

INCOME TAX SERVICE TAX & VAT AMENDMENTS

**BY FINANCE ACT 2009
(ASSESSMENT YEAR 2010-11)**

**CA-PCC/ IPCC
MAY-2010 & NOV-2010 ATTEMPT**

By- CA. NITIN SONI

AMENDMENTS IN TAX RATES

1. In case of Individual, HUF, AOP, BOI and every AJP.

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

2. In case of Resident woman, below 65 years of age at any time during the previous year

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

3. In case of Resident Individual, with age 65 years or more at any time during the previous year.

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

NOTE: There is no change in the rate of tax in case of following;

- Firm/ Limited Liability Partnership (LLP) - 30%
- Local Authority - 30%
- Company;
 - Domestic Co. – 30%
 - Foreign Co. – 40%
- Cooperative society;

Upto Rs. 10,000	10%
Rs.10,001- Rs.20,000	20%
Above Rs.20,000	30%

Surcharge : No surcharge is payable by any of the above persons with the exception being a company. i.e. only a company is required to pay surcharge where the total income exceeds Rs.1 crore, as follows;

Domestic Company – 10%

Foreign Company – 2.5%

EC & SHEC : chargeability of EC and SHEC continues to be at the same rates. i.e. EC – 2% and SHEC – 1% on income tax calculated.

AMENDMENTS IN CHAPTER I : BASIC CONCEPTS & DEFINITIONS

Section 2(15) : “charitable purpose” includes relief to the poor, education, medical relief, *preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest*, and the advancement of any other object of general public utility:

Provided that 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.

Reason of Amendment : Prior to the amendment, the activities introduced by the amendment would have been included under ‘advancement of any other object of general public utility’ and hence would have been subjected to the proviso. Therefore, by specifically introducing these activities in the definition the lawmakers have ensured that such activities are not subjected to the restrictions imposed by the proviso.

Section 2(29BA) : “Manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing,-

- (a) *resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or*
- (b) *bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.*

Reason of Amendment : Prior to the amendment, the term ‘manufacture’ was not defined in the Income Tax Act. Consequently there have been legal disputes as to what exactly constitutes ‘manufacture’. In order to remove these

disputes and clarify the correct legal intention, a new clause (29BA) has been inserted in section 2 so as to define the term ‘manufacture’.

Section 2(48) : “zero coupon bond” means a bond-

- (a) issued by any infrastructure capital company or infrastructure capital fund or public sector company or *scheduled bank* on or after the 1st day of June 2005.
- (b) in respect of which no payment and benefit is received or receivable before maturity or redemption from infrastructure capital company or infrastructure capital fund or public sector company or *scheduled bank*; and
- (c) which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Explanation- For the purpose of this clause, the expression “scheduled bank” shall have the meaning assigned to it in clause (ii) of the Explanation to sub-clause (c) of clause (viia) of sub-section (1) of section 36.

Reason of Amendment : The amendment is done so as to include the scheduled banks as an eligible person to issue zero coupon bonds. Therefore now, scheduled banks including nationalized banks can issue zero coupon bonds to meet their long term fund requirements.

NOTE 1: Consequential amendment is made in **clause (i) of the explanation to section 36(1)(iiia)** discussed below;

The above section defines the term “discount” as the difference between the amount received and the amount payable by the issuer* on the maturity or redemption of such bonds.

*issuer: earlier the issuers were infrastructure capital company, infrastructure capital fund and public sector company but now pursuant to the amendment issuer also include a scheduled bank (including a nationalized bank)

NOTE 2: Consequential amendment is made in **clause (x) of section 194A(3)** discussed below;

Section 194A(1) provides for deduction of tax at source from interest other than “interest on securities”.

Section 194A(3) specifically provides for exclusion of certain incomes from the coverage of section 194A(1).

Now clause (x) of section 194A(3) provides that the provision of TDS under section 194A(1) would not be applicable in respect of income paid or payable in relation to zero coupon bond issued by the issuer*.

*issuer: earlier the issuers were infrastructure capital company, infrastructure capital fund and public sector company but now pursuant to the amendment issuer also include a scheduled bank (including a nationalized bank)

AMENDMENTS IN CHAPTER III : INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

Section 10(10C) : In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-

Any amount received or receivable by an employee.... on his voluntary retirement or termination of his service, in accordance with any scheme to the extent such amount does not exceed 5 lakh rupees.

“Provided also that where any relief has been allowed to an 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 this clause shall be allowed to him in relation to such, or any other, assessment year.”

Related amendment is also made in section 89. (discussed alongwith for convenience)

Section 89 : where the assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months.... due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed.

“provided that no such 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...., if an exemption in respect of such amount has been claimed by the assessee under section 10(10C)”

Reason of Amendment : 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 arrear or advance of salary. In other words, arrears and advance salary result in higher tax bracket and burden on the taxpayer. With the view to mitigate this excess burden, the provision of section 89 provides for backward spread of the arrears and forward spread of the advance.

Under voluntary retirement scheme, the retiring employee receives lump-sum amount in respect of his balance period of service. Such amounts are 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 tax payers started claiming the benefit of both sections by claiming exemption under section 10(10C) (upto Rs 5 lakhs) and relief under section 89 (in respect of the amount received in excess of Rs 5 lakhs).

This was against the true legislative intent. Further, this tax treatment was also upheld by courts.

With a view to preventing such claims of double benefit and to convey the true legislative intent these sections has been amended.

Section 10(23C) : Under the existing provisions of section 10(23C), institutions (e.g. educational or medical institutions having receipts of more than rupees one crore) are exempt from income tax provided they take approval from the prescribed authority by making an application before the end the financial year for which the exemption is sought.

Now, an amendment is introduced by FA 2009 whereby now these institutions can make the required application on or before the 30th September of the relevant assessment year.

Reason of Amendment : In practice such eligible institutions had to anticipate their annual receipts to decide whether the application for exemption is required to be filed or not. This had resulted into genuine hardship. In order to mitigate this hardship the time limit for filing such application has now been extended from 31st march to 30th September of the succeeding financial year.

Example: suppose the gross receipts of a trust or institution exceeds Rs 1 crore in the financial year 2008-09, then it can file the application for exemption upto 30th September 2009.

Section 10(23D) : section 10(23D) exempts income of a mutual fund set up by a public sector bank.

Explanation to section 10(23D) defines a 'public sector bank' but it does not include within its scope, 'other public sector banks'.

Therefore an amendment is made so as to include 'other public sector banks' in the definition of 'public sector banks'.

Reason of Amendment : Reserve Bank of India has recently 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.

The amendment made aims to bring this bank within the ambit of the definition 'public sector bank' so as to exempt its income.

Section 10(44) : *Any income received by any person for, or on behalf of, the New Pension System Trust established on the 27th day of February 2008 under the provisions of the Indian Trusts Act 1882.*

Related amendments (discussed alongwith for convenience)

Section 115-O : any amount declared, distributed or paid by such company by way of dividends, shall be chargeable to additional income tax (dividend distribution tax) at the rate of 15 percent.

(1A) the amount referred above, shall be reduced by;

(i).....

(ii) *the amount of dividend, if any, paid to any person for, or on behalf of, the New Pension System Trust referred to in section 10(44)*

Section 197A(1E) : *Notwithstanding anything contained in this chapter, no deduction of tax shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred to in section 10(44)*

Section 80CCD : The existing provisions of section 80CCD provides that where an assessee being an individual, employed by central government or any other employer, who has paid or deposited any amount in his account under pension scheme, there shall be allowed a deduction in the computation of his total income of the whole of the amount paid or deposited by him as does not exceed ten percent of his salary in the previous year.

FA 2009 has inserted the words, “*or any other assessee, being an individual*” has been inserted.

Earlier the tax benefit under said section was only available to ‘employees’ but now after the amendment NPS Therefore now the benefit of this section has been extended to other individual assesses being ‘self employed’.

The amount received by the assess or his nominee from NPS Trust is taxable in the hands of the recipient. *FA 2009 has also provided that for the purpose of this 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.*

Reason of Amendment : The new pension scheme (NPS) has become operational since 1st January 2004 and is mandatory for all new recruits to the Central Government service from 1st January 2004. Since then it has been opened up for employees of State Government, private sector and self employed. NPS Trust has been set up on 27th February 2008 as per the provisions of the Indian Trust Act 1882 to manage the assests and funds in the interest of the beneficiaries.

The need arouse to make the NPS Trust a complete pass through in so far as taxation is concerned. Therefore-

- (i) Section 10(44) is inserted to provide that income received by NPS Trust is exempt from tax.
- (ii) Section 115-O(1A) is amended to provide that dividend paid to NPS Trust shall not be liable to Dividend Distribution Tax. (Dividend received by the trust is already exempt.)
- (iii) Chapter VII of Finance Act 2004 has also been amended to provide that all purchases and sales of equity and derivatives by the NPS Trust will be exempt from Securities Transection Tax.
- (iv) Section 197A is amended to provide that the NPS Trust shall receive all incomes without any TDS.

Section 10A & Section 10B * : Under the existing provisions, the deductions under these sections are available only upto assessment year 2010-11

FA2009 has extended the benefit of these deductions by one more year. Hence now the benefit will be available for AY 2011-12 also. However no deduction shall be allowed after AY 2011-12

***NOTE** : Under section 10A deduction is available in respect of profits and gains from the export of article, thing or computer software by newly established undertaking located in any free trade zone (FTZ) or electronic hardware technology park (EHTP) or software technology park (STP).

Under section 10B deduction is available in respect of profits and gains from the export of article, thing or computer software by newly established undertaking recognized as 100% EOU.

Section 10AA : Exempted profits in case of units in SEZs to be computed as a percentage of total turnover of the business carried on by the *undertaking* and not the total turnover of the business carried on by the assessee.

Existing position:

$$\text{Profits of the undertaking} \times \frac{\text{export turnover of the undertaking}}{\text{Total turnover of the assessee}}$$

Amended position:

$$\text{Profits of the undertaking} \times \frac{\text{export turnover of the undertaking}}{\text{Total turnover of the undertaking}}$$

TAXATION OF ELECTORAL TRUST

Section 2(22AAA) : “*electoral trust*” means a trust so approved by the Board in accordance with the scheme made in this behalf by the Central Government.

Section 2(24) : income includes.... Voluntary contributions received by an electoral trust.

Section 13B : *any voluntary contribution received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if-*

- (a) *such electoral trust distributes to any political party, registered under section 29A of the Representation of the people Act 1951, during the said previous year, 95 percent of the aggregate donations received by it during the said previous year along with*

the surplus if any, brought forward from any earlier previous year and
(b) such electoral trust functions in accordance with the rules made by the Central Government.

Section 80GGB : In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it, in the previous year to any political party *or an electoral trust*.

Section 80GGC : In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him, in the previous year, to a political party *or an electoral trust*.

Reason of Amendment : The concept of Electoral trust has been introduced so as to reform the system of funding political parties. Corporates are reluctant to fund political parties directly because of the fear of being associated with a particular political party. But now after the amendment they can safely donate to an electoral fund which can then fund the political parties.

TAXABILITY OF ANONYMOUS DONATIONS

Section 115BBC : Under the current provisions of this section, anonymous donations received by wholly religious entities are exempt from tax.

However anonymous donation received by wholly charitable entity is taxable u/s 115BBC @ 30%.

Further any anonymous donations received by partly religious and partly charitable entities have also been exempted from tax except where such donation is made with a specific direction that such donation is for any educational or medical institution run by such entity.

In order to provide relief to such organizations (liable to pay tax @ 30 %) an exemption limit has been introduced by FA 2009, and now anonymous donations in excess of this limit would only be subjected to tax @30% under section 115BBC.

Exemption limit is-

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

(b) Rs.1 lakh.

Whichever is higher.

AMENDMENTS IN CHAPTER IV : COMPUTATION OF TOTAL INCOME.

AMENDMENT IN SALARIES

FRINGE BENEFIT TAX HAS BEEN ABOLISHED. FRINGE BENEFITS TO BE TAXED AS PERQUISITES IN THE HANDS OF EMPLOYEES.

The Finance Act 2005 introduced a new levy, namely, Fringe Benefit Tax (FBT) on the value of certain fringe benefits.

FA 2009 has abolished FBT. Consequently following amendments has been made.

Section 17(2) : following amendments are made in section 17(2)

- (a) sub clause (vi) has been substituted so as to provide that perquisites 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 specified security or sweat equity shares shall be the fair market value 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 share. The FMV shall be determined in accordance with the method as may be prescribed by the board.*
- (b) Sub clause (vii) 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, the extent it exceeds 1 lakh rupees.*
- (c) Sub clause (viii) is inserted to provide that perquisites shall also include the value of any other fringe benefit or amenity as may be prescribed. (other fringe benefits and their valuation are prescribed in the Rule 3 of the Income Tax Rules 1962)*

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

AMENDMENTS IN PROFIT AND GAINS OF BUSINESS AND PROFESSION

Section 35(2AB): Where a company engaged in *any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh schedule* incurs any expenditure on in house research and development then it shall be allowed a deduction of 150% of the expenditure so incurred.

Reason of Amendment : Earlier the deduction was available only to the companies engaged in the business of bio technology or manufacture/production of drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any article notified by CBDT. But now in order to promote research and development in all sectors of the economy, the benefit of weighted deduction is extended to companies engaged in the production/manufacture of any article or thing except specified in 11th schedule of Income Tax Act.

NOTE : 11th schedule enlists items such as alcohol, tobacco, cosmetics etc.

INVESTMENT LINKED TAX INCENTIVE

Section 35AD : 100% deduction would be allowed in respect of any expenditure of **capital nature** incurred, wholly and exclusively, for the purpose of **specified business** during the previous year in which such expenditure is incurred.

Capital nature expenditure shall not include any expenditure incurred on acquisition of any land or goodwill or financial instrument.

Specified business means

- (1) setting up and operating cold chain facilities for specified products.
- (2) Setting up and operating warehousing facilities for storage of agricultural produce.
- (3) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.

→ The expenditure incurred wholly and exclusively for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business.

→ The assessee shall not be allowed any deduction in respect of the specified business under the provisions of chapter VI-A

→ Profit linked deduction provided under section 80-IA to the business of laying and operating a cross country natural gas distribution network has been

discontinued. Therefore person earlier availing benefit of section 80-IA can now avail the benefit of section 35AD.

Section 28 : clause (vii) has been inserted to provide that *any sum, whether received in cash or in kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD*

Section 43(1) : Explanation 13 has been inserted in section 43(1) to provide that the actual cost of any capital asset, on which deduction has been allowed or is allowable to assessee under section 35AD, shall be nil in both the following cases

- where assessee himself has claimed deduction u/s 35AD
- where previous owner has claimed deduction u/s 35AD.

Section 50B : In the case of slump sale for the purpose of computing the net worth of the assets transferred, the value of the capital assets covered by section 35AD shall be nil.

Section 73A : Any loss computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on indefinitely.

COMMODITIES TRANSECTION TAX HAS BEEN ABOLISHED.

Section 36(1) : clause (xvi) of this section has been deleted. Consequently no deduction of commodities transaction tax shall be available now.

SPECIAL DEDUCTION TO NATIONAL HOUSING BOARD

Section 36(1) : This section has been amended to provide that the corporations engaged in providing long term finance (including refinance) for development of housing in India will be eligible for the benefit of deduction.

Reason of Amendment : 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 reserve.

National Housing Bank (NHB) is wholly owned by RBI and is engaged in promotion and regulation of housing finance institutions in the country. It provides re-financing support to housing finance institutions and banks etc. for the development of housing in India. It also undertakes financing of slum projects, rural housing projects etc.

A view had been expressed that NHB is not entitled to the benefits of section 36(1)(viii) on the ground that it is not engaged in long term financing for construction or purchases of houses in India for residential purposes.

This amendment seeks to provide that corporations engaged in providing long term finance (including re-finance) for development of housing in India will be eligible for the benefit under this section.

PROVISIONS FOR PAYMENTS AND TDS TO TRANSPORTERS

Section 40A(3)/(3A) : In section 40A(3A) after the proviso, following proviso is inserted,

‘provided further that in the case of payment made for plying , hiring or leasing goods carriages, the provisions of sub section (3) and (3A) shall have effect as if for the words “twenty thousand rupees”, the words, “thirty five thousand rupees” had been substituted.’

Reason of Amendment : under the existing provisions of section 40A(3), if 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. As a large number of small truck owners/drivers have little working capital and do not have bank accounts outside their home cities, they insist on payment in cash for undertaking long haul journeys, as they need cash for incurring expenses on diesel, food and such expenses generally exceeds Rs. 20,000. this causes operational problems to those who have to pay for their services.

To address this problem that this limit of Rs. 20000 has been increased to Rs. 35000 in case of payment to transport operators.

Section 40AE : The presumptive income per vehicle of transport operators under this section has been increased as follows with effect from AY 2011-12

- for heavy goods vehicle – raised from Rs.3500 p.m to Rs.5000 p.m
- for other than heavy goods vehicle – raised from Rs.3150 p.m. to Rs.4500 p.m.

NOTE : Section 44AE provides for a presumptive taxation scheme for the assessee engaged in the business of plying, hiring or leasing goods carriage. The scheme applies to an assessee who owns not more than 10 goods carriage at any time during the previous year. Such assessee opting for the presumptive scheme are not required to maintain books of accounts under section 44AA or get them audited under section 44AB.

Section 40AD : this section has been substituted to include within its scope all such businesses with gross receipts/ total turnover upto 40 laks.(except the business of plying, hiring, and leasing goods already covered u/s 40 AE.)

→ therefore section 44 AF dealing with presumptive taxation for retail trade would not be applicable w.e.f. A.Y. 2011-12 since it would also be covered u/s 44AD.

→ This section would cover Resident individuals, HUF's, and partnership firms (except LLP's)

→ Presumptive tax rate would be 8 % of gross receipts/ total turnover. However assessee can declare higher income.

DEFINITION OF WDV

Section 43(6): In section 43(6), explanation 7 has been inserted;

“For the purpose of this clause, where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income tax under the head ‘PGBP’ for computing the WDV 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 ‘PGBP’ and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act”

Reason of Amendment : section 32(1)(ii) provides that depreciation is to be allowed and computed at the prescribed percentage on the WDV of any block of assets.

Section 43(6)(b) 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 Act.

Rule 7A, 7B and 8 of the Income Tax Rules 1962, deals with the computation of composite income where income is derived in part from agriculture operations and in part from business chargeable to tax under the head PGBP. The rules prescribe the method of computation in the case of manufacture of rubber, coffee and tea. In such cases, the income which is brought to tax as ‘business income’ is a prescribed fixed percentage of the composite income.

The Hon’ble Supreme court in the case of CIT Vs. Doom Doom India Ltd. has held that the language employed in section 43 (6)(b) is ‘actually allowed’ i.e. where income is partially agricultural and partially chargeable to tax under PGBP, the depreciation actually allowed in arriving at the taxable income alone can be taken into account for computing the WDV in the subsequent year.

The above interpretation of the court is not in accordance with the legislative intent. WDV is required to be computed by deducting the full depreciation attributable to aggregate/composite income and not just the portion attributable or allowed for the purpose of PGBP.

Thus the amendment overrules the judgement of the supreme court.

AMENDMENT OF CAPITAL GAINS

Section 43(6) : In the section along with the word ‘assessed’ the word ‘*assessable*’ is inserted in the phrase “value adopted or assessed or *assessable* by stamp valuation authority”

Following explanation is also inserted,

“For the purpose of this section, the expression ‘assessable’ means the price which the stamp valuation authority would have, adopted or assessed, if it were referred to such authority for the purpose of the payment of stamp duty.

Reason of Amendment : 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 stamp valuation authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain. However the present scope of the provisions does not include transactions which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney.

The above amendment seeks to cover these transfers within the ambit of section 50C,

AMENDMENT IN INCOME FROM OTHER SOURCE

Section 56(2) : This section is amendment so as to provide that value of any movable or immovable property received without consideration or for inadequate consideration shall be included under the head income from other source in the computation of total income.

→ In a case where an immovable property is received without consideration and stamp duty value exceeds Rs.50000, the whole of the stamp duty value of such property shall be taxed as the income of the recipient.

→ If immovable property is received for a consideration which is less than the stamp duty value and the difference between the two exceeds Rs.50000 (the case of inadequate consideration), such difference shall be taxed as income.

→ If movable property is received without consideration and the aggregate fair market value of such property exceeds Rs.50000, the whole of such FMV shall be taxed as income.

→ If movable property is received for a consideration which is less than the FMV and the difference between the two exceeds Rs.50000 (the case of inadequate consideration), such difference shall be taxed as income.

Reason of Amendment : Existing section 56 provides that any 'sum of money' (in excess of Rs.50000) 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 anything received in kind having 'money's worth' is outside the purview of existing provisions.

TAXABILITY OF COMPENSATION / ENHANCED COMPENSATION

Section 56(2)(viii) : income by way of interest received on compensation or on enhanced compensation shall be taxable under the head income from other source.

Section 145A : Interest received by an assessee on compensation or on enhanced compensation, as the case may be shall be deemed to be income of the year in which it is received. (irrespective of the method of accounting followed.)

Section 57 : In case of income by way of interest received on compensation or enhanced compensation, a deduction of 50% of such income shall be allowed.

Reason of Amendment : Income under the head 'PGBP' and 'Income from other source' is 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 held that arrears of interest computed on delayed or enhanced compensation shall be taxable of accrual basis. This caused undue hardship to taxpayers.

With a view to mitigate the hardship it is now provided 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.

AMENDMENT IN CHAPTER VIA: DEDUCTIONS FROM GTI

Section 80DD & 80U : Deduction in case of severe disability has been raised from Rs.75,000 to Rs.100,000

Section 80E : The scope of this section is extended 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 recognized by Central Government or State Government or local authority authorized.

Further, the definition of 'relative' in relation to an individual has been amended to include the student for whom the individual is the legal guardian.

Section 80G : Where an approval is granted by CIT to an institution or fund u/s 80G, then approval so granted shall continue to be valid in perpetuity unless specifically withdrawn.

Reason of Amendment : Earlier approval granted to institutions were valid only for the period specified in the approval not exceeding 5 years. Due to this limitation the approved institutions had to bear the hardship of getting the approval renewed from time to time.

The amendment seeks to avoid the hardship caused to such institutions and to save the time and resources of tax administrations involved in such renewals.

Section 80IA : Terminal date for commencing the activity of generation, transmission or distribution of power in case of such undertaking is extended from 31.3.2008 to 31.3.2011.

AMENDMENT IN TDS PROVISIONS

Section 194I : TDS on Rent

	Existing rate	Amended rate wef. 1.10.2009
(a) rent of plant, machinery or equipment	10%	2%
(b) rent of land, building or furniture to an individual and HUF	15%	10%
(c) rent of land, building or furniture to a person other than indl. & HUF	20%	10%

Section 194I : TDS on Contract

- (a) 1% where payment for a contract are to individual/HUF
- (b) 2% where payment for a contract are to any other entity.

→ The above rates apply to both contracts as well as sub-contracts.
→ The above rates apply to advertising contracts as well.

→ In order to ease the computation of TDS, it is proposed to remove surcharge and cess (both EC & SHEC) on tax deducted on non-salary payments made to resident taxpayers.

NOTE 1: 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. Transport operators reported problems 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. Therefore it is now provided that no TDS is required to be deducted on payments made to transport operators. However this would only apply in cases where the operator furnishes his PAN to the deductor. Deductors would inturn intimate these PAN details to the Income Tax Department.

NOTE 2 : The definition of 'work' under section 194C has been amended to provide that;

- work shall not include manufacturing or supplying a product according to the requirement or specification of a person by using material purchased from third person. (it's a contract for sale) however this will not be applicable to a contract which does not involve manufacture of an article or thing (eg construction contract)
- work shall include manufacturing or supplying a product according to the requirements of the customer using the material purchased from him.

Section 200 : The scheme of filing quarterly returns has been dispensed with. Now TDS statements shall be prepared for such period as may be prescribed by the government.

Section 201 : Order under section 201(1) deeming a person 'assessee in default' for failure to deduct the whole or any part of the tax from the person resident in India has to be passed within 2 years from the end of the financial year in which the statement of TDS is filed by the deductor.

Where no such statement is filed, such order can be passed up till 4 years from the end of the financial year in which the payment is made or credit is given.

→ No time limits have been prescribed for order under section 201(1) where
(a) the deductor has deducted but not deposited TDS 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 employer would not have paid tax on such perquisites.
 - (c) The deductee is a non resident as it may not be possible to recover the tax from the non resident.
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Mandatory quoting of PAN

It is mandatory to furnish PAN to the deductor failing which the deductor shall deduct TDS 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.
- (iii) At the rate of 20 percent.

TDS would be deductible at the above mentioned rates in cases where the taxpayer files a declaration u/s 197A (that his total income does not exceed taxable limit) but does not quote his PAN. Further no certificate u/s 197 shall be granted by A.O. unless the application contains PAN.

These provisions will also apply to non-residents where TDS is deductible on payments or credits made to them. To ensure that the deductor knows about the correct PAN it is also provided that PAN shall be mandatorily quoted by both deductor and deductee in all correspondence (bills and vouchers) between them.

Processing of TDS statements

It is proposed to provide for electronic processing of TDS statements (on the lines of income tax returns)

Following adjustments to be to compute tax, interest, or refund due.

- any arithemtical error in the statements
 - any incorrect claim apparent from the information provided.
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ADVANCE TAX

Section 208 : From F.Y. 2009 onwards advance tax would be payable only if the advance tax liability is Rs.10000 or more

→ The limit of Rs.5000 set in 1996 is now been revised.

TAXATION OF LIMITED LIABILITY PARTNERSHIPS

The Limited Liability Partnership Act 2008 has come into effect in 2009. LLP rules and forms have also been notified wef 1.4.2009

→ It is now proposed to incorporate the taxation scheme of LLP's in the Income Tax Act on the same lines as the taxation scheme currently prevalent for general partnerships, i.e. taxation in the hands of entity and exemption from tax in the hands of its partners.

→ **Signing of Return** :The LLP Act provides for nomination of 'designated partners' who have been given greater responsibility. It is proposed 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 the return or where there is no designated partner as such, any partner shall sign the return

→ In the case of liquidation of LLP every partner will be jointly and severally liable for payment of tax unless he proves that non recovery cannot be attributed to any gross neglect or breach of duty on his part.

→ As an LLP and a general partnership is being treated as equivalent 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.

CIRCULARS

1. Circular No. 4/2009, dated 29.6.2009

Section 195 mandates deduction of income tax from payments made or credit given to non-residents at the rates in force. The Reserve Bank of India has also mandated that except in the case of certain personal remittances which have been specifically exempted, no remittance shall be made to a nonresident unless a no objection certificate has been obtained from the Income Tax Department.

This was modified to allow such remittances without insisting on a no objection certificate from the Income Tax Department, if the person making the remittance furnishes an undertaking (addressed to the Assessing Officer) accompanied by a certificate from an Accountant in a specified format.

The certificate and undertaking are to be submitted (in duplicate) to the Reserve Bank of India / authorized dealers who in turn are required to forward a copy to the Assessing Officer concerned. The purpose of the undertaking

and the certificate is to collect taxes at the stage when the remittance is made as it may not be possible to recover the tax at a later stage from non-residents.

There has been a substantial increase in foreign remittances, making the manual handling and tracking of certificates difficult. To monitor and track transactions in a timely manner, section 195 was amended vide Finance Act, 2008 to allow CBDT to prescribe rules for electronic filing of the undertaking.

The format of the undertaking (Form 15CA) which is to be filed electronically and the format of the certificate of the Accountant (Form 15CB) have been notified vide Rule 37BB of the Income-tax Rules, 1962.

The revised procedure for furnishing information regarding remittances being made to non-residents w.e.f. 1st July, 2009 is as follows:-

(i) The person making the payment (remitter) will obtain a certificate from an accountant (other than employee) as defined in the Explanation to section 288 in Form 15CB.

(ii) The remitter will then access the website to electronically upload the remittance details to the Department in Form 15CA (undertaking). The information to be furnished in Form 15CA is to be filled using the information contained in Form 15CB (certificate).

(iii) The remitter will then take a print out of this filled up Form 15CA (which will bear an acknowledgement number generated by the system) and sign it. Form 15CA (undertaking) can be signed by the person authorised to sign the return of income of the remitter or a person so authorised by him in writing.

(iv) The duly signed Form 15CA (undertaking) and Form 15CB (certificate), will be submitted in duplicate to the Reserve Bank of India / authorized dealer. The Reserve Bank of India / authorized dealer will in turn forward a copy of the certificate and undertaking to the Assessing Officer concerned.

(v) A remitter who has obtained a certificate from the Assessing Officer regarding the rate at or amount on which the tax is to be deducted is not required to obtain a certificate from the Accountant in Form 15CB. However, he is required to furnish information in Form 15CA (undertaking) and submit it along with a copy of the certificate from the Assessing Officer as per the procedure mentioned from Sl.No.(i) to (iv) above.

NOTIFICATIONS

1. Notification No. 67/2009 dated 9.9.2009

The Central Government has, vide notification no.67/2009 dated 9.9.2009, specified the cost inflation index (CII) for the financial year 2009-10. The CII for F.Y. 2009-10 is 632.

S. No. Financial Year Cost Inflation Index

1. 1981-82	100
2. 1982-83	109
3. 1983-84	116
4. 1984-85	125
5. 1985-86	133
6. 1986-87	140
7. 1987-88	150
8. 1988-89	161
9. 1989-90	172
10. 1990-91	182
11. 1991-92	199
12. 1992-93	223
13. 1993-94	244
14. 1994-95	259
15. 1995-96	281
16. 1996-97	305
17. 1997-98	331
18. 1998-99	351
19. 1999-2000	389
20. 2000-01	406
21. 2001-02	426
22. 2002-03	447
23. 2003-04	463
24. 2004-05	480
25. 2005-06	497
26. 2006-07	519
27. 2007-08	551
28. 2008-09	582
29. 2009-10	632

2. Notification No. 70/2009, dated 22.9.2009

The CBDT has, in exercise of the powers conferred by section 139(1B), made an amendment in the notification of the Government of India relating to qualifications of an e-Return intermediary.

The qualifications of an e-Return Intermediary, as amended, are detailed hereunder -

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

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

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

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

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

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

