alternate dispute resolution mechanism, which will facilitate expeditious resolution of disputes in a fast track basis.

The salient features of the alternate dispute resolution mechanism are as under:—

1. The Assessing Officer shall, forward a draft of the proposed order of assessment (hereinafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after 1-10-2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.
2. On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,
   (a) File his acceptance of the variations to the Assessing Officer; or
   (b) File his objections, if any, to such variation with,—

(i) The Dispute Resolution Panel; and

(ii) The Assessing Officer.

3. The Assessing Officer shall complete the assessment on the basis of the draft order, if—
   (a) The assessee intimates to the Assessing Officer the acceptance of the variation; or
   (b) No objections are received within the period specified in sub-section (2) i.e. 30 days of the receipts of draft order by the eligible assessee.
4. The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under section 144C(3) within one month from the end of the month in which,—
   (a) The acceptance is received; or
   (b) The period of filing of objections under sub-section (2) expires.
5. The Dispute Resolution Panel shall, in a case where any objections are received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
6. The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—
   (a) Draft order;
   (b) Objections filed by the assessee;
   (c) Evidence furnished by the assessee;
   (d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
   (e) Records relating to the draft order;
   (f) Evidence collected by, or caused to be collected by, it; and (g) Result of any enquiry made by, or caused to be made by it.
7. The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—
   (a) Make such further enquiry, as it thinks fit; or
   (b) Cause any further enquiry to be made by any income tax authority and report the result of the same to it.
8. The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.
9. If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.
10. Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.
11. No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assesses and the Assessing Officer on such directions which are prejudicial to the interest of the assessce or the interest of the revenue, respectively.
12. No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.
13. Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in section 153, the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which the direction is received.
14. The Board may make rules for the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed, under subsection (2), by the eligible assessee.
15. For the purposes of this section,—

(a) "Dispute Resolution Panel" means a collegium comprising of 3 Commissioners of Income tax constituted by the Board for this purpose;

(b) "eligible assessee" means,—

  (i) Any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and

  (ii) any foreign company. Further, the following consequential amendments have been made—

(i) Section 131(1) so as to provide that "Dispute Resolution Panel" shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908;

(ii) Section 246(1)(a) has been amended so as to exclude the order of assessment passed under sectio.i 143(3) or order of re-assessment under section 147 in pursuance of directions of "Dispute Resolution Panel" as an appealable order.

(iii) Section 253(1) has been amended to insert clause (d) so as to include an order of assessment passed under section 143(3) or order of re-assessment under section 147 in pursuance of directions of "Dispute Resolution Panel" as an appealable order.

An order passed under section 154 rectifying such order shall also be appealable to IT AT.

57. Assessing Officer empowered to touch upon any other issue for which no reasons have been recorded notwithstanding that the reasons for such issue have not been included in the reasons recorded [Section 147] [W.r.e.f. assessment year 1989-90]

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

Sonic Courts have held that the Assessing Officer has to restrict the reassessment proceedings only to issues in respect of which the reasons have been recorded for reopening the assessment. He is not empowered to touch upon any other issue for which no reasons have been recorded. The above interpretation is contrary to the legislative intent.

With a view to further clarifying the legislative intent, the Act has inserted Explanation 3 in section 147 to provide that the Assessing Officer may assess or reassess income in respect of any issue which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under section 148(2).

Rationalisation of provisions of Tax Deduction and Collection at Source

58. Rationalisation of provisions relating to tax deduction at source (TDS) [W.e.f. 1-10 2009]

Tax deduction at source is a method of collecting taxes on behalf of the Government at the time of payment or credit. The Income-tax Act casts a legal responsibility on the deductor to deduct tax on the correct amount, at the correct rate and deposit it to the Government account. The TDS rates are specified partly in the Finance Act and partly in the provisions of the Income-tax Act. Dcductors are also required to compute surcharge and cess over and above some of the prescribed rates of TDS. If the deductor fails to deduct the tax or fails to deposit the tax after deduction, interest, penalty and prosecution provisions may get attracted. Further, under the provisions of section 40(a)(ia), if the deductor fails to deduct tax on a prescribed payment or fails to deposit the tax deducted in time, the entire expenditure is disallowed while computing his total income. To assist deductors in complying with their TDS obligations and reduce their compliance burden, it is proposed to rationalise the provisions of TDS as under:

(A) Amendment in TDS rates and other provisions of section 194C

(i) Rate of TDS under section 194C rationalized [W.e.f. 1-10-2009]: Under the existing provisions of section 194C of the Income-tax Act, TDS at the rate of 2% is deducted on payment for a contract. However, in the case of a sub-contract, TDS is deducted at the rate of 1%. Further, in the case of payment for an advertising contract, TDS is required to be deducted at the rate of 1%.

In order to reduce the scope for disputes regarding classification of contract as sub contract, the Act has specified the same rate of TDS for payments to both contractors as well as sub-contractors. To rationalise the TDS rates and to remove multiple classifications the Act has provided same rate of TDS in the case of payment for advertising contracts. To avoid hardship to small contractors/ sub-contractors most of whom are organized as individuals/HUFs, the Act has prescribed following rates of TDS:

(a) 1% where payment for a contract are to individuals/HUF

(b) 2% where payment for a contract are to any other entity.

The nil rate will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 1% for an individual/HUF transporter and 2% for other transporters up to 31.3.2010.

The rate of TDS will be 20% in all the above cases, if PAN is not quoted by the deducted w.e.f. 1-4-2010.

(ii) Provisions for payments and tax deducted at source to transports [W.e.f. 1-10-2009]: Under section 194C, tax is required to be deducted on payments to transport contractors engaged in the business of plying, hiring or leasing goods carriages. However if they furnish a statement that they do not own more than two goods carriages, tax is not to be deducted at source. Transport operators report problem in obtaining 'TDS certificates as these are not issued immediately by clients and they are not able to approach the client again as they may have to move across the country for their business. The Act has inserted sub-section (6) to section 194C and has exempted payments to transport operators (as defined in section 44AE) from the purview of TDS. However, this would only apply in cases where the operator furnishes his Permanent Account Number (PAN) to the deductor. As per section 194(7), the dcductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details to the Income Tax Department in the prescribed format.

(iii) Clarification regarding "work" under section 194C [W.e.f. 1.10.2009]: 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, the Act has provided that "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer ns 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). The Act has included 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 provided in section 194C(3) 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.

There is no change in the limit of Rs. 20,000 and Rs. 50,000 which is applicable for non deduction of tax at source under section 194C. Further, in a case where the payment is made by an individual or HUF to the contractor exclusively for personal purposes of such individual or member of HUF, there will be no need to deduct tax at source under section 194C.

(B) Rate of TDS reduced in case of section 194-I [**W.e.f.** 1-10-2009]: Under the existing provisions of section 194-I of the Income-tax Act, TDS on rental payments is prescribed at the rate of—

(a) 10% for the use of any machinery or plant or equipment,

(b) 15% for the use of any land or building or furniture or tlttings, if the payee is an individual or HUF, and

(c) 20% if the payee is other than an individual or HUF.

The Act has rationalised and reduced the TDS rates on rental payments as under:

(a) 2% for the use of any machinery or plant or equipment,

(b) 10% for the use of any land or building or furniture or fittings for all persons.

Nature of Payment (19 4-I) - Rent		**Rate upto 30-9-2009**	**New rate * (w.e.f. 1-10-2009)**
(a)	Rent of plant, machinery of equipment	10%	2%
(b)	Rent of land, building or furniture to an individual and Hindu undivided family	15%	10%
(c)	Rent of land, building or furniture to a person other than an individual or Hindu undivided family	20%	10%

The rate of TDS will be 20% in all the above cases, if PAN is not quoted by the deductee w.e.f. 1-4-2010.

(C) Rate of TDS on unlisted debentures or security or on Interest other than securities reduced to 10%.

Rate of TDS has been reduced by the Finance (No. 2) Act, 2009 from 20% to 10% in case of the following :

(i) TDS on interest on unlisted debentures and on any income other than mentioned in Para 1(a) of Part II of Schedule I to the Finance (No. 2) Act, 2009 relating to TDS rates in case of a person other than a company who is resident in India has been reduced from 20% to 10%.

(ii) Similarly, TDS on interest other than interest on securities and on any income other than mentioned in Para 2(a) of Part II of the Schedule I to the Finance (No. 2) Act, 2009 in case of a domestic company has also been reduced from 20% to 10%.

(D) TDS to be deducted at basic rates

In order to ease the computation of TDS, the Act has removed surcharge and education cess & SHEC on tax deducted on any payment made to resident taxpayers except in case of salary. In case of salary TDS shall be deductible after including education cess and SHEC. This provision shall be effective after the Finance (No. 2) Act becomes the Act.

(E) Section 197A has been amended: See para 11 above.

(F) Improving compliance with provisions of quoting PAN through the TDS regime [Section 206AAJ [W.e.f. 1-4-2010]

In order to strengthen the PAN mechanism, the Act has made 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 mandatory 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%.

TDS would be deductible at the above-mentioned rates even in a case where the taxpayer files a declaration in form 15G or I5H (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 in deductable on payments or credits made to them. To ensure that the dcduclor knows about the correct PAN of the decluctee it is also provided for mandatory quoting of PAN of the deductee by both the deduetor and the dcduclee in all **correspondence,** bills and vouchers exchanged between them.

(G) Processing of statements of tax deducted at source (Section 200A inserted w.e.f. 1-4-2010)

Currently almost all statements of tax deducted at source are filed in an electronic mode. The processing of these statements should, therefore, be done only in a computerized environment.

New section 200A has been inserted provide for processing of statements of tax deducted at source on computer so that liabilities on account of interest and other defaults in IDS payment are promptly calculated and intimated to the deduetor. In order to process TDS statements on computer, the Act has provided for electronic processing on the same lines as processing of Income-tax returns.

Further, the following adjustments can be made during the computerized processing of statements of tax deducted at source :

(i) Any arithmetical error in the statement; or

(ii) An incorrect claim, if such incorrect claim is apparent from any information in the statement, for example, in respect of rate of deduction of tax at source where such rate is not in accordance with the provisions of the Act.

The Act has provided that after making adjustments, tax and interest [e.g. under section 201(1A)] would be calculated and sum payable by the deduetor or refund due to the deduetor will be determined. An intimation will be sent to the deduetor informing him of his tax liability or granting him the refund due within one year from the end of the financial year in which the statement is filed. The Act has also provided that the processing of these statements can be undertaken in a centralized processing centre.

(H) Providing time limits for passing of orders under section 201(1) holding a person to be an assessee in default

Currently, the Income Tax Act does not provide for any limitation of time for passing an order under section 201(1) holding a person to be an assessee in default. In the absence of such a time limit, disputes arise when these proceedings arc taken up or completed after substantial time has elapsed.

In order to bring certainty on this issue, the Act has inserted sub-section (3) to section 201 to provide for express time limits in the Act within which specified order under section 201(1) will be passed.

An order under section 201(1) passed on or after 1-4-2010, for failure to deduct the whole or any part of the tax as required under this Act, if the deductee is a resident taxpayer shall be passed within two years from the end of the financial year in which the statement of tax deduction at source is filed by the deduetor.

Where no such statement is filed, such order can be passed up till four years from the end of the financial year in which the payment is made or credit is given.

Further, Explanation 1 to section 153 regarding exclusion of certain period (like injunction by Court) to calculate time limit shall also be applicable while determining the above time limit. Similarly like section 153(3)(ii) there will be no time limit in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260A, 262, 263 or 264 or order of a Court. To provide sufficient time for pending cases, the Act has provided that such proceedings for a financial year beginning from 1-4-2007 and earlier years can be completed by the 31-3-2011.

However, no time-limits have been prescribed for order under section 201(1) where—

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

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

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

These amendments shall be effective from 1-4-2010. Accordingly it will apply to such orders passed on or nflcr the 1-4-2010.

(I) Filing of TDS and TCS statements (W.e.f. 1-10-2009)

Section 200(3) of Income-tax Act provides that any person deducting tax in accordance with the provisions of Chapter XVIIB has to furnish, within the prescribed time, quarterly statements for the period ending on the 30lh June, 30th September, 31st December and 31st March in each financial year. Similarly, filing of quarterly returns for tax collection at source (TCS) have been provided in sub-section (3) of section 206C of the Act. Further section 206A provides furnishing of quarterly return in respect of payment of interest to residents without deduction of tax.

In order to provide administrative flexibility in deciding the periodicity of such TDS related statements, the Act has modified the existing provisions so as to allow the Government to prescribe periodicity of such TDS statements besides prescribing their form and manner.

Further, section 272A(2)(i) relating to non-filing of quarterly statement of TDS/TCS has been amended in order to delete the word 'quarterly' given for such statements.

AMENDMENT REGARDING PAYMENT OF ADVANCE TAX

59. Enhancement of the limit for payment of advance tax from the present Rs. 5,000 to Rs. 10,000 for the financial year 2009-2010 and onwards (Section 208)

Under the existing provisions of section 208 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 Rs. 5,000 or more. With a view to providing for inflation adjustment, the Act has raised the threshold limit for payment of advance tax from the present Rs. 5,000 to Rs. 10,000.

This amendment will take effect from the 1-4-2009. Accordingly, advance-tax for the financial year 2009-2010 would be payable only if the advance tiix liability is , Rs. 10,000 or more.

AMENDMENT REGARDING APPEAL

59A. Amendment in section 246A(1) regarding appeal to Commissioner (Appeals) [Section 246A(1)] (W.e.f. 1-10-2009)

The Act has amended section 246A(1)(a) to provide that the appeal against the order passed by the Assessing Officer under section 143(3) or order of re-assessment under

section 147 except an order passed in pursuance of directions of Dispute Resolution Panel shall lie to the Commissioner (Appeals).

59B. Amendment in section 253(1) regarding appeals to ITAT [Section 253(1)] (W.e.f. 1-10-2009)

The Act has inserted clause (d) to section 253(1) to provide that appeal against the order passed under section 143(3) or order of re-assessment under section 147 by the Assessing Officer in pursuance of directions of the Dispute Resolution Penal or an order passed under section 154 in respect of such order shall lie to the ITAT directly.

AMENDMENTS REGARDING PENALTY

60. Rationalisation of provisions relating to penalty for concealment of income in the course of search [Explanation 5A to section 271(1)] [W.r.e.f. 1-6-2007]

Under the existing provisions of Explanation 5A to sub-section (1) of section 271, it has been provided that where, in the course of search initiated under section 132 on or after 1-6-2007, the assessee is found to be owner of—(i) any money, bullion, jewellery or other valuable article or thing (hereinafter referred to as assets) and the assessee claims that such assets have been acquired by him by utilizing (wholly or in part) his income for any previous year; or (ii) any income based on any entry in any books of account or other documents or transactions and claims that such assets or entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year; which has ended before the date of the search and the due date for filing the return of income for year has expired and the assessee has not filed the return, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

In order to clarify that the scope of Explanation 5A also extends to cases where the assessee has filed the return of income for any previous year and the income found during the course of search relates to such previous year and is not disclosed in the said return, then such income shall be deemed to be concealed income and assessee shall be liable to pay penalty under section 271. Therefore, the Act has substituted the Explanation 5A to sub-section (1) of section 271 so as to provide that where in the course of a search initiated under section 132 on or after 1-6-2007, the assessee is found to be the owner of—

(i) Any money, bullion, jewellery or other valuable article or thing (hereinafter referred to as assets) and the assessee claims that such assets have been acquired by him by utilizing (wholly or in part) his income for any previous year; or

(ii) Any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year, which has ended before the date of search and,

(a) **Where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or**

(b) The due date for filing the return of income for such previous year has expired but the assessee has not filed the return, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of the search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be **deemed to have** coin-tilled **the particulars** of **his** income or **furnished inaccurate particulars of such income.**

MISCELLANEOUS PROVISIONS

61. Rationalisation of provisions relating to provisional attachment of asset - Period during which the proceedings for assessment or reassessment are stayed by an order or injunction of any court (writ petitions in High Courts and Supreme Court) shall be excluded [Section 281 B] [W.r.e.f. A.Y. 1988-89]

The provisions of section 281B empower the Assessing Officer to make provisional attachment of the assets of the assessee during the pendency of any proceedings for assessment or reassessment. The sub-section (2) further provides that every attachment order shall cease to have effect after the expiry of a period of six months from the date of order made under sub-section (1). However, the period of validity of provisional attachment order can be further extended by two years. I lie second proviso to subsection (2) further provides that where an application for settlement under section 245C is made, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is made shall be excluded from the period specified in this sub-section.

In many cases, the assessees have filed writ petitions in High Courts and Supreme Court and have obtained stay of the assessment proceedings. Often, such stay remains in force for many years during which the validity of provisional attachment order expires. Therefore, it is proposed to amend sub-section (2) of section 28IB to provide that the period, during which the proceedings for assessment or reassessment are stayed by any Court, shall be excluded in calculating the period specified therein.

62. Service of Notice [Section 28] [W.e.f. 1-10-2009]

Under the existing provisions of section 282 a notice or requisition under the Act may be served on the person therein named either by post or as if it were a summons issued by a court.

The Act has amended the said provisions to provide that the service of notice or summon or requisition or order or any other communication may be made by delivering or transmitting a copy thereof by post or courier service or in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or by any other means of transmissions as may be provided by rules made by the Board in this behalf.

Further, the Board may make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered.

63. Introduction of a computer based system of allotment and quoting of Document Identification Number in each correspondence sent or received by any income-tax authority [Section 282B] [W.e.f. 1-10-2010]

It is now well accepted that "tax administration is tax policy". A tax administration designed to foster voluntarily compliance yields higher revenue than a sound tax policy administered by an inefficient tax administration. Therefore, it has always been the endeavour of the Income-tax Department to improve the standards of its service and transparency in its functioning. Therefore, the Act has introduced a computer based system of allotment and quoting of Document Identification Number (DIN) in each correspondence sent or received by it so as to enable tracking of documents and minimize taxpayers grievances.

With a view to give effect to the aforesaid, the Act has inserted a new section 282B so as to provide that every income tax authority shall allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

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

Similarly, every document, letter or any correspondence, received by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number. Where the document, letter or any correspondence received by any income-tax authority or on behalf of such authority does not bear Document Identification Number, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

64. Power to withdraw approvals section 293C [W.e.f. 1-10-2009)

Under the existing provisions of Income-tax Act, an approval is required to be granted by the Central Government or the Board or an income-tax authority for availing of various incentives by the assessee. While some provisions of Income-tax Act specifically contain provisions for withdrawal of approval but in many cases there is no such specific previsions containing power of withdrawal.

In order to provide explicit provisions for power to withdraw of approval, the Act has inserted a new section 293C to provide that an approval granting authority i.e. the Central Government or the Board or an income tax authority shall also have the power? to withdraw the approval at any time. However, such withdrawal can be made only after giving a reasonable opportunity of showing cause against be proposed withdrawal to the concerned assessee.

65. Taxation of investment income/loss of Non life insurance business [First Schedule] [W.e.f. A.Y. 2011-12]

The profits and gains of non-life insurance business are computed under section 44 read with Rule 5 of the First Schedule. As per Rule 5, profits and gains of non-life insurance business is taken to be profits disclosed in the annual account, copies of which are required under the Insurance Act, 1938, to be furnished to the Controller of Insurance, subject to adjustments for unexpired risk and disallowances under section 30 to section 43B.

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

In view of the above, the Act has amended the provisions of the Income tax Act to provide that any increase in respect of any amount taken credit for in the accounts on account of appreciation of or gains on realisation of investments in accordance with the regulations prescribed by IRDA shall be treated as income and included in the computation of the total income. Similarly, deduction shall be allowed in respect of any amount either written off or provided in the accounts to meet diminution in or loss on realisation of investments in accordance with the regulations prescribed by IRDA.

66. Recognition to Provident funds - Extension of time limit for obtaining Exemption from EPFO under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 from 31-3-2009 to 31-12-2010 (Fourth Schedule) [W.e.f. 1-4-2009]

Rule 4 of Part A of the Fourth Schedule to the Income-tax Act provides for conditions which are required to be satisfied by a Provident Fund for receiving or retaining recognition under the Income-tax Act. Rule 3 of Part A of the Fourth Schedule provides that the chief Commissioner or the Commissioner of Income-tax may accord recognition to any provident fund which satisfies the conditions prescribed in rule 4 and the rules made by the Board in this behalf.

The proviso to sub-rule (1) of the said rule 3, inter alia, specifics that in a case where recognition has been accorded to any provident fund on or before 31-3-2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31-3-2009, the recognition to such fund shall be withdrawn. One of the requirements of this clause (ea) of rule 4 is that the establishment shall obtain exemption under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act).

With a view to provide further time to Employees' Provident Fund Organization (EPFO) to decide on the pending applications seeking exemption under section 17 of the EPF & MP Act, the Act has amended the said proviso so as to extend the time limit from "31-3-2009 to 31-12-2010.

67. Amendment in Part B of the Thirteenth Schedule to the Income Tax Act, 1961 to include paper industry for which tax holiday cannot be availed by new units located in Himachal Pradesh and Uttaranchal (W.e.f. A.Y. 2010-11)

Part-B of the Thirteenth Schedule to the Income-tax Act, 1961 provides for a list of activities or articles or things, the production or manufacture of which is not permissible if an undertaking wishes to avail a deduction under section 80-IC in respect of undertakings located in the states of Himachal Pradesh and Uttaranchal.

The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry has issued a notification F.No.3(1)/2003-SPS dated 27-6-2008 expanding the list of items in respect of the paper industry for which tax holiday cannot be availed by new units located in Himachal Pradesh and Uttaranchal.

In order to align the provisions of the Income-tax Act, 1961 with the overall industrial policy of DIPP in respect of these two States, the Act has amended Part B of the Thirteenth Schedule to the Income-tax Act and substitute SI.No.19 of Part B of the Thirteenth Schedule pertaining to the paper industry with the list as per the notification dated 27-6-2008 of the DIPP.

68. Extension of income-tax exemption to Special Undertaking of Unit Trust of India (SUUTI) (W.r.e.f. 1-4-2009)

The Special Undertaking of Unit Trust of India (SUUTI) was created vide The Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002. SUUTI is the successor of UTI. The mandate of SUUTI is to liquidate government liabilities on account of the erstwhile UTI.

Vide section 13(l)of the said Repeal Act, SUUTI is exempt from income-tax or any other tax or any income, profits or gains derived, or any amount received in relation to the specified undertaking for a period of five years, computed from the appointed day, i.e. 1-2-2003. This exemption was to come to an end on 31-1-2008 and the exemption was further extended up to 31-3-2009.

Since some of the schemes of SUUTI are still pending closure, it is proposed to amend section 13(1) so as to extend the exemption for a period of five years that is up to 31-3-2014.

(B) Amendments made in Wealth-tax Act

69. Enhancement of the limit for payment of wealth tax from Rs. 15,00,000 to Rs. 30,00,000 (Section 3) [W.e.f. A.Y. 2010-11]

Under the existing provisions of section 3 of the Wealth-tax Act, wealth tax is charged every year in respect of net wealth, on the valuation date, of every individual, Hindu undivided family and company @ 1%, of the amount by which the net wealth exceeds Rs. 15,00.000. The Act has raised the threshold limit for payment of wealth lax from Rs. 15,00,000 to Rs. 30,00,000 for the valuation of net wealth as on 31-3-2010 and subsequent years.