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BUILDING FUTURE

INSTITUTE OF CONCEPTUAL STUDIES

Amendments for May/June 2011 attempt

(For CA-IPCC/PCC & CS Executive)

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"JAI MATA DI"

Dedicated to

My

Maternal Grand Father, Grand Mother & Mother

Sh. Kishan Chand, Smt. Sheela Rani & Smt Kavita Rani

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AMENDMENTS BY FINANCE ACT, 2010 , NOTIFICATIONS & CIRCULARS UPTO 30.04.2010

1. Rates of Income-tax for Assessment year 2011-12

Tax on total income of an assessee is chargeable at the following two types of rates:

(1) Normal rates

(2) Special rates prescribed under Chapter XII and XII-A of the Income Tax Act, 1961.

A) Normal Rates of Income Tax

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

Upto Rs. 1,60,000	Nil
Rs. 1,60,010 to Rs. 5,00,000	10%
Rs. 5,00,010 to Rs. 8,00,000	20%
Above Rs. 8,00,000	30%

II. In the case of every **individual,** being a **woman resident in India, and below the age of sixty-five years** at any time during the previous year.

Upto Rs. 1,90,000	Nil
Rs. 1,90,010 to Rs. 5,00,000	10%
Rs. 5,00,010 to Rs. 8,00,000	20%
Above Rs. 8,00,000	30%

III. In the case of every **individual,** being a **resident in India,** who is of the **age of 65 years or more** at any time during the previous year.

Upto Rs. 2,40,000	Nil
Rs. 2,40,010 to Rs. 5,00,000	10%
Rs. 5,00,010 to Rs. 8,00,000	20%
Above Rs. 8,00,000	30%

Note – No surcharge is payable by the above assesses.

‘Education Cess’ @ 2%, and ‘Secondary and Higher Education Cess (SHEC)’ @ 1% on income tax shall be chargeable.

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

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

No Surcharge shall be levied in the case of a co-operative society.
'Education Cess' @ 2% and SHEC @ 1% on income tax shall be chargeable.

(C) In case of any firm (including limited liability partnership) – 30%
No surcharge shall be levied in the case of a firm.
'Education Cess' @ 2% and SHEC @ 1% on income tax shall be chargeable

(D) In the case of a company
(i) For domestic companies: 30%, surcharge @ **7.5%** on tax payable shall be levied where total income of the company exceeds **one crore rupees.**

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

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

B) <u>Special Rates of Income Tax</u>
(a) On short-term capital gain covered under section 111A – 15%
(b) On long-term capital gain covered under section 112 – 20%
(c) On winning of lotteries, crossword puzzles, card games, etc. [Section 115BB] – 30%
Besides the above, certain incomes of non-residents are taxable at special rates.

Note 1- Normal rates of tax are fixed by annual Finance Act. But special rates are given in the income tax Act.

Note 2*:* Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, such short-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such short-term capital gains shall be computed at the **rate of ten per cent**

2. <u>Marginal relief only in case of a company assessee</u>

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

i.e. (Tax on Rs 1 Crore) + (Total Income - Rs 1 Crore)

Example:

Total Income	**Income tax and surcharge**
Rs 1,00,00,000	Rs 30,00,000
Rs 1,01,00,000	Rs 30,30,000 + Rs 2,72,250 = Rs 32,77,250 Restricted up-to to Rs 31,00,000.

Changes in Definitions

3. <u>Exemption under section 10(21)</u> – It has been extended to include the research association undertaking research in social science or statistical science.

4. <u>Section 2(24)-</u> any sum of money or value of property referred to in Section 56(2)(viia) i.e. Value of shares received by a firm or a company for inadequate consideration or without consideration to be taxed in hands of the recipient

5. <u>Meaning of Charitable Purpose [Section 2(15)]</u>

Charitable purpose includes:-

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.

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.

Provided further *that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year*

Example : A Charitable trust has receipts of Rs 200 Lakhs from activities of charitable nature. The trust also have a business which is not incidental to the attainments of main objects of the trust and the total receipt from the business are:-

a) Receipts Rs 10 Lakhs, Expenses 3 Lakhs
b) Receipts Rs 30 Lakhs, Expenses Rs 22 Lakhs

Taxation of Charitable and religious organizations

6. The Commissioner, on receipt of an application for registration of a trust or institution made under section 12A, shall—

(*a*) call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about the genuineness of activities of the trust or institution and may also make such inquiries as he may deem necessary in this behalf; and

(*b*) after satisfying himself about the objects of the trust or institution and the genuineness of its activities, he—

(*i*) shall pass an order in writing registering the trust or institution;

(*ii*) shall, if he is not so satisfied, pass an order in writing refusing to register the trust or institution,

and a copy of such order shall be sent to the applicant :

No order under sub-clause (*ii*) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

Every order granting or refusing registration under clause (*b*) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (*a*) or clause (*aa*) of sub-section (1)] of section 12A.

Where a trust or an institution has been granted registration under clause (*b*) of sub-section (1) *or has obtained registration at any time under* and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing canceling the registration of such trust or institution after giving an opportunity of being heard.

Income deemed to accrue or arise in India

7. Explanation added by Finance Act, 2010:-

A- Section 9(v)- Income by way of **interest** payable by

(a) the **Government ; or**

(b) a person who is a **resident in India, except w**here the interest is payable in respect of any money's borrowed and used, for the purposes of a **business or profession** carried on by such person outside India or for the purposes of making or **earning any income** from any source outside India; **or**

(c) a person who is a **non-resident In India,** where the interest is payable in respect of any moneys borrowed and used, for the purposes of a **business or profession** **carried on by such person in India.**

shall be income deemed to accrue or arise in India in the hands of recipient.

Example : If Central Government has taken a loan from an agency in USA, equivalent to Indian Rs. 2,000 lakh @ 10%, in this case, interest of Rs. 200 lakh paid by the Government to such agency shall be considered to be the income of such agency accruing or arising in India.

Example: ABC Ltd. an Indian company has taken a loan from an organization in USA and the amount was utilized in USA. In this case, interest income shall be accruing or arising in USA.

Example: Z Ltd. a non-resident company has taken a loan from outside India and loan amount was utilized in India in house property, In this case, interest income shall be accruing or arising abroad.

B. Section 9(vi)-Income by way of **royalty** payable by –

(a) the **Government** ; or

(b) a person who is a **resident in India,** except where the royalty is payable in respect of any right/information/property used for the purpose of business or profession carried on outside India or earning any income from **any source outside India** ; or

(c) a person who is a **non-resident in India,** where the royalty is payable in respect of any right/information/property used for the purpose of **business or profession on in India or earning any income from any source in India.**

shall be income deemed to accrue or arise in India in the hands of recipient.

Note 1-Royalty here means any consideration for:-

Transfer of rights in respect of a –

a) Patent, invention, model, design, process or trade mark or copy right, literary, artistic or scientific work including films or video.
b) Use of any patent, invention, model, design or process etc.
c) Giving any information concerning the working of a patent, invention, model, design or process etc.
d) Rendering any services in connection with the above activities.

C. Section 9(vii)-Income by way of fees for **technical services** payable by –

(a) the **Government** ; or

(b) a person who is a **resident in India, except** where the fees are payable for a business or profession carried on outside India or earning any income from any source outside India ; or

(c) a person who is a **non-resident in India,** where the fees are payable in respect of services used for **business or profession carried on in India or earning any income from any source in India.**

shall be income deemed to accrue or arise in India in the hands of recipient.

Explanation by Finance Act, 2010: For the removal of doubts, it is hereby declared that for the purposes of this section, where income is deemed to accrue or arise in India under clause (v), (vi) and (vii) of subsection (1), such income shall be included in the total income of the non-resident, whether or not the non resident has a residence or place of business or business connection in India section (1) and shall be included in the total income of the non-resident, whether or not.-

(i) **the non-resident has a residence or place of business or business connection in India; or**
(ii) **the non resident has rendered services in India.**

Example: State with reasons, whether the following statements are true or false, with regard to the provisions of the Income-tax Act, 1961:
(a) Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services is taxable in India irrespective of territorial nexus.

Solution:

(a) **True-**Explanation to section 9 clarifies that income by way of interest, royalty or fee for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not the non-resident has a residence or place of business or business connection in India.

Changes under the head Salaries

8. Notification of interest rate on RPF as 8.5% w.e.f 1.9.2010, the interest in excess of which would be taxable as salary.

The Central Government has notified w.e.f. 1st September, 2010, in exercise of the powers conferred by Rule 6, 8.5% as the rate of interest on Employer's annual contributions in a recognized provident fund. This implies that w.e.f. 1st September 2010 interest credited on the balance to the credit of the employee in excess of 8.5 percent shall be deemed to have been received by the employee in the previous year and shall be included in the total income of the employee. Prior to this date, the interest credited to excess of 8.5% was deemed to be the income of the employee.

Example: If interest @ 9.5% is credited in the provident fund account of the employee as on 31st March, 2011 for the year 2010-11, then, according to the above notification, the amount of interest credited upto 31.08.2010 (i.e. 8.5%) is exempt from tax and w.e.f. 01.09.2010 the interest credited @ 1% (i.e. 9.5% - 8.5%) is deemed to be the income of the employee for A.Y. 2011-12.

9. **Ceiling for gratuity exemption raised to Rs. 10 lakhs**

Section 10(10)(ii) exempts any gratuity received under the Payment of Gratuity Act, 1972, to the extent it does not exceed an amount calculated in accordance with the provisions of sub-sections (2) and (3) of section 4 of that Act. The limit specified under sub-section (3) of section 4 has been increased from Rs. 3,50,000 to Rs. 10,00 000 by the Payment of Gratuity (Amendment) Act, 2010 dated 17th May, 2010.

Thereafter, the Central Government has enhanced the notified limit under section 10(10)(iii) from Rs. **3,50,000 to Rs. 10,00,000** in relation to employees who retire or become incapacitated prior to such retirement or die or after 24th May, 2010 or whose employment is terminated on or after the said date. In effect, the ceiling for gratuity exemption under section 10(10)(iii), which is relevant for employees not covered under the Payment of Gratuity Act, 1972, has also been increased to Rs. 10 lakh vide Central Government Notification No. 43/2010 dated 11th June, 2010.

Changes under the head PGBP & TDS related provisions

10. <u>Expenditure on scientific research [Section 35]</u> – The term "scientific research" means "any activity for the extension of knowledge in the fields of natural or applied sciences including agriculture, animal husbandry or fisheries". This section has been introduced with a view to accelerating scientific research, section 35 provides tax incentives. **Under this section amount deductible in respect of scientific research may be classified as under:**

Expenditure on research carried on by the assessee	Contribution to outsiders
1. Revenue expenditure under section 35(1)(i)	1. Contribution to an approved research association/university/college/other institution under section 35(1)(ii).
2. Capital expenditure under incurred during the year.	2. Contribution to an approved research association having object of statistical research/science or to university college/institution under section 35(1)(iii)
3. Capital expenditure incurred before commencement of business 35(iv)	3. Payment to National Laboratory under section 35(2AA)
4. Expenditure on an approved in house research under section 35(2AB)	4. Contribution to an Indian scientific research company Section 35(1)(iia)

Expenditure on Scientific Research at Glance	Weighted deduction with effect from AY 2011-12
<u>REVENUE EXPENDTURE INCURRED BY THE ASSESSEE HIMSELF [Section 35(1)(i)]</u> – Where the assessee himself carried on scientific research and incurs revenue expenditure, deduction is allowed for such **expenditure only if such research relates to the business.** **Pre-commencement period expenses –** Revenue expenses on salary paid to employees (other then perquisites to employees) **or** Payment for purchase of material used in research ,incurred before the commencement of business i.e. within three years immediately before commencement of business on scientific research related to the business are deductible in the previous year in which the business is commenced. However, the deduction is limited to the extent it is **certified by the prescribed authority.**	100% of actual expenditure

An approved research association which has, as its object, undertaking of scientific research **related or unrelated to the business of assessee** [section 35(1)(ii)]	**175% of actual Expenditure**
An approved university, college or other institution for the use of scientific related or unrelated to the business of assessee [section 35(1)(ii)]	**175% of actual expenditure**
An approved association which has as its object the undertaking of research in social science or statistical science or an approved university, college or other institution for the use of research in social science or statistical research related or unrelated to the business of the assessee [section 35(1)(iii)] **Note 1:** Approval under section 35(1)(ii)/(iii) is given by the Central Government. Contribution to these institutions are qualified for weighted deduction even if after the date of making contribution the approval granted to these institutions have been withdrawn.	125% of actual expenditure
<u>Capital expenditure incurred during the year</u> Capital expenditure on conducting scientific research (relating to the business of assessee) is deductible at the rate of **100 per cent in the year in which expenditure is incurred.** For instance, deduction under section 35 is allowable on capital expenditure for research purposes for construction of a building (which is under construction) even if it is not put to use for research and development during the previous year. The above expenses may be on plant or equipment for research or constructing building **(excluding cost of land)** for research or expenses of capital nature connected with research like expenses on purchase of buses to transport research personnel. **<u>Capital expenditure incurred before the commencement of business [Section 35(1)(iv)]</u>** Where any capital expenditure has been incurred on scientific research related to business before the commencement of business, the amount of such expenditure, incurred within **three years immediately preceding the commencement of the business, is deductible in the previous year in which the business is commenced.** No deduction by way of depreciation is admissible in respect of an asset for which deduction u/s 35 in respect of scientific research asset has been claimed. **<u>Sale of Scientific research Asset [Section 41(3)]</u>** **<u>Situation 1: If the asset is sold without having been used for other purposes</u>**, the following amount shall be chargeable to tax – a. surplus (i.e., sale price); or b. deduction already allowed under section 35, **Whichever is less**	

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Computation of Capital Gain:-
Sales Consideration ****
Less: COA (****)
Less: Expenses (****)
Capital Gain *****

Section 41(3)-It is chargeable to tax as business income of the previous year in which the sale took place [section 41(3)]. The excess of sale price over cost of acquisition (or indexed cost of acquisition) is chargeable to tax under section 45 under the head "Capital gains"

<u>**Situation 2:** If the asset is sold after having been used for Business purposes, then</u> –

A) As per explanation 1 of section 43(1) actual cost shall be **NIL**

B) Section 43(6) and Section 50 shall apply for the purpose of computing Capital Gain i.e. STCG.

(See Example below)

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CONTRIBUTION TO NATIONAL LABRATRY [Section 35(2AA)]

Condition 1: The payment is made to –
a. National Laboratory; or
b. University; or
c. Indian Institute of Technology; or
Specified person as approved by the prescribed authority;

Condition 2: The above payment is made under a specific direction that it should be used by the aforesaid person for undertaking scientific research programmed approved by the prescribed authority.

</td><td>175% of actual expenditure</td></tr>
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<u>**EXPENDITURE N IN-HOUSE RESEARCH AND DEVELOPMENT EXPENSES [Section 35 (2AB)]**</u>
1. The taxpayer is a company.
2. The company should be engaged in the business of **manufacture or production** of any article or thing except those specified in the Eleventh Schedule.
3. It incurs any expenditure on scientific research and such expenditure is of capital nature or revenue nature **(not being expenditure in the nature of cost of any land and building).** The expenditure on scientific research in relation to drugs and pharmaceuticals shall include expenditure incurred on clinical drug trial, regulatory approval and filing an application for a patent.

Note 1: Building is eligible for 100% and there is no deduction on purchase of land.

4. The research and development facility is approved by the prescribed authority

</td><td>**200% of actual expenditure**</td></tr>
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CONTRIBUTION TO A COMPANY TO BE USED BY SUCH COMPANY FOR SCIENTIFIC RESEARCH [SEC. 35(1)(iia)] The taxpayer is any person (may be an individual, HUF, firm, company or any other person). 2. The taxpayer has paid any sum to a company (hereinafter referred as "payee-company") to be used by the payee for scientific research. 3. The scientific research may or may not be related to the business of the taxpayer. 4. The payee-company is registered in India. 5. The payee-company has as its main object the scientific research and development. 6. The payee-company is for the time being approved by the prescribed authority. 7. The payee-company fulfils such other conditions as may be prescribed. **Note 1: PAYEE-COMPANY CANNOT CLAIM WEIGHTED DEDUCTION UNDER SECTION 35(2AB) –** With a view to avoid multiple claims for deduction, it has been provided that the payee-company approved under the provisions of section 35(2)(iia) will not be entitled to claim weighted deduction of 200 per cent under section 35(2AB). However, deduction to the extent of 100 per cent of the sum spent as revenue expenditure or capital expenditure on scientific research, which is available under section 35(1), will continue to be allowed.	125% of actual expenditure

CARRY FORWARD AND SET-OFF OF DEFICIENCY IN SUBSEQUENT YEARS

If on account of inadequacy or in absence of profits of the business, deduction on account of capital expenditure on scientific research cannot be allowed, fully or partly, the deficiency so arising is to be carried forward as if it is unabsorbed depreciation.

CONSEQUENCES IN CASE OF AMALGAMATION

In pursuance of an agreement of amalgamation, if the amalgamating company transfers to the amalgamated company, which is an Indian company, any asset representing capital expenditure on scientific research, provisions of section 35 would apply to the amalgamated company as they would have applied to the amalgamating company of the latter had not transferred the asset.

Example: Business is commenced on 01.01.2011. Following amounts have been spent on scientific research:

Year Ended	Salary to Scientific Research Personnel	Perquisites to Scientific Research Personnel	Rent for premises used for Scientific Research	Raw Material consumed in scientific Research	Capital Assets purchased for scientific Research
31.12.2010	Rs. 4,00,000	Rs. 70,000	Rs. 1,60,000	Rs. 85,000	Rs. 6,50,000
31.12.2009	Rs. 4,00,000	Rs. 70,000	Rs. 1,60,000	Rs. 75,000	Rs. 4,50,000
31.12.2008	Rs. 4,00,000	Rs. 70,000	Rs. 1,60,000	Rs. 65,000	Rs. 4,50,000
31.12.2007	Rs. 4,00,000	Rs. 70,000	Rs. 1,60,000	Rs. 55,000	Rs. 2,20,000

Assessment Year 2011-2012

Deduction under section 35(1)(ii)

Salary to scientific Research Personnel (Rs. 4,00,000 X 3) Rs. 12,00,000

Raw Material Consumed in Scientific Research (85,000 + Rs. 75,000 + Rs. 65,000)	Rs. 2,25,000

Total Deduction under section 35(1)(ii)	**Rs. 14,25,000**

Note 1: Rent paid & perquisites for all the four years upto 31.12.2010 shall not be allowed under section 35(1)(i) and shall be a capital loss.

Note 2: Expenditure incurred on raw material & salary for 31.12.2007 not allowed as deduction

Deduction under section 35(1)(iv)

Capital Expenditure of Rs. 15,50,000 shall be allowed as a deduction under section 35(1)(iv).
On the capital expenditure of Rs. 2,20,000, normal depreciation shall be allowable.

Example: Mr. P has purchased a scientific asset in the previous year ended 31-03-1999 for Rs 8,00,000. During the previous year ended 31-03-2011, the said asset is ceased to be used for scientific research. The following information is available for the previous year ended 31.03.2011.

PGBP before depreciation	Rs 5,00,000
WDV of the block of assets (15%)	Rs 4,00,000

The Scientific research asset is eligible for 15% depreciation. The said asset can be sold for Rs 9,00,000. Compute the income of Mr P for PY 2010-11 in following cases:-

c) If asset is sold without using for business.
d) If asset is sold after using for the business

Example: The following is the P & L A/c for the year ended 31-3-2011 of ABC Limited and during the year company has made following contributions for the scientific research assuming all formalities complete:-

Profit & Loss A/c

	Rs.		**Rs.**
To Contribution to statistical research Inst.	1,50,000	By Gross Profit	15,50,000
To Contribution to National Lab.	2,00,000		
To Contribution to Indian Co [35(1)(iia)]	1,50,000		
To net profit	10,50,000		
	-------------		------------
	15,50,000		15,50,000
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Compute the income from business for PY 2010-11.

11. Deduction in respect of expenditure on specified business [Section 35AD] – Section 35AD has been inserted to provide for investment linked tax incentive.

CONDITIONS – The following conditions should be satisfied to avail of the benefit of deduction under section 35AD –

Condition 1 – Specified business – Deduction under section 35AD is available only in the case of a "specified business" given below –

Specified business	**Who should own the business**	**Approval Required**	**Date of commencement of business**
Setting up and operating a cold chain facility i.e. It means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.	Any person	Not required	On or after April 1, 2009
Setting up and operating a warehousing facility for storage of agricultural produce	Any person	Not required	On or after April 1, 2009
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	An Indian company or a consortium of Indian companies or an authority / Board / corporation established under any Central or State Act	Should be approved by Petroleum and Natural Gas Regulatory Board and notified by the Central Government **[Refer Note 1]**	➢ On or after April 1, 2007, in the case of laying and operating a cross-country natural gas pipeline network for distribution or storage. ➢ In other cases, on or after April 1, 2009.
Building and operating anywhere in India **a new hotel** of 2 star or above category	Any person	No approval required	**On or after April 1, 2010**
Building and operating anywhere in India, **new hospital** with at least 100 beds for patients	Any person	No approval required	**On or after April 1, 2010**
Developing and building a housing project	Any person	Project should be under a scheme for slum redevelopment or rehabilitation framed by the CG/SG and notified by the Board.	**On or after April 1, 2010**

Note 1 – This business should make not less than one-third (for a natural gas pipeline network) or one fourth (for petroleum product pipeline network) of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person.

Associated person is a person who participates in the management of the assessee; holds at least 26 per cent voting power in the assessee; appoints more than half of the board of directors or who guarantees not less than 10 per cent of the total borrowing of the assessee.

Condition 2 – Specified business should be new business –

Point 1) The specified business should not be set up by splitting up, or the reconstruction, of a business already in existence.

Point 2) Moreover, it should not be set up by the transfer of old plant and machinery.

Exceptions to Point 2 above:-

1) Second-hand imported machinery is treated as new – Any machinery or plant which was used outside India by any person (other than the assessee) shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled –

1. Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.
2. Such machinery or plant is imported into India from any country outside India.
3. No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

2) 20 per cent old machinery is permitted – If the value of the transferred assets does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been satisfied.

Condition 3 – Audit of books of account – Books of account of the assessee should be audited.

AMOUNT OF DEDUCTION – ***100 per cent of capital expenditure*** incurred wholly and exclusively for the purpose of specified business carried on by an assessee is deductible in the previous year in which the expenditure is incurred.

Note 2: Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the previous year in which the assessee commences the operation of his specified business, if **the amount is capitalized in the books of account of the assessee on the date of commencement of operation.**

Note 3: If operation of the business of laying and operating a cross-country natural gas distribution network is commenced during April 1, 2007 and March 31, 2009, the capital expenditure (not being for acquiring land or goodwill or financial instrument) incurred before April 1, 2009 (to the extent not allowed as deduction under any section earlier) will be allowed as additional deduction under section 35AD for the assessment year 2010 11.

Note 4: No deduction in respect of the expenditure in respect of which deduction has been claimed shall be allowed to the assessee under **any** other provisions of the Act.

<u>Expenditure not eligible for Deduction u/s 35AD</u>

Expenditure incurred on the acquisition of following not eligible for deduction:-
any land or
goodwill or
financial instrument

<u>Sale proceeds on Capital Asset sold/transfer [Section 28]</u>
Any sum received or receivable on account of any capital asset, in respect of which deduction has been allowed under section 35AD, being demolished, destroyed, discarded or transferred shall be treated as income of the assessee and chargeable to income-tax under the head **PGBP.**

<u>Setoff & Carry forward and setoff losses [Section 73A]</u>
Any loss computed in respect of the specified business shall not be set off except against profits and gains, if any, of any other specified business.

To the extent the loss is unabsorbed, the same will be carried forward for set off against profits and gains from any specified business in the following assessment year and so on **(no time-limit for carry forward such loss)**.

<u>Section 50B relating to slump sale</u>: While computing the net worth in case of slump sale for the purpose of computing capital gain, in the case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a **deduction under section 35AD, its cost shall be taken as Nil**.

<u>Explanation 13 to section 43(1)</u>: As per Explanation 13, the actual cost of any capital asset on which deduction has been allowed is allowable to the assessee under section 35AD, shall be treated as **'nil'**. **–**
(a) in the case of such assessee; and
(b) in any other case if the capital asset is acquired or received, **-**
 (i) by way or gift or will or an irrevocable trust;
 (ii) or any distribution on liquidation of the company; and
 (iii) by such mode of transfer as is referred to in clause (i), (iv), (v), (vi), (vib), (*xiii*), (*xiiib*) and (*xiv*) of section 47.

<u>Section 80A(7)</u> **Where a deduction under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes" is claimed and allowed in respect of profits of any of the specified business referred to in clause (c) of sub-section (8) of section 35AD for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.**

Example : A Ltd. commenced operations of the business of laying and operating a cross-country natural gas pipeline network for distribution on 1st April, 2010. The company incurred capital expenditure of Rs. 40 lakh during the period January to March, 2010 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2010. Further, during the financial year 2010-11, it incurred capital expenditure of Rs. 150 lakh (out of which Rs. 50 lakh was for acquisition of land) exclusively for the above business. Compute the deduction under section 35AD for the A.Y. 2011-12, assuming that A Ltd. has fulfilled all the conditions specified in section 35AD.**The amount of deduction allowable under section 35AD for A.Y. 2011-12 would be.**

12.COMPLIANCE OF TDS PROVISIONS IN CASE OF A RESIDENT [Section 40(a)(ia)] – Section 40(a)(ia) is applicable if the following conditions are satisfied –

Section 40(a)(ia)-any interest, commission or brokerage, rent, royalty, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and **such tax has not been deducted or, after deduction, *has not been paid on or before the due date specified in sub-section (1) of section 139*.**

Provided *that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in sub-section (1) of section 139, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.*

Explanation.—

(*i*) commission or brokerage- section 194H;

(*ii*)"fees for technical services"- section 9(1)(vii);

(*iii*)"professional services"- section 194J;

(*iv*)"work" -section 194C;

(*v*)"rent" -section 194-I;

(*vi*)"royalty" -section 9(1)(vi)

Cases	**Expenditure given in Column 1 of the above table – It is deductible in the current previous year**	**Is such expenditure deductible in any subsequent previous year**
Case A – Tax not deducted	No deduction in the current previous year	If tax is deducted in any subsequent year, the expenditure will be deducted in the year in which TDS will be deposited by the assessee with the Government
Case B– Tax is deductible (and is so deducted) during the current financial year but it is not deposited on or before the due date of submission of return of income under section 139(1)	No deduction in the current previous year	If tax is deposited with the Government after the due date of submission of return of income, the expenditure will be deductible in that year in which tax will be deposited.

Example : Consider the following cases pertaining to payment of resident which is subject to the provisions of tax deduction at source under section 195 (in all cases liability is incurred during the previous year 2010-11) – Assume due date of return is 30/09/2011.

Date on which tax is supposed to be deducted	Actual date of tax deduction	When tax should be deposited under section 200(1)	Date of deposit of TDS	Previous year in which it is deductible (To be Complete by students)
June 25, 2010	June 25, 2010	July 7, 2010	September 1, 2010	
July 24, 2010	July 24, 2010	August 7, 2010	April 30, 2011	
March 31, 2011	March 31, 2011	April 30, 2011	April 30, 2011	
March 31, 2011	March 31, 2011	April 30, 2011	June 12, 2011	
May 19, 2010	May 19, 2010	June 7, 2010	August 12, 2011	
Dec 8, 2010	Not deducted	-	Not deposited	
June 18, 2010	June 18, 2010	July 7, 2010	July 20, 2012	

Interest for late Payment (Section 201)

1) Where any person, including the principal officer of a company,—

(*a*) who is required to deduct any sum in accordance with the provisions of this Act; or

(*b*) referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that no penalty shall be charged under section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax

2) ***Without prejudice to the provisions of sub-section (1)***,If any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—

(i) at **1%** for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at **1.5%** for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,

and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200

Example : Assessee is required to deduct TDS on 12.10.2010.
Case 1: Assessee deducts TDS on 12.10.2010 but pays TDS on 31.12.2010.
Case 2: Assessee deducts TDS on 12.12.2010 but pays TDS on 02.22.2011.

Due Date of Deposit and Return (Section 200(1))

The person deducting the tax is responsible to deposit the tax with the Central Government in the following manner:-

In case government is the person liable to deduct tax	Same day if tax paid without challan i.e., by internal transfer Within 7 days from end of month deduction if tax paid with challan
In other cases - **a) TDS on credit made in month of March** **b) Other than March**	 **On or before 30 April.** **Within one week from end of month of tax deduction**

Note 1: TDS Deposit time limit in special cases not covered here.

The Quarterly returns of TDS and TCS have to be filed by following due date:-

S.No	Date of ending of quarter of the financial year	Due Date
1	30th June	15th July of FY
2	30th September	15th October of FY
3	31st December	15th January of FY
4	31st March	15th May of FY immediately following the FY in which deduction is made.

13. When audit of accounts by certain persons is compulsory [Section 44AB]

The provisions of section 44AB are given below –

Who has to get his accounts audited on compulsory basis – The following persons are required to get their accounts compulsorily audited by a chartered accountant –

Cases	When they are covered by the provisions of compulsory audit under section 44AB
A person carrying on business	If the total sales, turnover or gross receipt in business for the previous year(s) relevant to the assessment year **exceeds Rs. 60 lakh.**
A person carrying on profession	If his gross receipts in profession for the previous year(s) relevant to the assessment year **exceeds Rs. 15 lakh**.
A person covered under section 44AE, 44BB or 44BBB	If such person claims that the profits and gains from the business are **lower than the profits and gains computed** under these sections **(irrespective of his turnover).**
A person covered under section 44AD	If such person claims that the profits and gains from the business are lower than the profits computed in accordance with the provisions of section 44AD (1) and if his income exceeds the maximum amount which is not chargeable to tax.

Note 1: Section 44AB is not applicable in the case of assesses who come within the purview of section 44B or 44BBA.

Due date for getting books audited / submission of audit report and Form No. – These provisions are given in the table below –

Different taxpayers	Audit Form No. & Statement particulars	Due date for getting books audited	Due date for submission of audit report
In the case of a person who carries on business or profession and who is required by or **under any law to get his accounts audited i.e. companies etc**	Form No. 3CA & In Form No 3CD	September 30 of the assessment year	September 30 of the assessment year
In the case of a person who carries on business or profession but not being a person referred to above	Form No. 3CB & In Form No 3CD	September 30 of the assessment year	September 30 of the assessment year

Note 1: In cases where accounts are required to be audited by or under any other law, it is sufficient if accounts are audited under such other law before September 30 of the assessment year and the assessee obtains before the said date, a report of the audit as required under such law and also a report of audit from a chartered accountant in the forms given above.

Note 2: An assessee should get the report of audit before the due date of the furnishing of the return and should fill out the relevant columns of return forms on the basis of such report. The assessee should retain the report with himself and no need to attach the form with ITR return.

Failure to get accounts audited [Section 271B]

If any person fail to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to **½ % of the total sales, turnover or gross receipts, as the case may be, in business, or of the gross receipts in profession, in such previous year or years or a sum of *Rs 1,50,000,* whichever is less.**

14.Computation of income on estimated basis in the case of taxpayers engaged in a business [Section 44AD]

The provisions of section 44AD are given below and are applicable if following conditions are satisfied–

1. **Eligible assessee –** The assessee should be an eligible assessee. Eligible assessee for this purpose is an individual, a Hindu undivided family or a partnership firm **(not being a limited liability firm)**.

2. **Eligible business –** The assessee should be engaged in any business (whether it is retain trading or civil construction or any other business) except the business of plying, hiring or leasing goods carriages referred to in section 44AE.

3. **Has not claimed some deductions** – The assessee has not claimed any deduction under sections 10A, 10AA, 10B, 10BA, 80HH to 80RRB in the relevant assessment year.

4. **Turnover – Total turnover / gross receipt in the previous year of the eligible business should not exceed Rs. 60 lakh.**

Estimated Income - If the above conditions are satisfied, the income from the eligible business is **estimated at 8 per cent of the gross receipt or total turnover.**

Higher declaration of income possible i.e. above 8%

A taxpayer can claim his income from the aforesaid business at a higher amount then that specified above.

1. The assessee can voluntarily declare a higher income in his return.

2. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, **are deemed to have been already allowed and no further deduction is allowed under these sections.**

Deduction Permissible in case of Partnership firm

In the case of a firm, the normal deduction in respect of salary and interest to partners under section 40(b) shall be allowed.

In Other Words:-	**Rs.**
8% or more * Gross Turnover or receipts	*****
Less: Interest @12% on capital	(****)
Less: salary admissible u/s 40(b)	(****)
Income from PGBP	*****

Assessee can declare lower income – A taxpayer can declare his income to be lower than the deemed profits and gains as stated above then–

1. The taxpayer will have to maintain the books of account as per section 44AA (irrespective of income or turnover) if his total income exceeds the exemption limit.

2. The taxpayer will have to get his book of account audited under section 44AB (irrespective of turnover) if his total income exceeds the exemption limit.

15. Computation of income on estimated basis in the case of taxpayers engaged in the business of plying, leasing or hiring trucks [Section 44AE] –

Section 44AE is applicable only if the following conditions are satisfied –

1. The taxpayer may be an individual, HUF, AOP, BOI, firm, company, co-operative society or any other person. He may be a resident or a non-resident.
2. Taxpayer is engaged in the business of plying, hiring or leasing goods carriages.
3. The taxpayer owns not more than 10 goods carriages at any time during the previous year.

Note 1: For this purpose, a taxpayer, who is in possession of a goods carriage, whether taken on hire purchase or on installments and for which the whole or part of the amount payable is still due, shall be deemed to be the owner of such good carriage.

Calculation of Estimated income

Type of goods carriage	Estimated income
Heavy gods vehicle	Rs. 5,000 for every month (or part of a month) during which the goods carriage is **owned by the taxpayer.**
Other than heavy goods vehicle	Rs. 4,500 for every month (or part of a month) during which the goods carriage is **owned by the taxpayer.**

Note2: Goods carriage – "Goods carriage" means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods.

Note 3: Heavy goods vehicle – "Heavy goods vehicle" means any goods carriage the gross vehicle weight of which, or a tractor or a road-roller the unladen weight of either of which exceeds 12,000 kilograms.

Note 4: Income on the aforesaid basis is calculated for the period during which the goods carriage is owned by the taxpayer, but not on the basis of the period during which the goods carriage is put to use.

Higher declaration of income possible i.e above Rs 5000 p.m./ Rs 4500 p.m.

A taxpayer can claim his income from the aforesaid business at a higher amount then that specified in the table above.

The following points should be noted –

1. The assessee can voluntarily declare a higher income in his return.

2. All deductions under sections 30 to 38, including depreciation and unabsorbed depreciation, are deemed to have been already allowed and no further deduction is allowed under these sections.

Deduction Permissible in case of Partnership firm

In the case of a firm, the normal deduction in respect of salary and interest to partners under section 40(b) shall be allowed.

In Other Words:-	**Rs.**
Estimated income	*****
Less: Interest @12% on capital	(****)
Less: salary admissible u/s 40(b)	(****)
Income from PGBP	*****

Assessee can declare lower income – A taxpayer can declare his income to be lower than the deemed profits and gains as stated above then–

1. The taxpayer will have to maintain the books of account as per section 44AA (irrespective of income or turnover) if his total income exceeds the exemption limit).

2. The taxpayer will have to get his book of account audited under section 44AB (irrespective of turnover) if his total income exceeds the exemption limit.

Example 55: Mr. X, is engaged in the business of plying and hiring of goods carriage. An assessee has purchased the following vehicles during the previous year 31.3.2011:

(i) 3 Heavy Goods vehicle on 11.07.2010 and put to use on 01.01.2011
(ii) 5 Light goods vehicle on 20.09.2010 and put to use on 12.12.2010.

As per books maintained by him, his taxable income for the Assessment Year 2011-12 is as under:

Net Profit	Rs. 2,60,000

Suggest which is better option for the X i.e. whether to OPT presumptive taxation u/s 44AE or to tax under normal provisions.

16.Special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils [Section 44BB, 44DA]

(1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A, in the case of an assessee , **being a non-resident,** engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils, **a sum equal to ten per cent of the aggregate of the amounts specified in sub-section (2)** shall be deemed to be the profits and gains of PGBP.

Provided that this sub-section shall not apply in a case where the provisions of section 42 or section 44D or *section 44DA or* section 115A or section 293A apply for the purposes of computing profits or gains or any other income referred to in those sections.

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*a*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be **used, in the prospecting for, or extraction or production of, mineral oils in India**; and

(*b*) **the amount received or deemed to be received in India** by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils outside India.

(3) An assessee may claim lower profits and gains than the profits and gains specified in that sub-section, if he keeps and maintains such books of account and other documents under section 44AA and gets his accounts audited under section 44AB.

***Explanation.*—For the purposes of this section,—**

(*i*) “plant” includes ships, aircraft, vehicles, drilling units, scientific apparatus and equipment, used for the purposes of the said business;

(*ii*) “mineral oil” includes petroleum and natural gas.

Changes under the head Capital Gains

17. Cost of inflation index 711 for financial year 2010-11.

Changes under the head IOS

18. Receipts without consideration to be treated as income i.e. Gift Taxation [Sec. 56(2)(vii)/(viia)]

These provisions are given below –

When a sum of money / property is received without consideration on or after October 1, 2009 – Clause (vii) has been inserted in section 56(2) by the Finance (No. 2) Act, 2009. under this clause, if an individual or a HUF receives on or after October 1, 2009 a sum of money or property without consideration (which falls in any of the following four categories), it is chargeable to tax in the hands of the recipient under the head “Income from other sources”.

CATEGORIES CHARGEABLE TO TAX – A receipt of sum of money or property without consideration is chargeable to tax under section 56(2)(vii), if it satisfied the following conditions-
1. It is received by an individual or a HUF.
2. It is received on or after October 1, 2009.
3. The sum of money or property falls in any of the following four categories.
4. It does not fall in the exempted category.

Categories – Receipt of sum of money / property without consideration should fall in any of the following four categories-

S.No	Nature of asset	Particulars	Taxable Value
1	Money	Without consideration	The whole amount if the same exceeds Rs. 50,000.
2	Immovable property	Without consideration	The **stamp value** of a property (single property), if it exceeds Rs. 50,000.
~~**3**~~	~~**Immovable property**~~	~~**Inadequate consideration**~~	~~**The difference between the stamp value and the consideration, if such difference exceeds Rs. 50,000.**~~
4	Movable property	Without	The **aggregate** fair market value of the property, if it

		consideration	exceeds Rs. 50,000.
5	Movable property	Inadequate consideration	The difference between the **aggregate** fair market value and the consideration, if such difference exceeds Rs. 50,000.

(Words in Point no.3 Deleted by Finance Act, 2010, w.r.e.f 1-10-2009)

Provided that this clause shall not apply to any sum of money 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

(*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, "relative" means—**

(*i*) spouse of the individual;

(*ii*) brother or sister of the individual;

(*iii*) brother or sister of the spouse of the individual;

(*iv*) brother or sister of either of the parents of the individual;

(*v*) any lineal ascendant or descendant of the individual;

(*vi*) any lineal ascendant or descendant of the spouse of the individual;

(*vii*) spouse of the person referred to in clauses (*ii*) to (*vi*);]

Note 1 -"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

Note 2-Property for this purpose means the following capital asset of the assessee (i.e., recipient):

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

(ii) Movable property being –

- shares and securities;
- jewellery;
- archaeological collection;
- drawings;
- paintings;
- sculptures;
- any work of art, or
- **bullion (w.e.f June 1, 2010)**

Note 3: Section 142A(1) to allow the AO to make reference to the valuation officer for an estimate of the value of property for the purpose of section 56(2).

Note 4: Section 56(2)(vii) not apply to Stock in trade.

Note 5: Section 49(4) Cost acquisition -Where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under section 56(2) (*vii*) *or (*viia*)*, 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*) *or clause (*viia*)*

Example: Check the taxability of the following gifts received by Mrs. Rita during the previous year 2010-11 and compute the taxable income from gifts for Assessment Year 2011-12:

(i) On the occasion of her marriage on 14.08.10, she has received Rs.90,000 as cash gift out of which Rs.70,000 are from relatives and balance from friends.

(ii) On 12.9.10, she has received cash gift of Rs.18,000 from cousin of her mother.

(iii) A cash gift of Rs.21,000 is gifted by her fiancée 15.8.2010.

(iv) She gets a cash gift of Rs.25,000 from the elder brother of her husband's grandfather on 25.10.2010.

(v) She has received a cash gift of Rs.2,000 from her friend on 14.4.2010.

Example : Mr. A had purchased a land on 15.08.1986 for Rs. 8,00,000. The said land is sold on 12.03.2011 to Mr. B Mr. A has declared Rs. 34,00,000 as the consideration for the sale of the land whereas, the value assessed by Government Authority for stamp duty valuation purposes is Rs. 38,00,000. The Assessing Officer refers the valuation of the land to a Valuation Officer and the Valuation Officer ascertains the value of land as:

(i)	**Case I**	: Rs. 36,00,000
(ii)	**Case II**	: Rs. 40,00,000
(iii)	**Case III**	: Rs. 32,00,000

19. <u>Value of shares received by a firm or a company for inadequate consideration or without consideration to be taxed in hands of the recipient [Section 56(2) *(*viia)]</u>

where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—

(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 this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47.

(Inserted by Finance Act, 2010)

Explanation.—for the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);

Example - Mr. A has given 100 shares to M/s ABC (P) Limited. The following are the details-

a) Without Consideration

b) At a price of Rs 100 per share.

Fair Market value of Share (FMV) is Rs 900 per share. Calculate the amount of Gift u/s 56(2) (viia).

Rule -11UA: CBDT has, vide this notification, made rules for determination of fair market value of the property other than immovable property, which would effective from 1st October, 2009

(a) Valuation of jewellery including bullion -

(i) the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;
(ii) in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;
(iii) In case the jewellery is received by any other mode and the value of the jewellery exceeds Rs. 50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date.

(b) Valuation of archeological collections, drawings, paintings, sculptures or any work of art

(i) the fair market value of archeological collections, drawings, paintings, sculptures or any work of art (artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;
(ii) in case the artistic work is received by the way of purchase on the violation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;
(iii) in case the artistic work is received by any other mode and the value of the artistic work exceeds Rs. 50,000, then, the assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the violation date.

(c) Valuation of shares and securities

(a) the fair market value of quoted shares and securities shall be determined in the following manner, namely:-
(i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;
(ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be –
(1) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and

(2) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date, there is no trading in such shares and securities on any recognized stock exchange.

(b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner namely:-

The fair market value of unquoted equity shares = $\frac{(A-L)}{PE} \times (PV)$

Where,

A = Boom value of the assets in Balance Sheet drawn up on the valuation date as reduced by any amount paid as advance tax under the Income-tax Act and any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset.

L = Boom value of liabilities shown in the Balance Sheet drawn up on the valuation date but not including the following amounts:-

1) the paid-up capital in respect of equity shares;
2) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
3) reserves, by whether name called, other than those set apart towards depreciation;
4) credit balance of the profit and loss account;
5) any amount representing provision for taxation, other amount paid as advance tax under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
6) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vii)any amount representing contingent liabilities other than arrears of dividends payable in respects of cumulative preference shares.

PE = Total amount of paid up equity share capital as shown in Balance Sheet drawn up on the valuation date.

PV = the paid up value of such equity shares.

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of such valuation.

Note – “Valuation date” means the date on which the respective property is received by the assessee.

20. Changes in Limited Liability Partnership

Definitions under section 2(23)

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

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

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

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

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

Liability of partners of limited liability partnership in liquidation [Section 167C]

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

Important Notes:-

1) **Tax rates in LLP- Rate 30% + 3% Education cess.**
2) **The Remuneration and Interest paid to the partners of LLP shall be allowed u/s 40(b).**
3) **The Share of profit received by the partner shall be exempt u/s 10(2A).**
4) **The remuneration and interest received by the partners shall be taxable as per section 28.**
5) **Section 44AD is not applicable to LLP**
6) **No Capital Gains shall be exempt when a company is converted into LLP.**
7) **When partnership firm is converted into company – there will be no tax implications.**
8) **Return of income shall be signed by the designated partner or where designated partner is not able to sign, then by any partner.**

Section 47(xiiib*)-any transfer of a capital asset or intangible asset by a private company or unlisted public company to a limited liability partnership or any transfer of a share or shares held in the company by a shareholder as a result of conversion of the company into a limited liability partnership in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008.*

Provided *that—*

(a) *all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the limited liability partnership;*

(b) *all the shareholders of the company immediately before the conversion become the partners of the limited liability partnership and their capital contribution and profit sharing ratio in the limited liability partnership are in the same proportion as their shareholding in the company on the date of conversion;*

(c) *the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the limited liability partnership;*

(d) *the aggregate of the profit sharing ratio of the shareholders of the company in the limited liability partnership shall not be less than fifty per cent at any time during the period of five years from the date of conversion;*

(e) *the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed sixty lakh rupees; and*

(f) *no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of three years from the date of conversion.*

<u>Section 32(1) - Computation of Depreciation in case of Amalgamation, Demerger, Succession and Conversion of private company or unlisted company into LLP if Conditions of Section 47 fulfills.</u>

The aggregate deduction, in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets or know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets allowable to the predecessor and the successor in the case of succession or to the amalgamating company and the amalgamated company in the case of amalgamation, or to the demerged company and the resulting company in the case of demerger, or to unlisted /Private company and to LLP in case of coversion, as the case may be, shall not exceed in any previous year the deduction calculated at the prescribed rates as if the succession or the amalgamation or the demerger, as the case may be, had not taken place,

and

such deduction shall be apportioned between the predecessor and the successor, or the amalgamating company and the amalgamated company, or the demerged company and the resulting company, or to unlisted /Private company and to LLP as the case may be, in the ratio of the <u>number of days for which the assets were used by them.</u>

Example 16: P Private company is converted into LLP on 30-08-2010.

Opening WDV of the Block of Assets in the hands of P as on 01-04-2010 is	Rs. 58,00,000
P acquires an asset in this block on 01-06-2010	Rs. 2,00,000
Opening WDV of the Block of assets in the hands of LLP as on 01-04-2010	Rs. 30,00,000
LLP acquires an asset on 31-12-2010 for	Rs. 5,00,000
P sells the Block of assets to S on 30-08-2010 in the scheme of conversion	Rs. 90,00,000
Depreciation Rate on Block of assets	10%

Compute the amount of depreciation.

Amortisation of expenditure incurred under voluntary retirement scheme section 35DDA(4A)

Where there has been reorganisation of business, whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (*xiiib*) of section 47, the provisions of this section shall, as far as may be, apply to the successor limited liability partnership, as they would have applied to the said company, if reorganisation of business had not taken place.

Explanation 13 to section 43(1)

The actual cost of any capital asset on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be treated as ‘nil.

Explanation 2C to section 43(6)

Where in any previous year, any block of assets is transferred by a private company or unlisted public Company to a limited liability partnership and the conditions specified in the proviso to clause (xiiib) of Section 47 are satisfied, then, notwithstanding anything contained in clause (1), the actual cost of the block of assets in the case of the limited liability partnership shall be the written down value of the block of assets as in the case of the said company on the date of conversion of the company into the limited liability partnership.

Section 47A(4)- if Conditions not fulfilled of proviso to clause (*xiiib*) of section 47

*Where any of the conditions laid down in the proviso to clause (*xiiib*) of section 47 are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset or share or shares not charged under section 45 by virtue of conditions laid down in the said proviso shall be deemed to be the profits and gains chargeable to tax of the successor limited liability partnership or the shareholder of the predecessor company, as the case may be, for the previous year in which the requirements of the said proviso are not complied with.*

Section 49(1) -The cost of assets in the hands of LLP in the conversion of a private company or an unlisted company shall be the cost to previous owner.

Section 49(2AAA)- Where the capital asset being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 (6 of 2009) became the property of the assessee on conversion as referred to in clause (xiiib) of section 47, the cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the share or shares in the company immediately before its conversion.

Section 72(6A)- Where there has been reorganisation of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiib) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly :

Provided *that if any of the conditions laid down in the proviso to clause (xiiib) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor limited liability partnership, shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.*

MAT credit section 115JAA- It is clarified that credit of tax paid u/s 115JB is only allowed to such company and not allowed to LLP.

Changes under Deductions

21. Notification of annuity plan for deduction under section 80C

Deduction under section 80C is available in respect of any sum paid or deposited to effect or to keep in force a contract for such annuity plan of the Life Insurance Corporation or any other insurer as the Central Government may, by notification in the Official Gazette specify in this behalf.

Accordingly, the Central Government, has through this notification specified the Tata AIG Easy Retire Annuity plan of the Tata AIG Life Insurance Company Limited as the annuity plan of the ICICI Prudential Life Insurance Company Limited for the purposes deduction under section 80C.

21.

Section 80D Medical Insurance Premium		
1.	Deduction allowed to	(a) Individual (b) H.U.F.
2.	Payment for Whom	Medical Insurance premium for (a) To Individual- for assessee himself or for his family; For the health of parent or parents (b) To HUF-Any member of HUF **OR** **Any contribution made to the Central Government Health Scheme.** (Finance Act 2010)
3.	Amount of deduction:	An assessee shall be allowed deduction of- (i) Rs. 15,000 (for taxpayer, spouse, dependent children) 20,000 if senior citizen + Rs. 15,000 for insurance of parents 20,000 for Senior Citizen or (ii) Amount paid **Whichever is less.**
4.	Conditions for deduction:	**Payment by any mode other than cash i.e. payment can be made by cheque, credit/debit card, Online banking etc.**

Note 1-Family" means the spouse and dependant children of the assessee.

Note 2-The Central Government Health Scheme is a medical facility available to serving & retired Government servants. This facility is similar to the facility available through health insurance policies.

Note 3-Family" means the spouse and dependant children of the assessee.

Note 4- Parents may be dependent or not dependent.

Note 5- Deduction is also available to Non-Resident Individual.

Note 6- In case of an individual who is senior citizen and is a non resident then deduction will be limited to Rs 15,000 only.

Section 80CCF

23. Deduction in respect of subscription to long term infrastructures bonds

Deduction is allowed to individual or a HUF.

- ✓ Deduction is allowed for depositing the amount as subscription to long term infrastructure bonds, as may be notified by the CG.
- ✓ Amount of deduction**- Amount deposited or Rs 20,000 whichever is less.**

Section 80GGA

The Act has amended section 35(1)(iii) so as to include an approved research association which has its object undertaking research in social science or statistical research for availing deductions of 125% of amount paid.

Section 80GGA has been amended to include allowability of 100% deductions for donations made to such approved concern.

24. TAX DEDUCTION & COLLECTION AT SOURCE

Tax Deduction as Source (TDS)
(Main Points only)

Rates & Limit for Tax deduction at source at Glance

Nature of Payment	Person from whose income tax is being deducted. (assessee)	Person liable for deducting tax	Exemption Limit	Rate
(1)	**(2)**	**(3)**	**(4)**	**(6)**
Salary (Section 192) **Note 1**	Employee	**Employer (at the time of payment)**	TDS shall not be deducted if Total income of employee is upto normal exemption limit i.e. Rs. 1,60,000 or 1,90,000 or 2,40,000	**Average rate of income tax (including education cess @ 3%)**

Interest on securities (section 193) <u>Interest on security means-</u> 1) Interest on security of CG or SG. 2) Interest on debentures or other securities for money issued by or on behalf of a local authority or a company established by central, state or provincial act.	A resident person holding securities	**Payer of interest (at the time of Payment or Credit whichever is earlier)**	**No TDS on notified securities.** 1) On any security issued by company if ✓ In dematerialized form and ✓ Listed on recognized stock exchange 2) On other securities no TDS shall be deducted (i) If interest for the entire p/y is upto Rs. 2,500 and (ii) payment is through a/c payee cheque and (iii) Securities are listed. (whether in physical form or in Demat form)	**10%** **(Flat rate and no surcharge and education cess)**
Interest other than interest on securities **(section 194A)**	Resident person	a) Other than Individual / HUF – always or b) Individual / HUF – only if a/c were audited in the preceding Financial year . **(at the time of Payment or Credit whichever is earlier)**	(i) In case interest is paid by banks or co-operative societies or by post office on any deposits, no TDS shall be deducted if interest for the entire Previous Year per branch is upto Rs. 10,000. (ii) upto Rs. 5,000 if paid by others (iii) No TDS on NSC, KVP, IVP etc. (iv) No TDS on interest on Saving account in banks & post office. (v) No TDS where	**10%** **(Flat rate and no surcharge and education cess)**

			interest is payable by firm to its partners (vi) No TDS where interest paid by cooperative society to its members. (vii) No TDS if interest is paid to banking co/LIC/UTI/Financial corporation. (viii) No TDS if interest credit to NRE account. (ix) No TDS paid by Infrastructure capital co/public sector co/scheduled bank in relation to ZERO coupon bond. (x) No TDS if interest on compensation awarded by Motor accident claim tribunal if interest does not exceeds Rs 50,000 in FY. (Some not covered here)	
Winnings from lotteries or crossword puzzles and horse races **(section 194B & section 194BB)** **Note 2**	Any person	Person paying winnings from crosswords, lotteries or race horses. **(at the time of Payment)**	No TDS shall be deducted if amount won in per lottery is upto Rs. 10,000. **(upto 01/07/2010 Rs 5,000)** No TDS shall be deducted if amount won in per horse races Rs 5,000. **(upto 01/07/2010 Rs 2,500)**	**30%** **(Flat rate and no surcharge and education cess)**
Payment to Contractor / Sub contractors **(section 194C)**	Resident contractor / sub contractor	a) Other than individual / HUF – always b) for individual / H.U.F. only if a/c were audited in the preceding Previous	No TDS shall be deducted if total amount payable during the **entire previous year** is upto 75,000 or single payment upto Rs	**Payment made to contractor** o **1% - individual / HUF** o **2% - others]** **(Flat rate and no**

Note 3		year. [no liability arises if payment is made by individual / HUF for their personal purposes] **(at the time of Payment or Credit whichever is earlier)**	30,000. But if one time amount payable exceeds Rs. 30,000 the TDS shall be deducted on that payment ((upto 01/07/2010 Rs 20,000 for single contract and Rs 50,000 for aggregate) [No TDS shall be deducted if payment is made to transport operator who furnishes his PAN to deductor.]	**surcharge and education cess)**
Insurance commission (sec 194D)	Resident person	Any person paying insurance commission **(at the time of Payment or Credit whichever is earlier)**	No TDS if the amount or aggregate amount of payment does not exceed Rs. 20,000. (upto 01/07/2010 Rs 5000)	**10%** **(Flat rate and no surcharge and education cess)**
Payment to non-Resident Sportsmen or sports association **(Section 194E)**	Any Person	Income earned by sportsmen including an athlete or association by way of- a) participation in any game (other than card game). b) advertisement c) contribution to any articles relating to any game or sports in newspaper, magazine or in journals.	-------------------	**10 % + 3% education cess i.e. 10.3%.**
Commission on sale of lottery tickets **(Section 194G)**	Any person	Any person paying commission on sale of lottery tickets **(at the time of Payment or Credit whichever is earlier)**	No TDS upto Rs. 1,000	**10%** **(Flat rate and no surcharge and education cess)**

Commission or brokerage **(Section 194H)**	Any resident person	a) other than Individual / HUF – always b) for Individual / HUF – only if a/c were audited in the preceding Financial year. **(at the time of Payment or Credit whichever is earlier)**	No TDS upto Rs. 5,000. (upto 01/07/2010 Rs 2500) No TDS on any commission or brokerage payable by BSNL or MTNL to their public call office franchise.	**10%** **(Flat rate and no surcharge and education cess)**
Rent **(section 194I)** **Note 4**	Any resident person	a) other than Individual / HUF – always b) for Individual / HUF – only if a/c were audited in the preceding Financial year. **(at the time of Payment or Credit whichever is earlier)**	No TDS shall be deducted if total **amount of rent** during the previous year is upto 1,80,000 (upto 01/07/2010 Rs 1,20,000)	**Rent of Plant & Machinery – 2%** **Rent of Land & Building or Furniture & Fixture – 10%** **(Flat rate and no surcharge and education cess)**
Fees for professional or technical services **(Section 194J)** **Note 5**	Any resident person Sum by way of :- a) professional fees b) technical fees c) royalty d) any sum referred in section 28(va).	a) other than Individual / HUF – always b) for Individual / HUF – only if a/c were audited in the preceding Financial year. **(at the time of Payment or Credit whichever is earlier)**	No TDS shall be deducted if **any sum** during the previous year is upto 30,000 for each such service. (upto 01/07/2010 Rs 20,000)	**10%** **(Flat rate and no surcharge and education cess)**

Note 1:

1) Loss under the head house property may be adjusted.

2) Where the employee has any other income, he may furnish the statement of other Income and any TDS already deducted to his employer for consideration for deduction of TDS.

3) If the employer has deducted less Tax in the earlier months, he will have to make higher deduction in subsequent moths or vice versa.

4) As per Supreme court if any home salary and allowance paid by foreign company abroad is for rendition of services in India and if no work is found to have have been performed for foreign company, the such payment would certainly come under section 192(1).

5) **Tax on non-monetary perquisites paid by employer-**

A) As per section 10(10CC), the tax paid by the employer on the non-monetary perquisites of the employee shall be exempt in hands of the employee.
B) Tax paid by employer not all deduction while computing business profits of the employer.
C) Credit of tax paid by the employer shall be given to the employee while computing his net tax liability.

Example: The Total Income of Mr. P Rs 8,60,000 inclusive of non-monetary Perquisites Rs 2,60,000. The employer opts to pay the tax on non-monetary perquisites. Determine the tax deposited by the employer.

Note 2: **<u>If Winnings are wholly in Kind or partly in kind and partly in cash</u>**

Mr. M wins car in a lucky draw organized by ABC Ltd. The Market price of the car is Rs 5,00,000. In this case before giving the car to M, ABC ltd will recover TDS amounting Rs 1,50,000 (30% * 5,00,000). If the ABC ltd cannot recover the amount of tax and the car is given to M, then G limited have to pay TDS itself calculated as under:-

Grossing up = Rs 5,00,000 * 100/700= Rs 7,14,286

TDS amount = Rs 7,14,286 * 30/100= Rs 2,14,286

ABC Ltd shall deposit Rs 2,14,286 and income of Mr. M will be Rs 7,14,286.

Note 3: <u>Meaning of Work</u>
a) Advertisement
b) broadcasting and telecasting including production of pragrammes.
c) carriage of goods or passengers by any mode of transport other than railways.
d) catering
e) manufacturing or supplying of product according to requirements 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 sing material purchased from the person, other than customer.**

Note 4: <u>Meaning of Rent-</u> Rent means any payment, by whatever name called, under any lease, sublease, tenancy, or any other agreement for use of any:-
a) land: or
b) building; or
c) land appurtment to a building; or
d) machinery; or
e) Plan; or
f) equiptment; or
g) furniture;or
h) fittings.

Example : ABC Ltd has paid amount of Rent amounting Rs 3,00,000 on building to XYZ Ltd. Rate of Service tax 10.3%. Compute the amount of TDS to be deducted by the payer.

Note 5: <u>Meaning of Professional services-</u> It means services rendered by a person in course of carrying on legal, medical, engineering, or architect, profession or of accountancy or technical consultancy or intererior decorator or advertising or any other profession notified u/s 44A or notified by CBDT.

Meaning of Technical services- It means any consideration including lump sum for rendering of any managerial or technical or consultancy services but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of recipient chargeable under head salaries.

CBDT CIRCULARS (Main Only)

A) In view of above, all such past transactions between TPAs and hospitals fall within provisions of section 194J and consequence of failure to deduct tax or after deducting tax failure to pay on all such transactions would make the deductor (TPAs) deemed to be an assessee in default in respect of such tax and also liable for charging of interest under section 201(1A) and penalty under section 271C.

Considering the facts and circumstances of the class of cases of TPAs and insurance companies, the Board has decided that no proceedings under section 201 may be initiated after the expiry of six years from the end of financial year in which such payment have been made without deducting tax at source etc. by the TPAs. The Board is also of the view that tax demand arising out of section 201(1) in situations arising above, may not be enforced if the deductor (TPA) satisfies the officer in charge of TDS that the relevant taxes have been paid by the deductee-assessee (hospitals etc.).

A certificate from the auditor of the deductee assessee stating that the tax and interest due from deductee-assessee has been paid for the assessment year concerned would be sufficient compliance for the above purpose. However, this will not alter the liability to charge interest under section 201(1A) of the Income-tax Act till payment of taxes by the deductee assessee or liability for penalty under section 271C of the Income-tax Act as the case may be.

2. The contents of the circular may be brought to the notice of officers and officials working under you for strict compliance. **CIRCULAR NO. 8/2009 [F.NO. 385/08/2009-IT (B)], DATED 24-11-2009)**

B) Tax Deduction at Source on payment of interest on time deposits under Section 194A of the Income Tax Act, 1961 by banks following Core-Branch Banking Solutions (CBS) software-It is clarified that since no constructive credit to the depositor's / payee's account takes place while calculating interest on time deposits **on daily or monthly basis** in the **CBS** software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only. In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's / payee's requirement or on maturity or on encashment of time deposits; whichever event takes place earlier; whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

Important Points

1. No tax shall be deducted if the payment is made to Government, RBI, specified Mutual Funds or any statutory corporation.
2. The person liable for deducting tax has to apply for TAN (tax deduction and collection account number).
3. Certificate of TDS is given in Form 16A for incomes other than salary income. Whereas in case of salary income certificate is given in Form 16.

4. All sums deducted under the above provisions will be deemed to be the income received.
5. The tax deducted shall be treated as the tax paid by the assessee and he shall get credit of the tax deducted provided he furnishes the certificate issued to him.
6. Where the income to received for an asset held jointly by two or more persons, credit of tax deducted shall be given to all the holders in the same proportion in which they shared the income.

Miscellaneous Provisions

25. **Allotment of Document Identification Number (Section 282B)**

(1) Every income-tax authority shall, on or after the 1st day of July, 2011, allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued by him to any other income-tax authority or assessee or any other person and such number shall be quoted thereon.

(2) Where the notice, order, letter or any correspondence, issued by any income-tax authority, does not bear a Document Identification Number referred to in sub-section (1), such notice, order, letter or any correspondence shall be treated as invalid and shall be deemed never to have been issued.

(3) Every document, letter or any correspondence, received, on or after the 1st day of July, 2011, by an income-tax authority or on behalf of such authority, shall be accepted only after allotting and quoting of a computer generated Document Identification Number.

(4) Where the document, letter or any correspondence received by any income-tax authority or on behalf of such authority does not bear the Document Identification Number referred to in sub-section (3), such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

Changes under Service tax

Individual Services (As prescribed by the 'ICAI')
(Only relevant for CA IPCC students)

1. Commercial Training & Coaching Services

-any institute or establishment providing commercial training or coaching;
-imparting skill or knowledge or lessons;
-on any subject or field;
- **is imparted for consideration**;
- **whether or not such centre or institute is registered as a trust or a society or other similar organisation under any law for the time being in force;**
- **carrying on its activity with or without profit motive.**

Reason for Amendment- The amendment is carried out retrospectively from July, 2003 so as to resolve the disputes pending at different levels of the dispute settlement system.

But does not include-

a. Sports (with or without issuance of certificate).
b. Preschool coaching & training.
c. Any institute or establishment issues any certificate or diploma or degree recognised by law for the time being in force.
d. Vocational training Institute.
e. Recreational training (related to dance, singing or hobbies etc).
f. Home tutor services.
g. Taxable services provided by commercial training or coaching centre which form an essential part of a course of any institute recognised by law subject to condition payment shall be made **directly to institute not to Coaching Centre.**
h. Free training to employees by employer.
i. Modular Employable skill courses approved by the National Council of Vocational training.

Includes-

j. Bureau services
k. All sorts of coaching classes including intensive batches and tutorial classes, also includes postal coaching.
l. Free training to employees, if it hires outside commercial or training centre for imparting training to employees, the payment made by employer then charge to service tax.
m. Training services provided online.

Note: In case of commercial training and coaching Institutes, deduction will be available only to the sales value of standard text books, which are priced. **Any material or written text provided by the institute will be subjected to service tax.**

➢ Amendment in definition of Vocational training Institute-

Prior to amendment: Vocational Training Institute means a Commercial training or coaching centre which provides vocational training or coaching that imparts skills to enable the trainee to seek employment or undertake self-employment, directly after training.

After amendment (Notification no 3/2010 dated 27-02-2010): Vocational Training Institute means an Industrial Training Institute (ITI)/ Industrial Training Centre (ITC) affiliated to National Council for Vocational Training, offering courses in designated trades as notified under Apprentices Act, 1961.
Note:

1) The ITI and ITC have equivalent recognition and the certificates/diploma granted by them have same recognition. The only difference between ITC and ITI is that ITI are the institutes owned by the government while the ITC are institutes owned by the private parties.

2) List figuring under schedule I of the Apprentices Act, 1961 covers engineering as well as non- engineering trades. Few of the designated trades covered are:-

a) cutting and tailoring trades b) beautician trades c) agricultural trades
d) electrical trades e) glass and ceramic trades f) heat engine trades
g) hi-tech trades.

➢ Modular employable skill courses-

Section 65 (105) (ZZC) of Finance Act, 1994-Commercial Training or coaching Service exemption to Modular employable skill courses approved by the National council of Vocational training.
(Notification no 23/2010 dated 29-4-2010)

➢ Implication of the Amendment-

The Exemption from Service tax in relation to vocational training courses would be available only if following conditions are satisfied**:-**

a) Vocational Training Institute is an ITC/ITI which is affiliated to National council for Vocational Training.

b) It offers courses in any of designated trades

2. Information Technology Software Services

"Information Technology Software Services" means any representation of instructions, data, sound or image, including source code and object code, recorded in a machine readable form, and capable of being manipulated or providing interactivity to a user, by means of computer or an automatic data processing machine or any other device or equipment.

It includes:-

a) development of information technology software
b) study, analysis, design and programming of information technology software,
c) Adaptation, up gradation, enhancement, implementation and other similar services related to information technology software,
d) Providing advice, consultancy and assistance on matters related to information technology software, including conducting feasibility studies on implementation of a system, specifications for a database design, guidance and assistance during the start up phase of a new system, specifications to secure a database, advise on proprietary information technology software
e) Acquiring the right to use information technology software for commercial exploitation including right to reproduce, distribute and sell information technology software and right to use software components for the creation of and inclusion in other information software products,
f) Acquiring the right to use information technology software supplied electronically.

- **Prior to amendment**- Information technology software services was subject to tax only in cases where such IT software was used for furtherance of business or commerce.

- **After Amendment (w.e.f 1st July, 2010)-**The scope of taxable services has now been expanded to tax service even if service provided is used for purposes other than business or commerce**.**

(By Finance Act, 2010)

- **Exemption to right to use the packaged/canned software subject to certain specified conditions-**
The taxable service of providing the right to use the packaged/canned software, pre-packed in retail packages intended for single use has been exempted from the service tax under 'information technology software services' subject to the following conditions:-

1. the document providing the right to use such software is packed along with the software.
2. **(a) In case of import:** The importer has paid the custom duty on the entire amount received from the buyer.
(b) In case of domestic production: The manufacture/duplicator/the person holding the copyright to software has paid the excise duty on the entire amount received from the buyer.

3. the benefit under the following notifications has not been availed:-
   - Notification No. 17/2010 CE dated 27.02.2010
   - Notification No. 31/2010 CUS dated 27.02.2010

[Notification No. 02/2010 ST dated 27.02.2010 and Notification No. 17/2010 ST dated 27.02.2010]

Example: Cladion Software Systems (CSS) is an information technology software company. The receipts during financial year 2010-11 are as under:-

Particulars	**Amount (Rs.)**
Receipts for development of information technology software	1,20,000
Receipts for providing the right to use information technology software supplied electronically	6,00,000

Receipts for programming of information technology software	3,50,000
Receipts for providing right to use the packaged software on which the amount of excise duty has been paid and benefit under Notification No. 17/2010 CE dated 27.02.2010 has not been availed	6,00,000

Determine the value of taxable services and amount of service tax payable by CSS for the financial year 2010-11. CSS has a good track record. In financial year 2008-09, it has provided the taxable services of value of Rs. 15 lakh. The amount of service tax has been charged separately.

Solution:

Computation of the value of taxable services and amount of service tax payable by CSS for the financial year 2010-11:-

Particulars	**Amount (Rs.)**
Receipts for development of information technology software	1,20,000
Receipts for providing the right to use information technology software supplied electronically	6,00,000
Receipts for programming of information technology software	3,50,000
Receipts for providing right to use the packaged software on which the amount of excise duty has been paid and benefit under Notification No. 17/2010 CE dated 27.02.2010 has not been availed (Non taxable)	-------
Total value of taxable services	10,70,000
Service tax @ 10% (Rs. 10,700,000 X 10%)	1,07,000
Add: Education cess @ 3% (Rs. 1,07,000 X 3%)	3,210
Service tax payable	1,10,210

3. <u>Legal Consultancy Services</u>

<u>Taxable service</u>-

It means any services provided or to be provided:

- **to** business entity,
- **by** any other business entity,
- in relation to advice, consultancy or technical assistance in any branch of law, in any manner

- However, any service provided by way of appearance before any court, tribunal or authority **shall not amount to taxable service**.
- The tax is not on profession of lawyers but on services rendered by such lawyer in nature of advice, consultancy or technical assistance in the branch of any law**.**

- **Following transactions are not taxable -**

• Individual lawyers providing any service or
• Services provided by business entity to individuals or
• If Services are provided in employment (whether in full time or part time).

- **Meaning of business entity**-

Includes an **association of persons, body of individuals, company or firm** but **does not include an individual.**

Note: Individual Includes sole proprietorship also**.**

Service Provider	Service recipient	Taxable or not
Business entity	Business entity	Yes
Business entity	Individual	No
Individual	Business entity	No
Individual	Individual	No
Business entity	Other than Business entity (For example, charitable associations, Govt etc)	No

Example: Luthra Consultants Ltd. started providing the legal consultancy services in Rajasthan on 01.10.2010. For the financial year 2010-11, the details of the transactions are as follows:-

Particulars	Amount (Rs.)
Amount received for appearance before any court, tribunal or authority	5,50,000
Amount received for services provided to sole proprietorship concerns	1,00,000
Amount received for tax consultancy to private companies	11,50,000

Luthra Consultants Ltd. has not collected any service tax from its client because it is of the view that legal consultancy services are not subject to service tax, Luthra Consultants Ltd. has approached you for advice. Examine whether Luthra Consultants Ltd. is liable to pay service tax and if so, what shall be the amount of service tax payable by it?

Note: Assume that exemption available to small service providers is not available to Luthra Consultants Ltd.

Solution:
Computation of amount of service tax payable by Luthra Consultants Ltd. for the financial year 2009-10 would be computed as follows:-

Particulars	Amount (Rs.)
Gross amount received for tax consultancy to private companies = $\frac{11,50,000 \times 100}{110.30}$	10,42,611.06
Value of taxable service	10,42,611.06
Service tax @ 10% (Rs. 10,42,611.06 X 10%)	1,04,261.00
Add: Education Cess @ 3% (Rs. 1,04,261.11 X 3%)	3128.00
Service tax payable (rounded off)	1,07,389.00

Working Notes:

1. Legal consultancy services provided by way of appearance before any court, tribunal or authority are not taxable.
2. Legal consultancy services provided to a service recipient who is an individual (including sole proprietorship) are not taxable.

4. Cargo Handling Services

Meaning of Cargo handling service-

Any service provided or to be provided-

- By cargo handling agency **(Note 1)**
- to any person
- in relation to cargo handling services.

Meaning-'Cargo Handling Service' means loading, unloading, packing and unpacking of cargo **and**

Includes-

- Cargo handling service provided for freight (for all modes of transport).
- Services of Packing* together with transportation of goods (with or without one or more of the other services like loading, unloading, unpacking).

* mere packing without transportation is not covered under this service.

But does not include-

(i) Handling of Export Cargo.
(ii) Handling of Passenger Baggage.
(iii) Mere transportation of goods.
(iv) mere packing without transportation.

Note 1: Agency- That the person who is handling the cargo **should not be owner of the cargo** but should handle the same in representative capacity as an agent. **In case the person is the owner of cargo, it would not amount to service at all.**

Note 2: Where the **individuals** undertake the activity of loading or unloading of cargo, they will not come under the purview of service tax. However, the same position **will not prevail in case of proprietorship concerns.**

Note 3: It is important that being handled should be cargo which means the **handling of goods while in process of transportation.**

Note 4: If a person offers a package rate which includes transportation and handling both, unless cost of transportation is separately charged in the bill, the whole amount value will be includible as taxable service. **However, if the amount of transportation is shown separately in the invoice, service tax is attracted only on the cargo amount.**

Note 5: In case where the role of agency is merely restricted to provision of machinery on hire basis and there is no performance of work, the trasaction cannot be taxed under this category. **But, if the activity of handling is also included, there would be liability of service tax.**

- **<u>Exemption from service tax</u>-**

Cargo handling service in relation to agricultural produce & goods requiring cold storage.

- **<u>Example of Service Covered</u>-**

A packer & mover agency undertakes packaging, loading and unloading of households articles. When a person shifts from one house to another. The service provided is taxable as Cargo handling service.

- **<u>Example of Service not covered (CBEC Clarification)</u>-**

Container Freight Station (CFS) undertakes handling of empty containers. It is not taxable as cargo handling service because empty containers are not cargo.

Example: Shankar Cargo Ltd. is engaged in providing 'cargo handling services'. In June, 2011, it received an amount of Rs. 1,00,00,00 for the services rendered. Calculate the value of taxable services under 'cargo handling services' providing brief reasons where required with suitable assumptions based on the following break-up of the total receipts for the month of June, 2011:

Receipts	**Rs. (in lakh)**
Services in relation to export cargo and handling of passenger baggage	50
Storage and cleaning of empty containers of shipping lines	10
Packing and transport of cargo	5
Handling of agricultural produce	5
Mere transportation of cargo	5
Other receipts for providing cargo handling services	25

Note: The above receipts are exclusive of service tax

Solution: Calculation of the value of taxable service under 'cargo handling services' of Shankar Cargo Ltd, for June, 2011:-

Particulars	**Rs.**
Total receipts for services rendered	1,00,00,000

Less: Exemptions:-

1. Receipts in relation to export cargo & handling baggage of passenger (Non Taxable)	50,00,000
2. Charges received for storage, washing etc. of empty container of shipping lines (Non Taxable)	10,00,000
3. Charges received in relation to handling of agricultural produce (Non Taxable)	5,00,000
4. Charges received for mere transportation of cargo (Non Taxable)	5,00,000
Value of taxable services under cargo handling services	30,00,000

5. Custom House Agent's Services

Meaning of Custom House Agent's Services-

Any service provided or to be provided-

- By a custom house agent;
- To any person;
- In relation to the entry or departure of goods; or the import or export of goods.

Meaning-Custom house Agent means a person **licensed***, temporarily or otherwise, under the regulations made under section 146(2) of the Custom Act, 1962.

*** Permanent license –Renewable every 5 years.**
*** Temporary License –For 1 year.**

Note 1: Only licensed customs house agents are liable for payment of service tax and unlicensed agents are outside the purview of taxation. If unlicensed agent works under the banner of licensed agent and accordingly, the principle licensed agent will be liable for service tax for such transactions even though the transactions are under taken by other person.

Note 2: The value of taxable service shall be gross amount charged to the client including the amount claimed as reimbursements.

➢ **Import and Export of consignment includes-**

- Loading /unloading, transportation of import or export goods from/at the premise of exporters /importers.
- Packing, weighment, measurement of export goods.
- Carrying out of various statutory formalities such as payment for octroi, destuffing, drawback survey, dock fees, repairing and examination charges, landing & container charges, statutory labour charges, testing fees etc.

➢ **Examples of Service Covered-**

- Service of filing IGM/EGM for a shipping company.
- Obtaining 'Entry Inward'/ 'Entry Outward' for shipping company.
- Arranging for loading of cargo for the client exporters.

- Filing Bill of Entry/Shipping Bill & getting custom clearance for goods of client.

6. Practising Chartered Accountant's Service

Any service provided or to be provided by:-
- a Practicing Chartered Accountant (**PCA**) **(Note 1)**
- to any person
- in Professional Capacity

Note 1:-
- **Individual** - **Member + Holding Certificate of Practice.**
- **Any Concern (Firm)** - **Engaged in rendering service in the field of Chartered Accountancy.**

- Council of CA are empowered to specify **services that can be offered by PCA.** These are the only services, which can be treated as provided in "professional capacity'

- Any other service (even if provided under general/special permission) cannot be treated as provided by PCA under 'Professional capacity', e.g. Many CA's offers services as part time lectures to colleges or universities, these services are not taxable.

Note 2: If a Chartered Accountant sub-contracts a part of the service to another Chartered accountant, he would be still be liable for the service tax on the entire amount and not only on the services which are directly provided by him.

➢ **Exemption from service tax-**

Representational Services i.e. Service of representing client before **any statutory authority** shall be exempt from Service tax if it relates to: Proceedings initiated by the 'statutory authority under any law by way of issue of notice.

➢ **Example of Service provided**-

1. Service of Audit, Accounts writing, IT Returns, preparation & filing etc.-**Service Tax Payable.**
2. CA edits a Journal published by Taxmann & receives payment- **No Service Tax.**
3. CA gives coaching to students & receives payment- Not covered here, but elsewhere, covered **Service tax Payable.**
4. Mr. A has not paid Income Tax; ITO has issued a notice u/s 148 to Mr. A for assessing income escaping assessment. Mr. A has approached CA-DK to represent him before the ITO-**No Service Tax payable.**
5. Mr. A has approached CA-DK to prepare a representation seeking exemption from excise duty on the product manufactured by it & to explain circumstances of exceptional nature to the Joint Secretary concerned in Ministry of Finance. –**Service tax Payable.**

Example: Rajul is a qualified Chartered Accountant. He acquired the certificate of practice from the ICAI in November, 2010. For the quarter ended on March, 2011, his receipts are as follows:-

Particulars	Amount (Rs.)
Certification of documents under Export and Import Policy of Government of India	2,00,000
Preparation of the financial statement of ABC Ltd.	5,00,000
Representation of the client before ITAT	50,000
Receipts for tax consultancy provided in the month pf December, 2010	10,000

Using the above information, calculate the value of taxable services for the quarter ended on March, 2011. Service tax is separately charged.

Solution: Calculation of the value of taxable services for the quarter ended on March, 2011:-

Particulars	Amount (Rs.)	Amount ST(Rs.)
Certification of documents under Export and Import Policy of Government of India	= 2,00,000 *10.3%	20,600
Preparation of the financial statement of ABC Ltd.	= 5,00,000 X 10.3%	51,500
Representation of the client before ITAT (Exempt)		Nil
Receipts for tax consultancy provided in the month of December, 2010	= 10,000 * 10.3%	1,030
Value of taxable services	7,10,000	73,130

7. Consulting Engineer's Services

Meaning of consulting engineer's services-

Any service provided or to be provided by-

- a consulting Engineer
- to any person
- in relation to Advice or Consultancy or Technical Assistance in any discipline of engineering including Computer Hardware Engineering.

Consulting Engineer' means-

- Any professionally qualified engineer, or
- Any body corporate; or
- Any other firm and
- Self employed professionally qualified engineer, whether or not employing others for assistance.

Explanation: - Service provided by consulting engineering in the discipline of both computer Hardware Engineering & Computer Software Engineering shall be classifiable under this.

Note 1: The valuation of immovable property will also be covered under the purview of taxable services provided by a consulting engineer services.

- **<u>Exemption from Service tax</u>-**

If a service is provided that includes **<u>transfer of technology</u>**, then the service provider shall get exemption **<u>equivalent to the amount of cess paid</u>** on the transfer to technology under the provision of Research & Development Cess Act, 1986.

Example : An engineering firm provides engineering consultancy on transfer of technology to a client. The taxable value of consultancy is Rs. 1,00,000. Assume that the **R&D Cess** liable to be paid on transfer of technology in this case is Rs. 5,000. The firms liability to ST would be calculated as follows:-

			Amount (Rs)
Service tax liability-	Normal Service Tax :	1,00,000.00 x10.30%=	10,300.00
	Less: Exempt :		5,000.00
	Service Tax payable :		**5,300.00**

Example: Mr. Ramesh, a consulting engineer provides the following particulars in respect of various services rendered by him during the quarter ending December 2010.

S.No.	Particulars	Rs.
(i)	Professional advice to one of his friend	5,000
(ii)	Consultancy services in computer hardware engineering	15,000
(iii)	Technical assistance in computer software engineering	25,000
(iv)	Advice in relation to metallurgical engineering	10,000
(v)	Professional advice to his friend free of charge	---------

Rs. 5,000 has been paid by him as case payable under section 3 of the Research and Development Cess Act, 1986 in respect of the above-mentioned services. Compute the service tax payable by Mr. Ramesh for the quarter ending December, 2010. Service tax has been charged separately by Mr. Ramesh and is not included in any of the receipts mentioned above. Mr. Ramesh is not entitled to the benefit of small services provider.

Sol: Computation of service tax payable:-

Particulars	**Amount (Rs.)**
Professional advice to one of his friend	5,000
Consultancy services in computer hardware engineering	15,000
Technical assistance in computer software engineering	25,000
Advice in relation to metallurgical engineering	10,000
Professional advice to his friend free of charge	Nil
Total	55,000
Value of taxable services	55,000
Service tax @ 10%	5,500
Add: Education cess @ 3%	165
Service tax payable & Education cess payable	5,665
Less: Cess of the Research and Development Cess Act, 1986 Paid	5,000
Net service tax payable	665

1. Cess payable under section 3 of the Research and Development Cess Act, 1986 is exempt under **Notification No. 18/2002 ST dated 16.12.2002**

8. Manpower Recruitment or Supply Agency's Services

Any services provided or to be provided by-

- Manpower recruitment/supply agency **(Note1)**
- to any person
- In relation to **recruitment** or **supply** of manpower **(Whether permanent or temporary).**

Note 1: Any person engaged in providing any service in any manner for recruitment or supply of manpower like in the campus interviews of IIT's, IIMs etc they charge for placements, and then they would also be liable for Service tax.

Note 2: Labour contractor supplying labour on **temporarily basis** either for a particular period or for a particular project also covered.

Note 3: The value of taxable service shall be gross amount charged to the client including the amount claimed as reimbursements.

- **Example of Service provided**-

1. A nursing home proposes to recruit trained nurses who have obtained training from recognized training institute & have minimum 2 years experience in nursing. The nursing home approaches an agency which agrees to screen the candidate, shortlist them & supply nurses to nursing home – **Taxable.**
2. Educational Institutes such as IIT/ITMs Charge a fee from prospective employers like corporate houses/MNCs, who come to the institute for recruiting candidate through campus interviews whether charges recovered for this are also subject to Service Tax-**Taxable.**
3. A patient suffering from diabetes is critically ill. He is advised to be under care of a trained nurse for a month. An agency provided a trained nurse temporarily for a period of 1 month- **Taxable.**

Example: Parsvnath Consultants is engaged in providing manpower recruitment and supply agency's services. For the financial year 2010-11, following information is available:-

Particulars	**Amount (Rs.)**
Amount received for pre-recruitment screening of the prospective candidates	8,00,000
Amount received for verification of the credentials of the candidates	5,00,000
Amount received for supply of contractual employees to big business houses	9,00,000
Amount received for manpower recruitment services provided to Bindu Transporters-a goods transport agency	1,00,000

On the basis of the above information, compute the service tax payable by Parsvnath Consultants under the category of manpower recruitment and supply agency's services' for the financial year 2010-11.

Note: Small Service provider exemption not available. Further, the amount of service tax has been charged separately.

Sol: Computation of service tax payable by Parsvnath Consultants under the category of 'manpower recruitment and supply agency's services for the financial year 2010-11:-

Particulars	**Amount (Rs.)**
Pre-recruitment screening of the prospective candidates	8,00,000
Verification of the credentials of the candidates	5,00,000
Supply of contractual employees to big business houses	9,00,000
Value of taxable services	22,00,000
Service tax @ 10% = Rs. 22,00,000 x 10%	2,20,000
Add: Education cess payable @ 3% = Rs. 2,20,000 x 3%	6,600
Amount of service tax payable	2,26,600

Note:

1. Services provided by a manpower recruitment or supply agency in relation to the recruitment or supply of manpower, temporarily or otherwise provided to a goods transport agency for transportation of goods by road in the said goods carriage from the whole of the service tax. Therefore, Rs. 1,00,000 would not be included in the value of the taxable services.

9. <u>Exemptions to advances prior to 01-07-2010 towards 8 new services introduced and specified existing services expanded by Finance Act 2010 [Notification No. 36/2010 ST dated 28-06-2010]</u>

The taxable services in the finance act, 2010 are exempt to the extent of the amount of advance payment received before 01-07-2010 in respect of them.

However, any advance payment, which relates to the retrospective amendments in Commercial Training & Coaching service and renting of immovable property shall not be so exempt.

"Advance payment means consideration received for the said taxable services to be provided"

10. **<u>Services provided or payments made prior to the effective date</u>**

Vide Finance Act, 2010, eight new services were added to the list of taxable services while the scopes of nine existing services were modified. As these changes become effective from 01.07.2010, activities that are covered under taxable service categories due to above additions or modifications, would start attract service tax from this date. It is however, possible that a part or full payment of the consideration for such services provided after the appointed date has already been received prior to that date, i.e. advance payments.

Example: where a domestic air journey performed after 1st July 2010, but the ticket is issued on payment prior to such date or where a construction activity falls within the taxable service only after the said date but the payment (full or in part) has been made before this date. While legally tax is payable on such amounts received, it has been decided to specifically exempt service tax on that partial or full amount which is received by the service provider/ person liable to pay the tax (and not by an agent, who in turn transfers such amount to such person after this date) before 01.07.2010, pertain to a service which has become taxable on account of the provisions of the Finance Act, 2010 and is provided on or after 01.07.2010. Any amount received after 01.07.2010 by the service provider/ person liable to pay the tax would be subjected to tax.

11. Flat Rate of Service tax in case of air Journey w.e.f 01-07-2010-

In the following cases, service tax is levied at a flat rate per journey:-

Nature of Transport	**Originating**	**Class**	**Flat rate**
1. International Transport	from India	Economy class	Rs 500 per journey
2. Domestic Transport	from India	Economy class	Rs 100 per journey
3. Domestic Transport	from India	Other	Rs 100 per journey

Notes:-

1. Services provided to passengers embarking on a journey originating or terminating in the airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura or at Baghdogra located in west Bengal are exempted.

2. When flat is applicable, credit of duty paid on input used for providing such taxable service shall not be allowed.

3. In case of journey from India by any class other than economy class to any place outside India by an International transport, **the rate of service tax shall be 10.3% of Gross value.**

12. Exemption for Services Provided to Units in SEZ for their authorised operations-

Notification No. 9/2009 ST dated 03.03.2009 was issued to provide refund of service tax paid on taxable services specified in section 65(105) of the Finance Act, 1994 which are provided in relation to the authorised operations (as defined under SEZ Act, 2005) in a Special Economic Zone (SEZ), and received by a developer or units of a SEZ, whether or not the said taxable services are provided inside the SEZ.

Notification No. 15/2009 ST dated 20.05.2009 has amended the aforesaid notification in the following manner:-

(A) Where the aforesaid services are consumed wholly within SEZ

Unconditional exemption is provided to the services consumed within the SEZ without following the refund route thus dispensing with the requirement of first paying the tax by the service provider and then claiming the refund thereof by developer/unit.

(B) Where aforesaid services are not wholly consumed with SEZ – Firstly pay the Service tax and then claim refund.

Therefore, the conditions to be satisfied in order to claim the exemption would be:-

(a) Approval of list of services
The developer or units of Special Economic Zone shall get the services required in relation to the authorised operations in the Special Economic Zone approved from the Approval Committee (hereinafter referred to as the specified services);

(b) Actual use of specified services
The developer or units of Special Economic Zone claiming the exemption actually uses the specified services in relation to the authorised operations in the Special Economic Zone.

(c) Exemption from payment of service tax
In case of the services consumed wholly within the special economic zone, the exemption can be claimed by the developer or units of special economic zone without following the refund route.

(d) No CENVAT credit of service tax paid on specified services
No CENVAT credit of service tax paid on the specified services used in relation to the authorized operations in the Special Economic Zone has been taken under the CENVAT Credit Rules, 2004.

(e) Exemption under no other notification claimed
Exemption on the specified services used in relation to the authorized operations in the Special Economic Zone shall not be claimed except under this notification.

(f) Proper records of receipts and utilization of services
The developer or unit of a special economic zone shall maintain proper account of receipt and utilisation of the taxable services for which exemption is claimed.

(g) Actually paid the the service tax and then claim the refund within 6 months from the date of payment of service tax.

(h) Refund Order- No limit prescribed.

13 A special mode of payment of service tax has been provided to a distributor or selling agent of lotteries by inserting sub-rule (7C) in rule of the Service Tax Rules, 1994.
The distributor or selling agents rendering the taxable service of promotion, marketing or organizing/assistance in organizing lottery can discharge their service tax liability in the following rates instead of paying service tax @ 10%:-

S.No.	If the lottery / lottery scheme is one where	Rate of service tax
1.	Guaranteed prize payout > 80%	Rs. 6000/- on every Rs. 10 lakh (or part of Rs. 10 lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw
2.	Guaranteed prize payout < 80%	Rs. 9000/- on every Rs. 10 lakh (or part of Rs. 10 Lakh) of aggregate face value of lottery tickets printed by the organizing State for a draw

Notes-

1. Aggregate face value of lottery tickets in case of online lottery

In case of online lottery, the aggregate face value of lottery tickets will be the aggregate value of tickets sold.

2. Time period for exercising the option

The distributor or selling agent will have to exercise such option within a period of one month of the beginning of each financial year. The option once exercised cannot be withdrawn during the remaining part of the financial year.

3. Time period for exercising option for financial year 2010-11

For the financial year 2010-11, the distributor or selling agent will have to exercise such option by:-

(a) 07.11.2010

Or

(b) in case of a new service provider, within one month of providing the service.

Once exercised, the option cannot be withdrawn during the remaining part of that financial year.

5. Meaning of certain expressions

The expressions “distributor or selling agent” “draw”, “online lottery” and “organisjng state” will have the same meaning as is assigned to them under Lottery (Regulation)Rules, 2010.

SOME TOPCS IN DETAIL

14. Why service tax not levy in Jammu & Kashmir

Sol: Article 370 of the Constitution of India restrict the power of Parliament to make laws for the state of Jammu & Kashmir. For the matters included in union list are subject to concurrence of the government of the State. That is why, there is no service tax provision has been extended to such state.

15. Registration in Service tax-

A) Centralised Registration B) Separate/Decentralised Registration

- **A) Centralised Registration-**

  - Where an Assessee is providing a taxable service from **more than one premises or offices; or**
  - receives such service in more than one premises or offices (i.e. service recipient); **or**
  - is having more than one premises or offices, which are engaged in relation to such service in any other manner, making such person liable to pay service tax.

  AND

  - **has centralised billing or accounting system,** he may at his **option**, register **such premises** from where such centralised billing or accounting system is done;
  - Registration shall be granted by jurisdictional Commissioner, from where centralised billing or accounting is done.

- **B) <u>Separate Registration-</u>**

Where an Assessee is providing a taxable service from **more than one premise or office** and does not have centralised billing or accounting system**, he shall** make a separate application for registration in respect of each of such premises or offices.

16. <u>Adjustment of Excess Service tax Paid (Rule 6(3))</u>-

There is possibility of excess payment of service tax in following situations:-

1) <u>Where the Assessee has paid service tax in respect of taxable service, which is not provided by him either partially or wholly-</u>

- Assessee may adjust excess service tax so paid by him **on (pro rata basis)** against the service tax liability of subsequent period,

- Provided, assessee has **refunded** the value of taxable service and the service tax thereon to the person from whom it was received.

2) <u>Where the Assessee has opted for Centralized Registration and has paid excess service tax on account of delayed receipt from other premises or offices-</u>

- Excess amount paid by an assessee having centralised registration, on account of delayed receipt of from other premises or offices towards taxable services may be **adjusted without any monetary limit.**

3) <u>Where the Assessee has paid service tax on provisional basis-</u>
- Already covered in module

4) <u>Self Adjustment of excess Service tax paid-</u>

Where the assessee has paid to the credit of Central Government any amount in excess of amount required to be paid towards service tax liability for a month/quarter, the assessee may adjust the excess amount paid by him against his service tax liability for succeeding month/quarter, subject to following conditions:-

- Excess amount paid is on account of reasons not **involving interpretation of law, taxability, classification, valuation or applicability of any exemption,**

- In cases other than specified in above, the excess amount paid may be adjusted with a **monetary limit of Rs 1 lakh for a relevant month/quarter**,

- The details of such adjustment shall be intimated to jurisdictional Superintendent of Central excise within a period of 15 days from the date of receipt of such adjustment along with reasons thereof.

SOME TOPICS IN DETAIL of VAT

VAT

1. ICAI'S ROLE IN VAT-

ICAI has issued:-
- Necessary accounting guidelines both for CENVAT as well as State Level VAT.
- Guidance Notes for accounting for CENVAT as well as State-Level VAT. These
- Guidance Notes to address all the accounting issues in regard to CENVAT and State-level VAT.
- A comprehensive study on State-Level VAT in India.

2. Consumption variant of VAT and registration under VAT

(a) Consumption variant is convenient from the point of administrative expediency. Is the statement true? If yes, briefly explain any other benefits that consumption variant might accrue.

Solution: Yes, the given statement is true. The consumption variant is convenient from the point of administrative expediency as it simplified tax administration by obviating the need to distinguish between purchases of intermediate and capital goods on the one hand and consumption goods on the other hand.

Besides, it does not affect decisions regarding investment because the tax on capital goods is also set-off against the VAT liability. Hence, the system is tax neutral in respect of techniques of production.

CA –IPCC/PCC LAW AMENDMENTS

AMENDMENT UNDER GRATUITY ACT

1. Gratuity Amount payable under Payment of Gratuity Act enhanced from Rs.3.5 lakhs to Rs 10 lakhs

The Payment of Gratuity (Amendment) Bill, 2010

The Payment of Gratuity Act 1972 provides for the payment of gratuity to employees engaged in industries including mines, oilfields, plantations, shops, factories, amongst others. This Amendment Bill raises the ceiling of gratuity to be paid from the present level of Rs. 3.5 lakh to Rs. 10 lakh.

Employees definition under Gratuity Act amended to included all types of works irrespective of salary limits

The Payment of Gratuity Act, 1972 definition of the term "employee" under Section 2 got widened. It is no more the old definition of persons employed in administrative or managerial capacity.

The new definition is as follows:-

Employees means any persons [Not being an Apprentice] employed for wages in any kind of work (manual or otherwise)

Or

in connection with work of factory, mine, plantation, oilfield, railway company, port or other establishment.

So, even teachers are eligible for gratuity now overriding the famous Ahmedabad Private Primary Teachers Association case.

Not covered under employee:-

Any such person who holds a post under CG

or

SG and is governed by any other act or any other rules providing payment of gratuity.

2. AMENDMENT IN EPF AND MISC. PROVISIONS ACT, 1952

a. EPF Interest Rates

The existing rates for **PF account** is 8.5% p.a. The interest amount is cumulative for each month. That is the reason why PF is one of the best savings plan for the employees. The EPF rate has been 8.5% since 2005-06. The decision was taken by the **Central Board of Trustees (CBT)** of the **EPFO**. Company-run PF trusts could be affected as they are required to match the **EPFO** rate. **EPFO**'s estimated 2010-11 earnings would only support a payout of 8.5% and the decision to provide 9.5% interest rate would result in a deficit of about Rs 1,600 crore.

b. <u>Increase in death benefit under Employees Deposit Linked Insurance Scheme (EDLI)</u>:

Central Government has notified the amendment of paragraph 22 (1) of Employees' Deposit Linked Insurance Scheme, 1976, from 18-6-2010 fixing a ceiling of Rs.1, 00,000/- (it is revised from the current ceiling of Rs. 62,000). The relevant notification is attached here below for your reference and information.

THE GAZETTE OF INDIA: EXTRAORDINARY [PART II- SEC. 3 (i)]

MINISTRY OF LAB OUR AND EMPLOYMENT
NOTIFICATION

New Delhi, the 18th June, 2010

G.S.R. 523(E) – In exercise of the powers conferred by Section 6C, read with sub-section (1) of Section 7 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby makes the following Scheme, further to amend the Employees' Deposit Linked Insurance Scheme, 1976, namely:-

1. (1) This Scheme may be called the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010.

(2) It shall come into force from the date of its publication in the Official Gazette.

2. in the Employees' Deposit Linked Insurance Scheme, 1976, in paragraph 22, for sub-paragraph (1), the following sub- paragraph shall be substituted namely:-

"(1) On the death of an employee, who is a member of the Fund or of a provident fund exempted under section 17 of the Act, as the case may be, the persons entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the Fund or of a provident of this membership, whichever is less, except where the average balance exceeds rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of rupees fifty thousand subject to a ceiling of rupees One lakh."