HIGHLIGHTS OF AMENDMENTS MADE BY FINANCE ACT, 2009

1. The **slab rate for individual and HUF** for Assessment Year 2010-11 has changed. The minimum exemption limit has been raised as under:

For Individual/ HUF	From 1,50,000 to Rs. 1,60,000
For resident women	From 1,80,000 to Rs. 1,90,000
For resident senior citizen	From 2,25,000 to Rs. 2,40,000

2. **Surcharge** abolished on all entities except companies including foreign companies. Surcharge of 10% on domestic companies and 2.5% on foreign companies where total income exceeds Rs. 1 crore shall continue.

3. The minimum exemption limit of **wealth tax** has been increased from Rs. 15 Lakhs to Rs. 30 Lakhs.

4. **Cost inflation index** for Financial Year 2009-10 is 632.

5. **Fringe Benefit Tax** (FBT) has been abolished w.e.f. Assessment Year 2010-11.

6. **Explanation 7 to section 43(6)** has been inserted and the said Explanation applies where Rule 7A; 7B and 8 applies and the income of the assessee is treated partly from agriculture (exempt) and partly from Profits & Gains of Business or Profession (taxable). The depreciation shall be allowed from the composite income i.e. agricultural income and exempt income and the depreciation so allowed shall be reduced from WDV of Block of asset.

7. The scope of **section 35(2AB)** has been expanded. Now weighted deduction of 150% of the actual expenditure on in-house research and development shall be available to all companies engaged in manufacture or production of goods or articles other than those specified under Eleventh Schedule. Prior to amendment by Finance Act, 2009, the deduction was available only to the companies engaged in business of bio-technology, or manufacture or production of drugs / pharmaceuticals/ electronic equipments/ computers/ telecommunication equipments/ chemicals.

8. Deduction on account of transfer to special reserve under **section 36(1)(viii),** shall be allowed to the financial corporations including banks which provides long term finance for construction or purchase of houses in India for residential purpose. The amendment extends this benefit to the National Housing Bank (NHB).

9. **Sections 40A(3) and (3A)** have been amended to provide that where the payment is made to the transporter of goods otherwise than by an account payee cheque or bank draft, the aggregate payment made in a day, should not exceed Rs. 35,000. Payment made to transporter of goods of an amount exceeding Rs. 35,000 otherwise than by an account payee cheque in a day shall be disallowed.

10. **Section 35AD** has been introduced to provide investment linked incentive to the following specified business:

    (i) Setting up and operating a cold chain facility. Commence its operations on or after 1.4.2009.
    (ii) Setting up and operating a warehousing facility for storage of agricultural produce. Commence its operations on or after 1.4.2009.
    (iii) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution including storage facilities being an integral part of such network. Commence its operations on or after 1.4.2007.

    The deduction shall be as under:
    (i) Any capital expenditure incurred before commencement of business allowed fully in the year in which business is commenced provided capitalized in books.
    (ii) Any capital expenditure incurred after the commencement of business fully allowed in the year in which expenditure is incurred.
    (iii) Assessee in business of laying cross country pipelines if they commence business from 1.4.2007 to 31.3.2009, then any capital expenditure incurred before 1.4.2009 which is not yet amortised by way of depreciation or otherwise shall be allowed as deduction in Assessment Year 2010-11.

    Note: Expenditure on land, goodwill and financial instrument shall not be allowed as deduction.

    Conditions:
    1. New Plant & Machinery. Exception imported Plant & Machinery. Exception 20% of total Plant & Machinery can be old.
    2. Not formed by splitting or reconstruction of business already in existence.
    3. Assessee in business of laying cross country pipelines should be approved by prescribed authority and $1/3^{rd}$ or more of the pipeline capacity should be available for use on common carrier basis.
    4. No deduction under Chapter VI-A shall be allowed.

11. **Section 73A** provides that losses from the specified business under section 35AD shall not be allowed to be set-off against any income except profits of specified business. However, the loss can be carried forward indefinitely.

12. **Section 28** has also been amended to provide that where the deduction under section 35AD has been allowed to the assessee in respect of a capital asset, any sum received in cash or in kind, on demolition, destruction, or transfer of such capital asset, shall be taxable as the income from Profits & Gains of Business or Profession.

13. **Section 50B** has been amended to provide that where deduction in respect of any capital asset has been allowed under section 35AD and such capital asset is transferred in slump sale, then for the purpose of section 50B, the value of such asset shall be taken as NIL while computing net worth of the undertaking transferred.

14. **Explanation 13 to section 43(1)** has been inserted to provide that where actual cost of any capital asset has been allowed as deduction under section 35AD and capital asset is transferred by way of transactions referred to in section 47, then the actual cost of such asset to the transferee shall be NIL.

15. The scope of taxation of gifts has been expanded by insertion of **Section 56(2)(vii)** which provides that the following shall be taxable as gift in the hands of the individual or HUF, if received from any person (other than specified person) on or after 1.10.2009:

    (a) any **sum of money**, without consideration, **the aggregate value** of which exceeds Rs. 50,000, the whole of the aggregate value of such sum.

(b) **any immovable property,—**

(i) without consideration, the stamp duty value of which exceeds Rs. 50,000, the stamp duty value of such property;

(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50,000, the stamp duty value of such property as exceeds such consideration;

(c) **any property,** other than immovable property, (i.e., shares, securities, jewellery, archeological collections, drawings, paintings, sculptures and work of art)—

(i) without consideration, the **aggregate fair market value** of which exceeds Rs. 50,000, 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 Rs.50,000, the aggregate fair market value of such property as exceeds such consideration:

Non taxability if money / immovable property / property received from relative, on marriage, under will/ inheritance, in contemplation of death of donor, from local authority / institutions under section 10(23C) / trust under section 12AA.

16. **Section 49(4)** provides that where the property / immovable property has been subjected to tax under section 56(2)(vii) is sold, then cost of acquisition of such property/immovable property shall be the FMV/ Stamp duty value, which has been taken for the purpose of section 56(2)(vii).

17. Prior to Finance Act, 2009, **section 50C** applied to immovable properties whose transfer is registered with Registrar of Immovable property. Section 50C has been amended to include transfer of the immovable property which are not registered with Registrar of Immovable property and are executed through agreement to sell or power of attorney.

18. **Section 145A** has prescribed the method of accounting for interest on compensation or enhanced compensation. It shall be chargeable to tax in the year in which it is actually received by the assessee.

19. Further, **section 56(2)(viii)** has been inserted to provide that the interest on compensation or enhanced compensation shall be charged to tax under the head “Income from Other Sources”.

20. Further**, section 57** provides that where the assessee receives the interest on compensation or enhanced compensation, there shall be allowed deduction of 50% of such income, and no other deduction shall be allowed therefrom.

21. Under **section 115JB**, if the normal tax payable on the total income as computed under the Income Tax Act is less than 15% of the book profits, then the tax payable shall be 15% of its book profits. (Earlier this was 10%).

22. The scope of provision of MAT has been expanded. While computing the book profits under **section 115JB,** the amount set aside as provision for diminution in the value of any asset shall be added.

    As per the amendment the following shall be added back while computing the book profits:

    (i) Provision for bad and doubtful debts as it amounts to provision for diminution in value of assets, namely, debtors.

(ii) Provision for diminution in value of any investment or asset as per AS-13/AS-28.

23. The period of **MAT credit under section 115JAA** has been extended to 10 years.

24. The deduction under **section 80-IB** is 100% of profits and gains from business of commercial production or refining of mineral oil for 7 Assessment Years. This deduction was not available to an undertaking which begins refining of mineral oil on or after 1.4.2009. The Finance Act, 2009 provides that deduction shall also be available if refining of mineral oil starts on or after 1.4.2009.

25. The tax holiday of 7 Assessment Years has been extended to undertaking engaged in commercial production of natural gas in blocks licensed under NELP(VIII) which begins commercial production of natural gas on or after 1.4.2009. It has been clarified that all blocks licensed under a single contract shall be treated as a single undertaking and therefore, period of 7 Assessment Years shall start from the Assessment Year in which any of the blocks starts commercial production.

26. **Section 80-IB** is available to an assessee in business of development and construction of housing project. It is clarified that if such assessee sub-contracts or gives a works contract in respect of such housing project to some other person, then deduction under section 80-IB shall not be available to such other person.

27. The deduction under **section 80-IB** to an assessee in business of developing and constructing housing project shall be available provided that it shall not be allowed to allot more than one residential unit in the housing project to the same person, not being an individual, and where the person is an individual, no other residential unit in such housing project is allotted to any of the following person:-
    (i) Individual or spouse or minor children of such individual;
    (ii) the Hindu undivided family in which such individual is the karta;
    (iii) any person representing such individual, the spouse or minor children of such individual or the Hindu undivided family in which such individual is the karta.

28. The deduction under **section 80-IB** of 100% for first 5 Assessment Years and 30% for next 5 Assessment Years extended to assessee in business of processing, preservation and packaging of fruits and vegetables or meat and meat products or poultry or marine or dairy products.

29. Deduction under **section 10BA** not available from Assessment Year 2010-11.

30. Deduction under **section 10A and 10B** extended by one more year and shall be available upto Assessment Year 2011-12.

31. As per **Supreme Court in Liberty India,** export incentives like CCS, Duty drawback, etc. shall not form part of "profit of business of undertaking" and therefore, shall not be deductible under section 10A/10AA/ 10B/ 80-IA/ 80-IB/ 80-IC/ 80-ID/ 80-IE.

32. **Section 80A** provides as under:

    (i) The total deduction under section 10A/ 10B/ 10AA and Chapter VI-A shall not exceed the profits of the undertaking mentioned in these sections.
    (ii) No deduction under section 10A/ 10B/ 10AA and Chapter VI-A shall be available if assessee fails to make a claim in his return.
    (iii) Where goods/ services are transferred to an eligible assessee claiming deduction under section 10A/ 10B/ 10AA and Chapter VI-A or goods or services are transferred by such eligible assessee, then for computing deduction under these sections, profits shall be computed by taking the FMV of such goods and services.

33. The limit of deduction under **sections 80DD and 80U,** in case of severe disability has been raised to Rs.1,00,000 from Rs. 75,000. However, the limit of ordinary disability has been retained at Rs. 50,000.

34. **Section 80E** has been amended to provide that vocational studies shall be treated as higher studies, and deduction under section 80E shall be allowed on repayment of interest on loan taken for vocational studies also.

35. **Section 10(44)** provides that the income of New Pension Scheme Trust shall be exempt from tax.

36. **Section 115-O(1A)** has been amended to provide that where the dividend is paid to the New Pension System Trust, the Dividend Distribution Tax shall not be levied on the such dividend.

37. **Section 80CCD** extends the benefit of the New Pension Scheme to the self employed individuals. Now, deduction shall be available to an individual who deposits any amount in his account under a pension scheme notified by the Central Government subject to a maximum limit of 10% of his gross total income.

    Any amount received by the individual or his nominee from NPS Trust shall be taxable in his hands. However, the assessee shall be deemed not to have received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year.

38. **Section 197(1E)** has been amended to provide that NPS Trust will receive all the incomes without deduction of tax at source.

39. **Section 2(22AAA)** defines an Electoral Trust as “A Trust approved by CBDT in accordance with the scheme made by the Central Government”.

40. **Section 13B** has been inserted to provide that income of electoral trust shall be exempt if:

    (i) Such electoral trust distributes its income to the political parties to the extent of 95% of the contribution received during the previous year and the brought forward surplus; and
    (ii) Such electoral trust functions in accordance with the scheme of the Central Government.

41. **Section 80GGB and Section 80GGC** have been amended to provide that if any person makes a donation to an Electoral Trust, then such donation shall be allowed as deduction in computing the total income of such person.

42. **Section 2(15)** has been amended to provide that the “charitable purpose” shall also include preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest even if it incidentally involves the carrying on of commercial activities.

    In order to mitigate the undue hardship caused to the donors who have made donations, under bona fide belief that they would be entitled to benefit under section 80G in financial year 2008-09, the Finance Act, 2009 has with effect from 1-4-2009 inserted clause (vii) in sub section (5) of section 80G, which provides that where an institution or fund has been approved under clause (vi) of section 80G (5) for previous year 2007-08, such institution or fund shall notwithstanding anything contained in section 2(15), be deemed to have been:

    1. Established for charitable purpose for the previous year 2008-09.
    2. Approved under section 80G (5)(vi) for the previous year 2008-09.

43. **Section 115BBC** has been amended to provide that Anonymous Donation shall not be taxable to the extent of higher of the following amounts:
    - **(i) 5% of the total donations received by the assessee; or**
    - **(ii) Rs. 1,00,000.**

44. The limits for computing the remuneration of partners allowable under **section 40 (b)** has been revised. Now, The payment of remuneration should not exceed the following amounts (Any amount in excess will be disallowed).

(a) On the first Rs.3,00,000 of book profit or in case of a loss.	Rs. 1,50,000 or at the rate of 90% of the book profit, whichever is more
(b) On the balance of book profits.	at the rate of 60%

45. Limited Liability Partnership (LLP) is new concept in India. To give the certainty to the taxation of LLP, **section 2(23)** has been amended to provide that the Limited liability partnership shall be treated on the same footing as the partnership registered under Indian Partnership Act. Partner means the partner of LLP also.

46. In case of LLP, **section 140** provides that the ROI shall be signed by designated partner or where designated partner is not able to sign due to unavoidable reasons, any partner shall sign ROI.

47. **Section 167C** provides that the liability of the partners of LLP shall be joint and several 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.

48. **Section 90** has been amended to provide that the DTAA can be entered by Central Government with specified territory outside India also. Earlier, the Central Government was empowered to enter into an agreement only with foreign countries and after the amendment it shall be empowered to enter into such an agreement with any specified territory outside India.

49. **Section 92C** provides that the actual transaction price shall be taken where the difference between the arithmetical mean of the arm's length price and the actual transaction price does not exceed 5% of actual transaction price.

50. **Section 92CB** has been inserted to empower the board to make the safe harbor rules for determination of arm's length price.

51. New **section 144C** has been inserted to provide that while making assessment under section 143(3)/147 the Assessing Officer shall refer the case of eligible assessee to the Dispute Resolution Panel (DRP) where the Assessing Officer proposes any transfer pricing adjustment which is prejudicial to the assessee.

52. Dispute Resolution Panel Rules, 2009 have been introduced for the functioning of the DRP.

53. **Section 131** has been amended to provide that the DRP shall have the powers regarding discovery, production of evidence, calling of books of accounts and other documents, issuing commissions, impound and retain books, etc.

54. **Section 246A and section 253** has been amended to provide that against the order of the Assessing Officer following the instructions of the DRP, the appeal shall lie directly to the ITAT and not to the Commissioner of Income-tax (Appeals).

55. **Section 194C** has been substituted by Finance Act, 2009. Now, there is no discrimination between contract and sub-contract. Where any person makes the payment to the resident contractor for any work done under a contract he is required to deduct tax at source on the gross amount paid or payable at the following rate:
    (i) 1% where the payee is individual or HUF
    (ii) 2% in case of any other assessee.

    However, where payment is made to the transporter of goods, no tax is required to be deducted at source if the transporter furnishes his PAN.

    The definition of "work" is expanded to include certain cases of job work. The definition of "work" shall include:

    "Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. However, it shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer."

    The section also provides that in above case the TDS shall be deducted:

    (i) On the invoice value excluding the value of material, if such value is mentioned separately in the invoice; or
    (ii) On the whole of the invoice value, if the value of material is not mentioned separately in the invoice.

56. Under **section 194-I** the rate of TDS has been changed w.e.f. 1.10.2009.
    (i) For use of Plant & Machinery – 2%
    (ii) For use of Land, building, Furniture or fitting – 10%

57. To ensure the correct functioning of the dematerialization scheme of TDS certificates, **section 200**, **section 206A** and **section 206C** have been amended to provide that the periodic statements, as may be prescribed, shall be required to be furnished by the deductor. (Presently, quarterly returns are prescribed for TDS and TCS).

58. **Section 200A** has been inserted which provides for the processing of TDS returns. The provisions are similar to the processing of income tax return under section 143(1).

59. **Section 201** has been amended to provide the time limit for passing the order for deeming the person as assessee in default where he failed to deduct the whole or any part of the tax from the person resident in India. No such order can be passed after:

    (i) 2 years from the end of the Financial Year in which the periodic statement has been filed under section 200.
    (ii) In any other case, 4 years from the end of the Financial Year in which payment is credited or made.

60. **Section 206AA** has been inserted which provides that where the payee has not furnished the PAN, his TDS should be deducted at the higher of the following rates:
    (i) Rates prescribed for the relevant section under which TDS is required to be deducted; or
    (ii) Rates prescribed by the Finance Act
    (iii) At the rate of 20%.

    Where the payee furnishes incorrect PAN or the PAN does not belong to the payee, it shall be presumed that no PAN has been furnished by the payee.

Any declaration under section 197A by the payee shall be valid only if it contains the PAN of the payee.

Further, certificate for the lower deduction under section 197 shall not be issued if the application does not contain the PAN of the applicant.

61. **Explanation 3 to section 147** has been inserted to clarify that the Assessing Officer may assess or reassess any income which comes to his notice subsequently in course of proceedings, and he is not required to record the reasons for the same while issuing notice under section 148.

62. **Explanation 5A to Section 271(1)(c)** has been amended to provide that where the income relates to any previous year which has ended before the date of search and the return of income for such year has been furnished before the date of search and such income is not declared therein, then, there shall be deemed concealment even if such income is disclosed in a return filed on or after the date of search.

63. FBT abolished and perquisite rules reinstated. **Employers' contribution to an approved superannuation fund** in excess of Rs. 1 Lakhs is taxable as perquisite.

64. **Shares allotted under ESOP** shall be taxable as perquisite in the hands of the employees.

    Perquisite = FMV of the shares on the date on which option is exercised – Amount paid by the employee

65. **Section 49(2AA)** inserted to provide that the cost of acquisition of shares received by the employee under ESOP shall be the FMV of such shares used to compute the perquisite.

66. **Section 2(29BA)** inserted to define the term "manufacture". Manufacture means the change in a non-living object resulting in transformation of the object into a new object having a different name, character and use; or bringing into existence of a new and distinct object with a different chemical composition or integral structure.

67. **Section 10(10C) and section 89** have been amended to provide that the where the assessee receives any amount on his voluntary retirement or termination, then assessee shall not be allowed to claim simultaneous benefit under section 10(10C) and section 89. If the assessee claims exemption under section 10(10C), then relief under section 89 shall not be allowed to him.

68. Presently, **section 10(23C)** lays down time limit for making an application by the institutions for grant of exemption and such application shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is applied.

    The Finance Act, 2009 has extended the aforesaid time limit from end of the financial year immediately preceding the assessment year to 30th September of the relevant assessment year with retrospective effect from 1.4.2009.

69. **Section 80G has been amended to provide that:**
    (i) Approval under section 80G once granted shall continue to be valid in perpetuity. Therefore all the approvals granted on or after 1.10.2009 shall be valid for all time to come unless withdrawn.
    (ii) Existing approvals expiring on or after 1.10.2009 need not be renewed and shall be deemed to be continued in perpetuity, unless specifically withdrawn.
    (iii) Approvals expiring before 1.10.2009 will have to be renewed once and after such renewal these shall be valid for perpetuity, unless specifically withdrawn.

70. Under **section 208** the assessee is liable to pay advance tax only if his total tax liability during the year exceeds Rs. 5,000. This limit is increased from Rs. 5,000 to Rs. 10,000 by Finance Act, 2009.

71. The scope of **section 132** has been enlarged. In addition to Director General or Director or Chief Commissioner or Commissioner, now the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner can also authorize the search & Seizure. However, they can do so only if they are empowered by the CBDT to do so.

72. **Section 281B** provides that the Assessing Officer can make order for the provisional attachment of the assets of the assessee during the pendency of any proceedings. The period of validity of provisional attachment order is 6 months and that can be further extended by 2 years. Finance Act, 2009 has inserted proviso to provide that the period, during which the proceedings for assessment or reassessment are stayed by any Court, shall be excluded in calculating the period of such order.

73. **Section 282** has been amended to provide facility for electronic communication and courier of notice and other communication, etc.

74. To provide that each document filed with the income tax authorities and issued by them shall bear a computer generated number i.e., Document identification number (DIN), Finance Act, 2009 has inserted **section 282B.** It also provides that if any document does not bear the DIN it shall be deemed as invalid.

75. **Section 293C** has been inserted to provide that the Central Government or Board or Income tax Authorities shall have the general power to withdraw the approval given by them even if no specific power has been conferred to them to withdraw the approval under the relevant provision.

76. Zero Coupon Bond can be issued by Scheduled Bank also.