

HIGHLIGHTS OF AMENDMENTS SUGGESTED IN FINANCE ACT 2009 **ASSESSMENT YEAR -2010-11**

APPLICABLE FOR PCC/IPCC MAY-2010/NOV-2010

1. SLAB RATE

- **Individual, Hindu Undivided Family, Association of Persons, Body of Individual**

Income shall be taxable at the slab rates given below:

If total Income upto Rs.1,60,000	NIL
On next 1,40,000	10%
On next 2,00,000	20%
On Balance amount	30%

- **Resident woman below the age of 65 years**

If total income is upto Rs.1,90,000	NIL
On next Rs.1,10,000	10%
On next Rs.2,00,000	20%
On Balance amount	30%

- **Resident individual of the age of 65 years or more**

If total income is upto Rs.2,40,000	NIL
On next Rs.60,000	10%
On next Rs.2,00,000	20%
On Balance amount	30%

No surcharge is applicable for individual, HUF, AOP, BOI and partnership firm from A.Y. 2010-11 however company has to pay surcharge as usual.

2. Fringe benefit tax is omitted hence the employee has to pay tax even if the employer is company or firm etc.
3. As per section 17(2)(vi), if the employer has issued shares or securities at concessional rate, its market value shall be taxable in the hands of the employee
4. As per section 17(2)(vii), employer's contribution to superannuation fund in excess of Rs.1,00,000 shall be taxable in the hands of the employee.
5. As per section 17(2)(viii), fringe benefits like loan by the employer to the employee etc. shall now be covered under section 17(2)(viii) instead of section 17(2)(vi).
6. SBI lending rates as on 01.04.2009 are as follows:

(1)	<u>Housing Loan : -</u>		
	Upto Rs.30 Lacs	Upto 5 years	9.75% p.a.
		Above 5 year and upto 15 years	10.00% p.a.
		Above 15 years and upto 25 years	10.25% p.a.
	Above Rs.30 Lacs and	Upto 5 years	10.25% p.a.

	upto Rs.75 Lacs	Above 5 year and upto 15 years	10.50% p.a.
		Above 15 years and upto 25 years	10.75% pa.
	Above Rs.75 Lacs	Upto 5 years	10.25% p.a.
		Above 5 year and upto 15 years	10.50% p.a.
		Above 15 years and upto 25 years	11.00% p.a.
(2)	Car Loan :-		
	New Vehicles		
	Repayment Period		
	Upto 3 years	Rs.7.5 lacs and above	11.50% p.a.
	Upto 3 years	Below Rs.7.5 lacs	11.75% p.a.
	Above 3 years and upto 5 years		11.75% p.a.
	Above 5 years and upto 7 years		12.00% p.a.
(3)	Education Loan :-	Loan upto Rs.4 lacs	11.75% p.a.
		Above Rs.4 lacs and upto Rs.7.50 lacs	13.25% p.a.
		Above Rs.7.50 lacs	12.25% p.a.
(4)	Personal Loan:-	Upto 3 years	13.25% p.a.
		More than 3 years and upto 6 years	12.50% p.a.

7. Advance tax is payable only if tax payable is Rs.10,000 or more instead of Rs.5,000 or more.

8. Gift

If gift has been given in kind, it is exempt but w.e.f. A.Y. 2010-11, it is taxable in the manner given below:

(i) In case of immovable property, if the value of immovable property for the purpose of charging stamp duty is upto Rs.50,000, it will be exempt and if it is exceeding Rs.50,000, entire amount is taxable.

(ii) In case of any other gift in kind like jewellery etc., if the aggregate market value is upto Rs.50,000, it is exempt but if it is exceeding Rs.50,000, entire amount is taxable.

Example

(i) Mr. X has received three gifts from his three friends

(a) Rs.55,000 in cash

(b) Land with market value Rs.5,00,000 but the value for the purpose of charging stamp duty Rs.4,00,000.

(c) Jewellery with market value Rs.3,00,000

In this case, taxable amount shall be $55,000 + 4,00,000 + 3,00,000 = 7,55,000$

If in the above case instead of receiving the land free of cost, Mr. X has paid Rs.1,40,000, taxable amount shall be $4,00,000 - 1,40,000 = 2,60,000$ but if Mr. X has paid Rs.3,70,000, Taxable amount shall be nil because if the difference ($4,00,000 - 3,70,000$) is upto Rs.50,000, it will be exempt.

9. Salary etc. allowed to the working partners shall be as given below:

(i) First Rs.3,00,000 of the book profits

90% or Rs.1,50,000 whichever is higher

(ii) On the balance

60%

10. As per section 40A(3), payments exceeding Rs.20,000 should be by account payee cheque or account payee bank draft but in case of payments made for plying, hiring or leasing goods carriages, Rs.20,000 shall be taken as Rs.35,000.
11. Under section 80DD, deduction in case of severe disability shall be Rs.1,00,000 instead of Rs.75,000. Similarly under section 80U, deduction for severe disability shall be Rs.1,00,000
12. No surcharge or education cess in case of TDS, however, in case of non-resident company, surcharge and education cess shall be applicable in the normal manner.
In case of salary income, education cess shall be applicable in the normal manner.
13. TDS under section 194C shall be @ 1% for all type of contracts if payment is given to an individual or HUF @ 2% in case of payment to any other person.

No TDS in case of payment for plying, hiring, leasing goods carriages under section 194C.

14. TDS under section 194-I shall be @ 2% in case of rent for plant and machinery etc. and @ 10% in case of letting out of house property.
15. If the person from whose income, tax is to deducted has not submitted his PAN, as per section 206AA, rate of TDS shall be actual rate or 20% whichever is higher.
16. Under section 80E, higher education shall include any course of study after passing senior secondary examination.
17. Charitable purpose shall include relief of 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.
18. Cost of acquisition in case of shares/debentures received under ESOP Section 49(2AA)
If the employer has issued sweat equity shares to the employees, in such cases as per section 17(2)(vi), market value of the shares shall be taxable in the hands of the employee.

If the same shares have been sold by the employees subsequently, the cost of acquisition of the shares shall be the market value of the shares which was taken into consideration for the purpose of perquisite value under the head salary.

19. Cost of acquisition in case of assets received as gift Section 49(4)
If any gift in kind was taxable under section 56, in such cases, at the time of sale, cost of acquisition of such asset shall be the value which has been taken into consideration for the purpose of computing taxable amount of gift. E.g. Mr. X purchased one house property on 01.07.2008 and it was gifted to Mr. Y on 01.11.2009 and value for the purpose of charging stamp duty was Rs.5,00,000 and subsequently the house property was sold by Mr. Y on 01.01.2010 for Rs.15,00,000, in this case capital gains shall be computed in the manner given below:

	Rs.
Full value of consideration	15,00,000
Less: Cost of acquisition	5,00,000
Short term capital gain	10,00,000

20. ICAI has clarified that the five services for the May 2010 and Nov 2010 examination shall be as given below:

1. Legal Consultancy Services
 2. Mandeep Keeper's Services
 3. Commercial Training or Coaching Services
 4. Information Technology Software Services
 5. Services in respect of membership of clubs or associations
21. For the students appearing in Nov' 2010, perquisite value for motor car for official/personal purpose shall be Rs.1,800 p.m. for 1.6 litres and Rs.2,400 p.m. for motor car exceeding 1.6 litres and perquisite value for driver shall be Rs.900 p.m. as per the new rules notified on 18th Dec' 2009.
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AMENDMENTS FROM ASSESSMENT YEAR 2011-12

APPLICABLE FOR MAY-2011/NOV-2011 EXAMINATION

1. Section 44AF shall be omitted and all the business shall know be covered under section 44AD.
2. Under section 44AE, Rs.3,500 shall be taken as Rs.5,000 and Rs.3,150 shall be taken as Rs.4,500.

ORIGINAL TEXT

1. **Section 2(15) Charitable Purpose**

In clause (15), after the words "medical relief," the words and brackets "preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest," shall be inserted;

2. **Section 17(2)(vi)**

In section 17 of the Income-tax Act, in clause (2), for sub-clause (vi), the following sub-clauses shall be substituted with effect from the 1st day of April, 2010, namely:—

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

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

(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 there for, 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;
- (vii) the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees;
- (viii) the value of any other fringe benefit or amenity as may be prescribed:'.

3. **Section 35**

In section 35 of the Income-tax Act, in sub-section (2AB), in clause (1), for the words "the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board", the words "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" shall be substituted with effect from the 1st day of April, 2010.

4. **Section 40(b)**

In section 40 of the Income-tax Act, in clause (b), in sub-clause (v), for items (1) and (2), the following shall be substituted with effect from the 1st day of April, 2010, namely :—

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

5. **Section 40A(3)**

In section 40A of the Income-tax Act, in sub-section (3A), after the proviso, the following proviso shall be inserted with effect from the 1st day of October, 2009, namely:—

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

6. **Section 49(2AA) / 49(4)**

In section 49 of the Income-tax Act,—

- (a) for sub-section (2AA), the following sub-section shall be substituted with effect from the 1st day of April, 2010, namely:—

“(2AA) Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (vi) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause.”;

- (b) after sub-section (3), the following sub-section shall be inserted with effect from the 1st day of October, 2009, namely :—

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

7. **Section 56**

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

(a) with effect from the 1st day of October, 2009,—

(i) in clause (vi), after the words, figures and letters "on or after the 1st day of April, 2006", the words, figures and letters "but before the 1st day of October, 2009" shall be inserted;

(ii) after clause (vi), the following clause shall be inserted, namely:—

'(vii) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—

(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;

(b) any immovable property,—

(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration;

(c) any property, other than immovable property,—

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:

Provided that where the stamp duty value of immovable property as referred to in sub clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under that section:

Provided further that this clause 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.

Explanation.—For the purposes of this clause,—

(a) "assessable" shall have the meaning assigned to it in the *Explanation* 2 to subsection (2) of section 50C;

(b) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed;

(c) "jewellery" shall have the meaning assigned to it in the *Explanation* to sub-clause (ii) of clause (14) of section 2;

(d) "property" means—

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures; or

(viii) any work of art;

(e) "relative" shall have the meaning assigned to it in the *Explanation* to clause (vi) of sub-section (2) of this section;

(f) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;

(b) after clause (vii) as so inserted, the following clause shall be inserted with effect from the 1st day of April, 2010, namely:—

"(viii) income by way of interest received on compensation or on enhanced compensation referred to in sub-section (2) of section 145A."

8. Section 80DD

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

9. Section 80E

In section 80E of the Income-tax Act, in sub-section (3), for clause (c), the following clause shall be substituted with effect from the 1st day of April, 2010, namely:—

'(c) "higher education" means any course of study pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorised by the Central Government or State Government or local authority to do so;'

10. Section 80U

In section 80U of the Income-tax Act, in sub-section (1), after the proviso, the following proviso shall be inserted with effect from the 1st day of April, 2010, namely:—

Provided further that for the assessment years beginning on or after the 1st day of April, 2010, the provisions of the first proviso shall have effect as if for the words "seventy-five thousand rupees", the words "one lakh rupees" had been substituted.'

11. Section 194-C

For section 194C of the Income-tax Act, the following section shall be substituted with effect from the 1st day of October, 2009, namely:—

'194C. (1) Any person responsible for paying any sum to any resident (hereafter in this section referred to as the contractor) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and a specified person shall, at the time of credit of such sum to the account of the contractor or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to—

(i) one per cent. where the payment is being made or credit is being given to an individual or a Hindu undivided family;

(ii) two per cent. where the payment is being made or credit is being given to a person other than an individual or a Hindu undivided family,

of such sum as income-tax on income comprised therein.

(2) Where any sum referred to in sub-section (1) is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(3) Where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the *Explanation*, tax shall be deducted at source—

(i) on the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or

(ii) on the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

(4) No individual or Hindu undivided family shall be liable to deduct income-tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of Hindu undivided family.

(5) No deduction shall be made from the amount of any sum credited or paid or likely to be credited or paid to the account of, or to, the contractor, if such sum does not exceed twenty thousand rupees: Provided that where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid during the financial year exceeds fifty thousand rupees, the person responsible for paying such sums referred to in sub-section (1) shall be liable to deduct income-tax under this section.

(6) No deduction shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor during the course of business of plying, hiring or leasing goods carriages, on furnishing of his Permanent Account Number, to the person paying or crediting such sum.

(7) The person responsible for paying or crediting any sum to the person referred to in subsection (6) shall furnish, to the prescribed income-tax authority or the person authorised by it, such particulars, in such form and within such time as may be prescribed.

Explanation.—For the purposes of this section,—

(i) “specified person” shall mean,—

(a) the Central Government or any State Government; or

(b) any local authority; or

(c) any corporation established by or under a Central, State or Provincial Act; or

(d) any company; or

(e) any co-operative society; or

(f) any authority, constituted in India by or under any law, engaged either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; or

(g) any society registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India; or

(h) any trust; or

(i) any university established or incorporated by or under a Central, State or Provincial Act and an institution declared to be a university under section 3 of the University Grants Commission Act, 1956; or

(j) any Government of a foreign State or a foreign enterprise or any association or body established outside India; or

(k) any firm; or

(l) any person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, if such person,—

(A) does not fall under any of the preceding sub-clauses; and

(B) is liable to audit of accounts under clause (a) or clause (b) of section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid to the account of the contractor;

(ii) “goods carriage” shall have the meaning assigned to it in the *Explanation* to sub-section (7) of section 44AE;

(iii) “contract” shall include sub-contract;

(iv) “work” shall include—

(a) advertising;

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

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

(d) catering;

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

12. Section 194-I

In section 194-I of the Income-tax Act, for clauses (a), (b) and (c), the following clauses shall be substituted with effect from the 1st day of October, 2009, namely:—

“(a) two per cent. for the use of any machinery or plant or equipment; and

(b) ten per cent. for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings.”.

13. Section 206AA

After section 206A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2010, namely:—

“206AA. (1) Notwithstanding anything contained in any other provisions of this Act, any person entitled to receive any sum or income or amount, on which tax is deductible under Chapter XVIIIB (hereafter referred to as deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereafter referred to as deductor), failing which tax shall be deducted at the higher of the following rates, namely:—

(i) at the rate specified in the relevant provision of this Act; or

(ii) at the rate or rates in force; or

(iii) at the rate of twenty per cent.

(2) No declaration under sub-section (1) or sub-section (1A) or sub-section (1C) of section 197A shall be valid unless the person furnishes his Permanent Account Number in such declaration.

(3) In case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with the provisions of sub-section (1).

(4) No certificate under section 197 shall be granted unless the application made under that section contains the Permanent Account Number of the applicant.

(5) The deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all the correspondence, bills, vouchers and other documents which are sent to each other.

(6) Where the Permanent Account Number provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnished his Permanent Account Number to the deductor and the provisions of sub-section (1) shall apply accordingly.”.

14. Section 208

In section 208 of the Income-tax Act, for the words “five thousand rupees”, the words “ten thousand rupees” shall be substituted.

NOTES ON CLAUSES

1. Section 2(15) Charitable Purpose

It is proposed to amend section 2(15) so as to include preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest along with relief of the poor, education and medical relief in the definition of “charitable purpose” under section 2(15) so that the proviso to the said section shall also not apply to these activities.

It is proposed to make the above amendment applicable with retrospective effect from 1st April, 2009 and will, accordingly, apply in relation to assessment year 2009-2010 and subsequent years.

2. Section 17(2)(vi)

It is proposed to substitute the said sub-clause so as, inter alia, to provide that perquisite 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.

It is also proposed to insert sub-clause (vii) to the said clause (2) so as to provide that perquisite include the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees.

It is also proposed to insert sub-clause (viii) so as to provide that perquisite include the value of any other fringe benefit or amenity as may be prescribed.

These amendments will take effect from the 1st April, 2010 and will, accordingly, apply to the assessment year 2010-11 and subsequent assessment years.

3. Section 40(b)

It is proposed to revise the above limits and provide uniform limits for both professional firms and non-professional firms as under—

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

The proposed amendment will take effect from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010- 2011 and subsequent years.

4. Section 40A(3)

It is proposed to insert a second proviso so as to provide that in case of payment made for plying, hiring or leasing goods carriages, the ceiling of twenty thousand rupees specified in sub-sections (3) and (3A) shall be enhanced to thirty-five thousand rupees.

The proposed amendment will take effect from 1st October, 2009.

5. Section 49(2AA)

It is proposed to substitute the said sub-section so as to provide that where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (vi) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause.

This amendment will take effect from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-2011 and subsequent years.

6. Section 56

The proposed amendment seeks to tax specified properties, including a sum of money, received without consideration or for inadequate consideration.

This amendment will take effect from 1st October, 2009.

It is also proposed to amend sub-section (2) of said section so as to insert a clause which provides that income by way of interest received on compensation or on enhanced compensation referred to in

sub-section (2) of section 145A shall be chargeable to income tax under head income from other sources.

This amendment will take effect from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-2011 and subsequent years.

7. Section 80DD

The proposed amendment seeks to amend the proviso to subsection (1) of the said section to enhance the present limit of seventy five thousand rupees to one hundred thousand rupees for a dependant who is a person with severe disability.

This amendment will take effect from 1st April 2010 and will, accordingly, apply in relation to assessment year 2010-2011 and subsequent years.

8. Section 80E

It is proposed to substitute clause (c) so as to provide that “higher education” will mean any course of study pursued after passing the senior secondary examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority.

The proposed amendment will take effect from the 1st day of April, 2010 and will, accordingly, apply in relation to assessment year 2010-2011 and subsequent years.

9. Section 194-C

The proposed amendment seeks to substitute section 194C.

Sub-section (1) of the proposed amendment provides that any person shall deduct tax at source at the rate of one per cent. if the payee is an individual or a Hindu undivided family or at the rate of two per cent. in the case of any other person, on payment to a resident contractor for carrying out any work.

Sub-section (2) provides that if the sum is credited to suspense account, etc., then also tax at source needs to be deducted.

Sub-section (3) provides that where any sum is paid or credited for carrying out any work mentioned in sub-clause (e) of clause (iv) of the Explanation to section 194C, tax shall be deducted at source on the invoice value excluding the value of material if such value is mentioned separately in the invoice, or on the whole of the invoice value if the value of material is not mentioned separately in the invoice.

Sub-section (4) is identical to the proviso to earlier sub-section (1) of section 194C.

Sub-section (5) is identical to clause (i) of sub-section (3) of the existing section 194C.

The proposed sub-section (6) provides that no tax shall be deducted at source in case of payment for plying, hiring or leasing goods carriages provided that the contractor provides his Permanent Account Number.

The proposed sub-section (7) provides that the “payer” mentioned in sub-section (6) shall furnish to the prescribed Income Tax Authority or the person authorised by it such particulars as may be prescribed. The Explanation to the proposed section defines the expressions “specified person”, “goods carriage” and “contract”.

Clause (iv) of the Explanation defines the expression “work” to include advertising, broadcasting and telecasting including production of programmes for such broadcasting or telecasting, carriage of goods or passengers by any mode of transport other than by railways, catering and manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer.

The Explanation further provides that the work shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person other than such customer.

This amendment will take effect from 1st October, 2009.

10. Section 194-I

It is proposed to substitute the said clauses (a), (b) and (c) by new clauses (a) and (b) so as to provide that deduction of tax at source on an income by way of rent shall be at the rate of (a) two per cent. for the use of any machinery or plant or equipment; and (b) ten per cent. for the use of any land or building (including factory building) or land appurtenant to a building (including factory building) or furniture or fittings.

These amendments will take effect from 1st October, 2009.

11. Section 206AA

The proposed sub-section (1) of the said section specifies that any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVIIIB (hereinafter referred to as the deductee) shall furnish his Permanent Account Number to the person responsible for deducting such tax (hereinafter referred as the deductor), failing which tax shall be deducted at the rate mentioned in the relevant provisions of the Act or at the rate in force or at the rate of twenty per cent., whichever is higher.

The proposed sub-section (2) of the said section provides that the declaration filed under section 197A shall not be valid unless the person filing the declaration furnishes his Permanent Account Number in such declaration.

The proposed sub-section (3) of the said section provides that in case any declaration becomes invalid under sub-section (2), the deductor shall deduct the tax at source in accordance with the provisions of sub-section (1).

The proposed sub-section (4) of the said section provides that no certificate under section 197 shall be granted unless it contains the Permanent Account Number of the applicant.

The proposed sub-section (5) of the said section provides that the deductee shall furnish his Permanent Account Number to the deductor and both shall indicate the same in all correspondence, bills, vouchers and other documents which are exchanged between them.

The proposed sub-section (6) of the said section provides that where the Permanent Account Number provided by the deductee is invalid or it does not belong to the deductee, then it shall be deemed that Permanent Account Number has not been furnished to the deductor and tax shall be deducted under sub-section (1).

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

12. Section 208

It is proposed to enhance the said limit from five thousand rupees to ten thousand rupees.

This amendment will take effect retrospectively from 1st April, 2009.

Anshul G. Bafna

MEMORANDUM

1. **Section 2(15) Charitable Purpose**

Amendment to include certain activities within the ambit of provisions relating to 'charitable purpose' in the Income Tax Act

It is now proposed to amend clause 15 of section 2 so as to separately list the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest so that they would be excluded from the applicability of the aforesaid conditions which are applicable to the "advancement of any other object of general public utility".

The proposed amendment shall be applicable with retrospective effect from 1st April, 2009 and will accordingly apply in respect of assessment year 2009-2010 and subsequent years.

2. **Section 17(2)(vi)**

It is proposed to insert a new section 115WM to abolish the fringe benefit tax. Consequently, it is also proposed to restore the taxation of the fringe benefits as perquisites in the hands of the employees. Therefore, it is also proposed to amend clause (2) of section 17,—

(a) by substituting sub-clause (vi) 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.

(b) by inserting sub-clause (vii) 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 one lakh rupees.

(c) by inserting sub-clause (viii) to provide that perquisite shall also include the value of any other fringe benefit or amenity as may be prescribed.

These amendments will take effect from 1st April, 2010 and will accordingly, apply to the assessment year 2010-11 and subsequent assessment years.

3. **Section 40(b)**

Remuneration to partners in a firm

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

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

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

4. Section 40A(3)**Enhancement of limit for disallowance of expenditure made in the case of transporters**

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

The existing limit for other categories of payments will remain at Rs. 20,000/- subject to the exceptions declared in Rule 6DD of the Income-tax Rules.

The proposed amendment will apply to transactions effected on or after the 1st October, 2009.

5. Section 49(2AA)

It is also proposed to amend section 49 to provide that Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in sub-clause (vi) of clause (2) of section 17, the cost of acquisition of such security or shares shall be the fair market value which has been taken into account for the purposes of the said sub-clause. This amendment will take effect from the 1st April, 2010 and will accordingly apply to assessment year 2010-11 and subsequent assessment years.

6. Section 56

It is, therefore proposed to amend section 56 of the Income-tax Act to provide that the value of any property received without consideration or for inadequate consideration will also be included in the computation of total income of the recipient. Such properties will include immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.

In a case where an immovable property is received without consideration and the stamp duty value of such property exceeds fifty thousand rupees, the whole of the stamp duty value of such property shall be taxed as the income of the recipient. If an immovable property is received for a consideration which is less than the stamp duty value of the property and the difference between the two exceeds fifty thousand rupees (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 sub-section (15) of section 155 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 fifty thousand rupees, 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 fifty thousand rupees, the difference between the fair market value of such property and such consideration shall be taxed as the income of the recipient.

It is also proposed to provide 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.

This amendment will take effect from 1st October, 2009 and will accordingly apply for transactions undertaken on or after such date.

7. Section 80DD

Deduction for medical treatment of a dependent suffering from disability

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

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

8. Section 80E

Deduction in respect of Interest on loan taken for higher education

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

With the objective of fostering human capital formation in the country, it is proposed to amend the provisions of section 80E of the Income Tax Act so as to extend its scope to cover all fields of studies (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority to do so.

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

9. Section 194-C

Provisions for payments and tax deducted at source to transporters:

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. It is, therefore, proposed to exempt 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. Deductors 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.

Further under the existing provisions of sections 40A(3) the Income-tax Act, 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 en-route expenses on diesel, food and repairs etc and such expenses generally exceed Rs 20,000/-. This causes operational problems to those who have to pay for their services.

To address this problem, it is proposed to raise the limit of cash payment to such transport operators to Rs35,000/- from the existing limit of Rs 20,000/-.

These amendments will take effect from the 1st day of October, 2009 and will accordingly apply to transaction on or after such date.

10. **Section 194-I**

The current rates need a downward revision as they are leading to blocking of working capital funds in many cases. It is therefore proposed to rationalise and reduce 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 (194-I)

	<i>Existing rate</i>	<i>Proposed rate* (w.e.f. 1-10-2009)</i>
Rent —		
a. rent of plant, machinery or 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 per cent in all cases, if PAN is not quoted by the deductee w.e.f. 1.04.2010.

11. **Section 206AA**

Filing of TDS and TCS statements

Sub-section (3) of section 200 of Income-tax Act provides that any person deducting tax in accordance with the provisions of Chapter XVIIIB has to furnish, within the prescribed time, quarterly statements for the period ending on the 30th June, 30th September, 31st December and 31st March in each financial year. 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, it is proposed to modify the existing provisions so as to allow the Government to prescribe periodicity of such TDS statements besides prescribing their form and manner.

These provision will be applicable from 1st October, 2009.

12. **Section 208**

Enhancement of the limit for payment of advance tax

With a view to providing for inflation adjustment, it is proposed to raise the threshold limit for payment of advance tax from the present five thousand rupees to ten thousand rupees.

The proposed amendment will take effect from the 1st April, 2009. Accordingly, advance-tax for the financial year 2009-2010 would be payable only if the advance tax liability is Rs. 10,000/- or more.

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