

RECENT AMENDMENTS TO DIRECT TAX

A: AMENDMENTS MADE BY THE FINANCE ACT, 2009

INCOME TAX

(1) RATES OF INCOME TAX FOR A.Y. 2010-11

A. RATES OF TAX FOR INDIVIDUALS

TOTAL INCOME	TAX
Upto Rs. 1,60,000	NIL
Next Rs. 1,40,000 i.e. Rs. 1,60,001 to Rs. 3,00,000	@ 10%
Next Rs. 2,00,000 i.e. Rs. 3,00,001 to Rs.5,00,000	@ 20%
Above Rs. 5,00,000	@ 30%

Senior Citizen

However for resident individual who is at least 65 years of age at any time during the Previous Year Income shall be exempted upto Rs. **2,40,000**. Thereafter the aforesaid slab is to applied.

Resident Woman

For resident woman, not being a senior citizen income upto Rs. **1,90,000** shall be exempted. Thereafter the aforesaid slab is to applied.

Surcharge: NIL; Education Cess: 3% on the amount of Income Tax [Including 1% SHEC]

B. RATES OF TAX FOR HINDU UNDIVIDED FAMILY

TOTAL INCOME	TAX
Upto Rs. 1,60,000	NIL
Next Rs. 1,40,000 i.e. Rs. 1,60,001 to Rs. 3,00,000	@ 10%
Next Rs. 2,00,000 i.e. Rs. 3,00,001 to Rs.5,00,000	@ 20%
Above Rs. 5,00,000	@ 30%

Surcharge: NIL; Education Cess: 3% on the amount of Income Tax and surcharge [Including 1% SHEC]

C. RATES OF TAX FOR OTHER ASSESSEES

ASSESSEE	RATE OF TAX	SURCHARGE	E.CESS
PARTNERSHIP FIRM (Including Limited liability partnership)	30% ON WHOLE OF TOTAL INCOME	NIL	3%
LOCAL AUTHORITY	30% ON WHOLE OF TOTAL INCOME	NIL	3%
CO-OPERATIVE SOCIETY	Upto Rs. 10,000 @ 10% 10,001 to 20,000 @20% If exceeds Rs. 20,000 @ 30%	NIL	3%
DOMESTIC COMPANY	30% ON WHOLE OF TOTAL INCOME	10% if Total Income exceeds Rs. 1 crore	3%
FOREIGN COMPANY	40% ON WHOLE OF TOTAL INCOME	2.5% if Total Income exceeds Rs. 1 crore.	3%
AOP,BOI,ARTIFICIAL JURIDICAL PERSON	Same as Individual and HUF.	FOR AOP AND BOI @ 10% only if Total Income exceeds Rs, 10,00,000 and in case of artificial juridical person 10% on total income	3%

(2) APPLICABILITY OF SURCHARGE

► ON INCOME TAX

Assessee	Situation	Rate (%)
Individual/HUF/AOP/BOI		NIL
Artificial Juridical Person		NIL
Firm		NIL
Domestic Company	Net Income ≤ Rs. 1 crore	NIL
	Net Income > Rs. 1 crore	10%
Foreign Company	Net Income ≤ Rs. 1 crore	NIL
	Net Income > Rs. 1 crore	2.5%
Co-operative society, Local Authority		NIL

► ON MINIMUM ALTERNATE TAX (MAT)

Assessee	Situation	Rate (%)
Domestic Company	Book Profit ≤ Rs. 1 crore	NIL
	Net Income > Rs. 1 crore	10%
Foreign Company	Net Income ≤ Rs. 1 crore	NIL
	Net Income > Rs. 1 crore	2.5%

► ON TDS

Surcharge and Education cess will not be added to TDS except in following two cases-

(i) Under section 192, EC and SHEC will be added to rate of TDS.

ii) If the recipient is a foreign company and the payment subject to TDS exceeds Rs. 1 Crore, surcharge @ 2.5% will be applicable.

► ON CORPORATE DIVIDEND TAX

Surcharge on corporate dividend tax u/s 115-O for distribution of dividend is 10% of dividend tax irrespective of the quantum of dividend distributed by a company or irrespective of the income of the company declaring dividend.

► ON DISTRIBUTION TAX

Surcharge on distribution tax u/s 115R (2) for distribution of income is 10% of distribution tax irrespective of the quantum of income distributed by a mutual fund.

(3) COMPUTATION OF NET AGRICULTURE INCOME

Agricultural Income U/s 2(1A) means

(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes

(b) any income derived from such land by way of agricultural operations including the processing of agricultural produce, raised or received as rent in kind so as to render it fit for the market or sale of such produce.

(c) any income derived from any building, farmhouse or land utilised in connection with cultivation of agricultural produce.

Provided that—

(i) the building is on or in the immediate vicinity of the land, and is utilised as a dwelling house, or as a store-house, or other out-building, and

(ii) the land is either assessed to land revenue in India or where the land is not so assessed to land revenue it is not situated within municipal limits or within 8 km of such municipal limits.

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However as per **Explanation 2 to Section 2(1A)** income derived from any building or land situated in the immediate vicinity of agricultural land and is utilised for any purpose (including letting for residential purpose or for the purpose of any business or profession) other than agriculture falling under sub-clause (a) or sub-clause (b) shall not be agricultural income.

As per Explanation 3 to Section 2 (1A) any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income [w.e.f A.Y 2009-10].

For the purpose of computing tax in the case of individuals, Hindu undivided family, etc., having net agriculture income in addition to the non-agriculture income, the net agricultural income for the assessment year 2010-11 will be computed as follows:

Rule 1- Agricultural income of the nature referred in section 2(1A)(a) will be computed on the same basis as is adopted for the computation of income chargeable under the head “Income from other sources” under section 56 to 59.

Rule 2- Agricultural income of the nature referred in section 2(1A)(b) will broadly be computed as if it were income chargeable to tax under the head “PGBP” and provision of section 30 to 32, 36, 37, 40, 40A [other than sub-section (3) and (4)], 41, 43, 43A, 43B and 43C will apply accordingly.

Rule 3- Agricultural income of the nature referred in section 2(1A)(c) will be computed as if were income chargeable under the head “Income from house property” under section 23 to 27.

Rule 4- Where an assessee derives income from sale of tea grown and manufactured by him in India, 60% of total income from such business, as computed in accordance with rule 8 of the income tax Rules, will be regarded as agricultural income.

Rule 5- Where the assessee is a member of an association of person or a body individuals (other than a Hindu Undivided Family, a company or a firm) which, in the previous year, has either no income chargeable to tax or has non-agricultural income of not exceeding the maximum amount not chargeable to tax in the case of AOPs or BOIs, but has agricultural income, then the agricultural income or loss of the association or body is to be computed in accordance with these rules and the share of the assessee in the agricultural income or loss so computed will be regarded as agricultural income or loss of the assessee.

Rule 6- Loss incurred in agriculture will be allowed to be set off against gains from agriculture. No set off will, however, be allowed in respect of an assessee’s share in the agricultural loss of an AOPs or BOIs.

Rule 7- Any tax levied by a State Government on agricultural income will be allowed as deduction.

Rule 8- The unabsorbed loss from agricultural activities during the previous year relevant to the A.Y. 2002-03 to 2009-10 will be set off against the agricultural income of the assessment year 2010-11 in chronological order. Likewise, an absorbed loss from agriculture during the previous year relevant to the assessment year 2003-04 to 2010-11 will be taken into account in determining the net agricultural income for the purpose of payment of advance tax during the financial year 2010-11. The set-off of loss will, in either case, be allowed only if such loss has already been determined. Where a person is succeeded by another person (other than the person who was incurred the loss) cannot claim the set off as discussed above.

Rule 9- Where the net result of computation of agricultural income from various sources is a loss, the loss will be disregarded and the net agricultural income of the assessee shall be taken as NIL

Rule 10- The net agricultural income of the assessee will be rounded off to the nearest multiple of Rs.10.

(4) AMENDMENTS RELATING TO DEFINITIONS

(1) Section 2(15): Charitable Trust

After the words “medical relief”, the words and brackets “preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,” shall be inserted;

Section 2(15) defines Charitable trusts to include relief of the poor, education, medical relief, *preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest* and the advancement of any other object of general public utility. However, ‘the advancement of any other object of general public utility’ shall not be a charitable purpose, if it involves the carrying on of-

- (a) any activity in the nature of trade, commerce or business, or
- (b) any activity of rendering any service in relation to any trade, commerce or business,

for a fee or cess or any other consideration, irrespective of the nature of use or application of the income from such activity, or retention of such income, by the concerned entity.

(2) Section 2(22AAA), 2(24)(iia), 13B, 80GGB and 80GGC][w.e.f. A.Y 2010-11]

Contribution to Electoral Trust also eligible for 100% deduction u/s. 80GGB and 80GGC besides contribution to political parties.

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

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

Consequential changes:

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

(b) After section 13A of the Income-tax Act, the following section shall be inserted with effect from the 1st day of April, 2010, namely :—

Section 13B: Special provisions relating to voluntary contributions received by electoral trust.—Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if—

- (i) such electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951, during the said previous year, 95% of the aggregate donations received by it during the said previous year along with the surplus, if any, brought forward from any earlier previous year; and
- (ii) such electoral trust functions in accordance with the rules made by the Central Government.

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

(3) Sections 2(23), 140, 167C and 40(b)] [w.e.f. A.Y. 2010-11]

Taxation of Limited Liability Partnership (LLP) on the same lines as the taxation scheme currently prevalent for general partnerships i.e. taxation in the hands of the entity and exemption from tax in the hands of its partners

The Limited Liability Partnership Act, 2008 has into effect in 2009. LLP Rules (except some rules dealing with conversion) and forms have been notified w.e.f. 1-4-2009.

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

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(a) **Substitution of section 2(23)**:: The following clause shall be substituted with effect from the 1st day of April, 2010, namely :—

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

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

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

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

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

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

(b) **Amendment in section 140 relating to signing of income-tax return**: The LLP Act provides for nomination of “designated partners” who have been given greater responsibility. The Act has amended section 140 to provide that the designated partner shall sign the income-tax return of an LLP, or, where, for any unavoidable reason such designated partner is not able to sign and verify the return or where there is no designated partner as such, any partner shall sign the return.

(c) **Insertion of section 167C**: Like section 179 which is applicable for a private limited company, section 167C has been inserted to provide that notwithstanding anything contained in the Limited Liability Partnership Act, 2008, where any tax due from a limited liability partnership in respect of any income of any previous year or from any other person in respect of any income of any previous year during which such other person was a limited liability partnership cannot be recovered, in such case, every person who was a partner of the limited liability partnership at any time during the relevant previous year, shall be jointly and severally liable for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the limited liability partnership.

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

(4) Section 2(29BA): Definition of the term “manufacture” [w.e.f. A.Y. 2009-2010]

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

“manufacture”, with its grammatical variations, means a change in a non-living physical object or article or thing,

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

(b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure;’

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

The following changes have been made in this regard:

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

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

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

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

(5) CHANGES RELATING TO EXEMPTED INCOME**(6) Section 10(10C) and section 89: Double benefit under section 10(10C) and section 89 not allowed [w.e.f. A.Y. 2010-11]**

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

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

Section 10(23C) stipulates that income of institutions specified under its various sub-clauses (fund or trust or institution or any university or other educational institution or any hospital or other medical institution) shall be exempt from income tax. For trusts or institutions covered under section 10(23C)(iv), (v), (vi) and (via), approvals are required to be taken from prescribed authorities, in the prescribed manner, to become eligible for claiming exemption. Under the existing provisions, any institution (having receipts of more than rupees one crore) has to make an application for seeking exemption at any time during the financial year for which the exemption is sought. In practice, an eligible institution has to anticipate its annual receipts to decide whether the application for exemption is required to be filed or not. This has often led to avoidable hardship.

In order to mitigate this hardship, the Act has extended the time limit for filing such application to the 30th day of September in the succeeding financial year. This relaxation has been provided for the financial year 2008-09 and subsequent years. In other words, where the gross receipts of a trust or institution exceeds rupees one crore in the financial year 2008-09, it can file the application for exemption up till 30th September 2009.

(8) Section 10(23D) [w.e.f. A.Y.2010-11]

Amendment to section 10(23D) of the Income-tax Act, 1961- Incorporating “Other Public Sector Banks” under the expression “Public Sector Bank” Income of a mutual fund set up by a Public Sector Bank is exempt under section 10(23D). The expression “Public Sector Banks” has been defined in the *Explanation to section 10(23D)*. Reserve Bank of India has categorized a new sub-group called “other public sector banks”. The Central Government holds more than 51% shareholding in IDBI Bank Limited, which has been categorized under “other public sector banks” by RBI.

Since “other public sector banks”, has not been included in the expression “public sector banks” as defined in the *Explanation to section 10(23D)*, the Act has amended the relevant provisions of the Income-tax Act, 1961 to do so. Hence, income of a mutual fund set up by other public sector banks shall also be exempt.

(9) Section 10(44), 115-O, 197A and 80CCD [w.e.f. A.Y.2009-10]**Tax benefits for New Pension System- extended also to “self-employed”, and tax treatment of savings under this system as “exempt-exempt-taxed”**

The New Pension System (NPS) has become operational since 1-1-2004 and is mandatory for all new recruits to the Central Government service from 1-1-2004. Since then it has been opened up for employees of State Government, private sector and self-employed (both organized and unorganized). NPS Trust has been set up on 27-2-2008 as per the provisions of the Indian Trusts Act, 1882 to manage the assets and funds under the NPS in the interest of the beneficiaries.

With a view to ensure that tax treatment of savings under this system is in synchronized with the “exempt-exempt-taxed” (EET) method and that there is no incidence of taxation at the accumulation stage, the Act has made the NPS Trust a complete pass-through in so far as taxation is concerned.

Therefore, the following changes amendments have been made in this regard,-

1. Benefit allowable to NPS Trust: The following changes/amendments have been made to provide benefit to NPS Trust:

(a) *Insertion of section 10(44)*: Section 10(44) has been inserted in of the Income-tax Act so as to provide that any income received by any person on behalf of the New Pension System Trust established on 27-2-2008 under the provisions of the Indian Trust Act of 1882 shall be exempt from income tax.

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

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

(d) *Amendment of section 197A*: The Act has inserted sub-section (1E) to section 197A to provide that the NPS Trust shall receive all income without any tax deducted at source.

2. Amendment in section 80CCD: The tax benefit under section 80CCD of the Income-tax Act, 1961 was hitherto available to “employees” only. However, the NPS now has been extended also to “self-employed”. Therefore, the Act has also amended sub-section (1) of section 80CCD so as to extend the tax benefit thereunder also to “self-employed” individuals.

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

The Act has also inserted sub-section (5) to section 80CCD to provide that for the purposes of the said section the assessee shall be deemed not to have received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year.

(10) Section 13B [W.e.f. A.Y. 2010-11]

Special provisions relating to voluntary contributions received by electoral trust: Refer point (2) above.

(6) CHANGES UNDER “SALARY”

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

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

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

(b) *Restoration of taxation of the fringe benefit as perquisite in the hands of the employee:*

The Act has made the following changes-

(i) *Amendment of section 17(2) relating to meaning of perquisites*: Sub-clause (vi) to Section 17(2) has been substituted so as to provide that perquisite shall include the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

For this purpose, the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such security or shares.

The “fair market value” will mean the value determined in accordance with the method as any be prescribed by the Board.

(ii) Sub-clause (vii) to section 17(2) has been inserted to provide that perquisite shall also include the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds Rs. 100,000.

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

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(c) Substitution of section 49(2AA) by New sub-section (2AA) to determine cost of acquisition of ESOP for computing capital gain: The Act has substituted sub-section (2AA) of section 49 by a new sub-section (2AA) to provide that where the capital gain arises from the transfer of specified security or sweat equity shares referred to in section 17(2)(vi), the cost of acquisition of such security or shares shall be the fair market value has been taken into account for the purposes of the said sub-clause.

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

(a)“specified security” means the securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and, where employees’ stock option has been granted under any plan or scheme Therefore, includes the securities offered under such plan or scheme;

(b)“sweat equity shares” means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

©the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from the assessee in respect of such security or shares;

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

(e)“option” means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;

(7) CHANGES UNDER “PGBP”

(12) In section 28 of the Income-tax Act, after clause (vi), the following clause shall be inserted with effect from the 1st day of April, 2010, namely :—

“(vii) any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD;”.

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

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

(14) Weighted deduction for in-house research and development to companies engaged in the business of manufacture or production of an article or thing except those specified in the Eleventh Schedule of the Income-tax Act [Section 35(2AB)] [W.e.f. A.Y. 2010-11].

Under the existing provisions of the Income-tax Act, under section 35(2AB), a weighted deduction of 150%, is allowed to a company engaged in the business of biotechnology or in the business of manufacture or production of drugs, Pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board and which has incurred expenditure (excepting on land and building) on in-house scientific research and development facility approved by the prescribed authority.

With a view to promoting research and development in all sectors of the economy, the Act has extended the benefit of weighted deduction to companies engaged in the business of manufacture or production of any article or thing except those specified in the Eleventh Schedule of the Income-tax Act.

(15) SECTION 35AD: DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS

[Newly inserted w.e.f. 1-4-2010]

► **BACKGROUND:** The Income Tax Act provides for profit linked exemption/ deduction under various section e.g –
→ Section 10A, 10AA, 10B and 10BA

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→ Section 80IA, 80IAB, 80IB, 80IC, 80ID and 80IE

Such benefits are inefficient, inequitable, impose higher compliance and administrative burden, and result in revenue loss, increase litigations and lead to competitive demand for similar tax benefits. Further, these benefits also encourage diversion of profits from the taxed sector to the exempt/untaxed sector. However, investment-linked incentives are relatively less distortionary in their impact.

With a view to creating rural infrastructure and environment friendly alternate means of transportation for bulk goods, w.e.f A.Y 2010-11, the Finance Act 2009 by inserting section 35AD has made a departure and now onwards investment linked tax incentive (instead of profit linked exemption/ deduction) shall be allowed to assessee carrying on certain specified business.

► **SPECIFIED BUSINESS-**

Deduction under section 35AD is available only in the case of a “specified business” given below –

<i>Specified business</i>	<i>Who should own the business</i>	<i>Approval (if any)</i>	<i>Date of commencement Of business</i>
Setting up and operating a cold chain facility [Note-1]	Any person	Not required	On or after 1-4-2009
Setting up and operating a warehousing facility for storage of agricultural produce.	Any person	Not required	On or after 1-4-2009
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 Govt. [Note 2]	•On or after 1-4-2007 in the case of laying and operating a cross-country natural gas pipeline network for distribution or storage •In other cases, on or after 1-4-2009

Notes:

(1) “**Cold chain facility**” 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.

Whether an assessee engaged in operation of cold storage only and not transportation is eligible for deduction u/s. 35AD?

‘Storage’ and ‘transportation’ are complementary to each other and the absence of one will not make the chain complete. However, in this definition, the words ‘storage’ and ‘transportation’ are separated by the conjunction ‘or’. Consequently, an assessee is eligible for deduction under section 35AD even if it has operated only cold storage plant and does not operate transportation facility. [ITO v. Ambika Sheet Grah (P) Ltd. [2009] 119 ITD 235 (Agra)]

(2) This business should make not less than 1/3rd 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, (a) who participates in the management of the assessee; (b) who holds at least 26% voting power in the assessee; (c) who appoints more than half of the board of directors (d) who guarantees not less than 10% of the total borrowing of the assessee.

► **SPECIFIED BUSINESS SHOULD BE NEW BUSINESS –**

- (i) it is not set up by splitting up, or the reconstruction, of a business already in existence;
- (ii) it should not be set up by the transfer of **old plant and machinery**.

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.

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—

- (i) such machinery or plant was not, at any time prior to the date of the installation by the assessee, used in India;
- (ii) such machinery or plant is imported into India from any country outside India; and
- (iii) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this 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;

► **AUDIT OF BOOKS OF ACCOUNT** –Books of account of the assessee should be audited.

► **QUANTUM 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. However, this is subject to the following two propositions –

(i) Expenditure incurred on the acquisition of any land or goodwill or financial instrument is not eligible for any deduction under section 35AD.

(ii) 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.

Additional Deduction: If operation of the business of laying and operating a cross-country natural gas distribution network is commenced during 1-4-2007 and 31-3-2009, the capital expenditure (not being for acquiring land or goodwill or financial instrument) incurred before 1-4-2009 (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.

► **CONSEQUENCES OF CLAIMING DEDUCTION U/S. 35AD-**

The following consequences should be noted –

(a) The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA under section 80HH to 80RRB.

(b) No deduction in respect of the expenditure in respect of which deduction has been claimed shall be allowed to the assessee under any other provisions of the Income-tax Act.

(c) Any sum received or receivable on account of any capital asset, in respect of which deduction has been allowed u/s 35AD, being demolished, destroyed, discarded or transferred shall be treated as income of the assessee and chargeable to income-tax under the head “Profits and gains of business or profession”. **[Insertion of clause (vii) to section 28]**

(d) 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. **[Insertion of Section 73A]**

(e) If the assessee owns two units one of them qualifies for deduction under section 35AD and the other one is not eligible for the same and there is inter-unit transfer of goods or services between the two units, then for the purpose of section 35AD calculation will be made as if such transactions are made at the market value. **[Insertion of clause (6) to section 80A]**

(f) Other consequential amendments

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

[Clause (vi) to section 80-IA (4) deleted]

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

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(c) **Explanation 13 inserted to section 43:** As per Explanation 13 the actual cost of any capital asset on which deduction has been allowed or is allowable to the 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 of gift or will or an irrevocable trust;
 (ii) on any distribution on liquidation of the company; and
 (iii) by such mode of transfer as is referred to in clause (i), (iv), (v), (vi), (vib), (xiii) and (xiv) of section 47.

Concept Capsule 1: ABC Ltd. has incurred following expenditure:

For setting up a warehouse

06-08-2007	Acquisition of Land	Rs. 1,00,000
10-12-2007	Building material	Rs. 4,00,000
03-05-2008	Plant & Machinery	Rs. 5,00,000
01-04-2009	Plant & Machinery	Rs. 6,00,000

For setting up marketing business

01-04-2008	Acquisition of Building	Rs. 8,00,000
10-04-2009	Plant & Machinery	Rs. 2,00,000
20-04-2009	Furniture & Machinery	Rs. 3,00,000

Additional information:

(a) Both business of the company starts its operation from 01-07-2009.

(b) During the previous year 2009-10, the company earned Rs. 10,00,000 (before depreciation) from warehouse facility and Rs. 22,00,000 (before depreciation) from other business. Compute Business income of the company.

Solution:

(1) Computation of income from Warehouse facility

Net profit before depreciation		10,00,000
Less: Deduction u/s 35AD being capital expenses incurred		
- Building material	4,00,000	
- Plant and Machinery	5,00,000	
- Plant and Machinery	<u>6,00,000</u>	
Eligible deduction u/s 35AD	15,00,000	
Subject to maximum of Rs. 10,00,000		<u>10,00,000</u>
Income from warehouse facility		<u>Nil</u>

Balance deduction u/s 35AD being Rs. 5,00,000 shall be carried forward and eligible for set off from income from cold chain facility of next year.

(2) Computation of income from other business

Net profit before depreciation from other business		22,00,000
Less: Depreciation u/s 32		
- Building	80,000	
- Plant and Machinery	30,000	
- Furniture & Fitting	<u>30,000</u>	
Income from other business		<u>20,60,000</u>

(3) Computation of depreciation u/s. 32

	Building	Plant & Machinery	Furniture & Fittings
Opening WDV	Nil	Nil	Nil
Add: Actual cost of Assets acquired during the previous year			
- In warehouse facility	Nil	Nil	Nil
- In marketing business	<u>8,00,000</u>	<u>2,00,000</u>	<u>3,00,000</u>
WDV as on 31-03-2010	<u>8,00,000</u>	<u>2,00,000</u>	<u>3,00,000</u>

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Rate of Depreciation	10%	15%	10%
Depreciation on above	80,000	30,000	30,000

Note: where capital expenditure is eligible for deduction under section 35AD, actual cost of assets shall be considered as Nil.

(4) Computation of business income of ABC Ltd. for A.Y 2010-11

	<u>Amount (Rs.)</u>
Income from warehouse facility	NIL
Income from other business	<u>20,60,000</u>
	<u>20,60,000</u>

Concept Capsule 2: Apple Ltd. commences the operation of a Cold Chain facility in Assam for storage of agricultural produce on 1-4-2009. The following information is available from the records of company -

Expenses incurred prior to April 1, 2009. These expenses are capitalized on March 31, 2009.

	<u>Rs.</u>
Purchase of land for Cold Chain	10,00,000
Construction cost of Cold Chain	5,00,000
Purchase of know-how for Cold Chain	1,00,000
Remuneration to staff	80,000

Expenses incurred during 2009-10 -

	<u>Rs.</u>
Construction cost of Cold Chain	20,00,000
Purchase of old plant and machinery (from domestic market)	4,00,000
Purchase of old plant and machinery (from china)	6,00,000
Purchase of new plant and machinery	10,00,000
Purchase of goodwill	5,00,000

Profit and loss account for the year 2009-10

Depreciation of building @ 5% on Rs. 25,00,000	1,25,000		50,25,000
		Amount collected from Cold Chain facility	
Depreciation of machinery @ 23.333% on Rs. 20,00,000	4,66,660		
Cost of know-how (amount written off)	1,00,000		
Other operating expenses (allowable under IT Act)	8,08,340		
Donation to political party	25,000		
Net Profit	<u>35,00,000</u>		<u>50,25,000</u>
	<u>50,25,000</u>		

Find out the taxable income of X Ltd. for the assessment year 2010-11 on the assumption that Apple Ltd. has the following other income –

- (a) **Income from the business of commission agency Rs. 8,00,000 (as per Income Tax Act)**
- (b) **Dividend from a foreign company: Rs.1,00,000.**

Solution:

(1) Amount deductible under section 35AD

(Amount in Rs.)

(i) Expenditure incurred prior to the commencement of operation (to the extent these are capitalized)

Purchase of land (not qualified for deduction)	Nil
Construction of warehouse	5,00,000
Purchase of know-how	1,00,000
Salary to staff	80,000

(ii) Expenditure incurred during the previous year

Construction cost of warehouse	20,00,000
Purchase of machinery (Rs. 4,00,000 + Rs. 6,00,000 + Rs. 10,00,000)	<u>20,00,000</u>
Amount deductible under section 35AD	<u>46,80,000</u>

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(2) Computation of income from Cold Storage

Net profit as per profit and loss account	35,00,000
Add: Depreciation of building (not deductible as cost of building is eligible for deduction under section 35AD)	1,25,000
Add: Depreciation of machinery (not deductible as cost of machinery is qualified for deduction under section 35AD)	4,66,660
Add: Cost of know-how (not deductible as deduction is available under section 35AD)	1,00,000
Add: Donation to political party	25,000
Less: Deduction under section 35AD	<u>46,80,000</u>
Loss from cold storage business	<u>(4,63,340)</u>

(3) Computation of Total income M/s. Apple Ltd.

	Rs.	Rs.
(I) Income from PGBP		
(i) Commission agency business	8,00,000	
(ii) Cold Storage	<u>(-4,63,340)</u>	
BUSINESS INCOME (No Set off)		8,00,000
 (II) Income from other sources		
Dividend from foreign company		<u>1,00,000</u>
 Gross total income		9,00,000
Less: Deduction u/s. 80GGB (donation to a political party)		<u>25,000</u>
Net income		<u>8,75,000</u>

Notes - (1) Second hand imported machinery is taken as new machinery. The business of operating Cold chain is formed by using new machinery of Rs. 16,00,000 and old machinery of Rs. 4,00,000. Value of old plant and machinery does not exceed 20% of the total value of plant and machinery. Other conditions of section 35AD are satisfied. Apple Ltd. is, therefore, eligible for deduction under section 35AD.

(2) Loss from operating COLD CHAIN (by virtue of section 73A) can be set off only against profit and gains, if any, of only other business specified u/s. 35AD. In this case, Apple Ltd. does not have any other specified business. Loss will be carried forward (without any time-limit) for being set off against income from operating Cold chain or any other specified business u/s 35AD.

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

Section 36(1)(viii) provides special deduction to financial corporations and banking companies of an amount not exceeding 20% of the profits subject to creation of a reserve.

National Housing Bank (NHB) is wholly owned by Reserve Bank of India and is engaged in promotion and regulation of housing finance institutions in the country. It provides re-financing support to housing finance institutions, banks, ARDBs, RRBs, etc., for the development of housing in India. It also undertakes financing of slum projects, rural housing projects, housing projects for EWS and LIG categories, etc. NHB is also a notified financial corporation under section 4A of the Companies Act.

A view has been expressed that NHB is not entitled to the benefits of section 36(1)(viii) on the ground that it is not engaged in the long-term financing for construction or purchase of houses in India for residential purpose. The amendment has been made in clause (b) of Explanation to section 36(1)(viii) to provide that corporations engaged in providing long-term finance (including re-financing) for development of housing in India will be eligible for the benefit under section 36(1)(viii).

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

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

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

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

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

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

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

Under the existing provisions of the Income-tax Act, where an assessee incurs any expenditure, in respect of which payment in excess of Rs. 20,000 is made otherwise than by an account payee cheque or account payee bank draft, such expenditure is not allowed as a deduction. Given the special circumstances of transport operators for incurring **expenditure on long haul journeys for plying, hiring or leasing goods carriages**, the Act has inserted proviso 2 section 40A (3) and (3A) in order to raise the limit of payment to such transport operators otherwise than by an account payee cheque or account payee bank draft to Rs. 35,000 from the existing limit of Rs. 20,000.

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

(20) In section 43 of the Income-tax Act, w.e.f 1-4-2010, inserted Explanation 13 – Ref. point 17

(21) How to compute WDV where income of an assessee is derived in part from agricultural and in part from business. [Explanation 7 to Section 43(6)] [W.e.f. A.Y. 2010-11].

Explanation 7 to section 43(6) provides that where the income of the assessee is derived, in part from agricultural and in part from business chargeable under the head “PGBP”, for computing the W.D.V. of the assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head PGBP and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.

Note: The above amendments nullify the judgments of *CIT vs. Doom dooma India Ltd. [2009] 310 ITR 392 (SC)* where in it was held that *Incase of Business of growing and manufacturing tea – Only 40% depreciation is “actually allowed” & deductible in computing WDV.*

For example -	Rs.
Sale proceeds of tea	1,000
Less: Expenses:	
Depreciation – (10% of Rs. 1,000)	(100)
Other expenses	(300)
Composite income	600
Income subject to charge under the Income-tax Act, 1961 by application of rule 8 (40% of 600)	240
Income not chargeable to Income-tax (60% of 600)	360

According to the interpretation of the Court, the WDV of the fixed asset for the immediately succeeding year is to be taken at Rs. 960 (Rs. 1,000 minus depreciation of Rs.40 being depreciation allocated for business income) and not Rs. 900 (Rs. 1,000 minus depreciation of Rs 100 allowed for determining composite income).

However, the above interpretation is not in accordance with the legislative intent. **Therefore, Explanation 7 has been inserted in section 43(6) and accordingly** in the above illustration, the WDV of the fixed asset for the immediately succeeding year is to be taken at Rs.900 and not Rs. 960.

(22) Amendments in section 44AA relating to maintenance of account and in section 44AB relating to audit of accounts [Section 44AA and 44AB] [w.e.f. A.Y. 2011-12] – so not required now.

(23) Special provision for computing profits and gains of a business other than business covered under section 44AE [Section 44AD] [w.e.f. A.Y. 2011-12] -- so not required now.

(24) Presumptive income for truck owners [Section 44AE] [w.e.f. A.Y. 2011-12]- – so not required now.

The Finance Act, 2009 increases the presumed income from Rs. 3500 p.m to Rs. 5,000 p.m. or part of month, incase of heavy goods vehicle and from Rs. 3150 p.m to Rs. 4,500 p.m. or part of month, incase of other than heavy goods vehicle. It is further provide that a prescribed fixed sum or a sum higher than the aforesaid sum claimed to have been earned by the assessee shall be deemed to be profit and gains of such business. This amendment will take effective from 1-4-2011 i.e A.Y 2011-12.

(25) Presumptive income scheme for retail business merged with section 44AD [Section 44AF] [w.e.f. A.Y. 2011-12] – not relevant now.

(26) Substitution of new section for section 145A – covered under heading other sources.

(27) Insertion of new section 167C Liability of partners of limited liability partnership in liquidation- covered in page 5 above.

(8) CHANGES UNDER “CAPITAL GAINS”

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

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.

(29) Cost of acquisition of sweat equity shares [Section 49(2AA)] [w.e.f. A.Y. 2010-11]

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

(30) Cost of acquisition of the property acquired in a manner given under section 56(2)(vii) [newly inserted section 49(4)] [w.e.f. A.Y. 1-10-2009].

The Act has inserted sub-section (4) to section 49 to provide that where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under section 56(2)(vii), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause(vii).

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

The existing provisions of section 50C provide that where the consideration received or accruing as a result of the transfer of a capital asset, being land or building or both, is less than the value *adopted or assessed* by an authority of a State Government (stamp valuation authority) for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall be deemed to be the full value of the consideration received or accruing as a result of such transfer for computing capital gain. **However, the present scope of the provisions does not include transactions, which are not registered with stamp duty valuation authority, and executed through agreement to sell or power of attorney.**

With a view to preventing the leakage of revenue, the Act has amended section 50C so as to provide that where the consideration received or accruing as a result of transfer of a capital asset, being land or building or both is less than the value **adopted or assessed or assessable** by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall be deemed to be the full value of consideration received or accruing as a result of such transfer for computing capital gain.

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Further, new Explanation 2 has been inserted to section 50C (2) so as to clarify the meaning of the term 'assessable'.

'Explanation 2.—For the purposes of this section, the expression "assessable" means the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.'

Notification No. 67/2009 dated 9.9.2009

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

(9) CHANGES UNDER "OTHER SOURCES"

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

Any Sum of money or any property received without consideration [Section 56(2)(vii):
Where an individual or H.U.F. receives in any previous year from any person or persons on or after 1st day of October,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 shall be treated as income of the individual or HUF.

b) any immovable property :-

i) without consideration, the stamp duty value of which exceeds Rs. 50,000 , the stamp duty value of such property the shall be treated as income of the individual or HUF.

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 shall be treated as income of the individual or HUF.:

c) any property other than immovable property

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 shall be treated as income of the individual or HUF.;

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 shall be treated as income of the individual or HUF.

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

Provided further that this clause shall not apply to any sum of money received or any property received—

(a) from any relative; or

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

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

(d) in contemplation of death of the payer.

(e) from a local authority

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(f) from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in Section 10 (23C)

(g) from a charitable institute registered U/s 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 persons referred to in clauses (ii) to (vi).

“property” means – i) immovable property being land or building or both; ii) shares and securities; iii) jewellery; iv) archaeological collections ; v) drawings ; vi) paintings ; vii) sculptures; or viii) any work of art

Consequential amendments

Section 2(24) relating to definition of income amended: The Act has inserted clause (xv) to section 2(24) to provide that any sum of money or value of property referred to in section 56(2)(vii) shall also form part of income.

Cost of acquisition of the property acquired in a manner given under section 56(2)(vii): The Act has inserted sub-section (4) to section 49 to provide that where the capital gain arises from the transfer of a property, the value of which has been subject to income-tax under section 56(2)(vii), the cost of acquisition of such property shall be deemed to be the value which has been taken into account for the purposes of the said clause(vii).

CATEGORY 1

ANY SUM OF MONEY RECEIVED WITHOUT CONSIDERATIONS (GIFT IN CASH/CHEQUE/DRAFT)

► **Conditions:** If the aggregate amount of Sum of Money received by an individual or HUF without considerations from one or more persons during the Previous Year but on or after 1-10-09 exceeds Rs. 50,000.

► **Treatment:** The whole of such aggregate value shall be chargeable to tax.

► **Note:** For the ceiling limit of Rs. 50,000 all transaction of the Previous Year shall be considered.

Example 1:

(a) Mr. X received Cash Gift of Rs. 60,000 from his friends -

(i) as on 5-10-09

(ii) as on 5-9-09

→ As the Aggregate amount received on or after 1-10-09 exceeds Rs. 50,000, the whole of such amount i.e. Rs. 60,000 shall be taxable u/s. 56(2)(vii).

→ Rs. 60,000 taxable u/s. 56(2)(vi)- As the aggregate amount of cash gift received during the Previous Year but upto 30-09-09 exceeds Rs. 50,000.

(b) Mr. A received cash gift of Rs. 50,000 from his friends -

(i) as on 5-8-09

(ii) as on 5-10-09

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→ As the aggregate amount or cash gift received during the Previous Year but upto 30-9-09 does not exceed Rs. 50,000, hence nothing is taxable u/s. 56(2)(vi).

→ As the aggregate amount of cash gift received during the Previous Year but on or after 1-10-09 does not exceed Rs. 50,000, hence nothing is taxable u/s. 56(2)(vii).

(c) Mr. A received cash gift of Rs. 25,000 each from his 3 friends -

(1) as on 15-9-09.

(2) as on 1-10-09

→ Since aggregate amount of gift received (i.e., Rs. 25,000 × 3 = Rs. 75,000) before 30-09-2009 exceeds Rs. 50,000, hence the entire Rs. 75,000 is taxable u/s. 56(2)(vi)

→ Since aggregate amount of gift received during the Previous Year but on or after 1-10-09 exceeds Rs. 50,000, hence entire Rs. 75,000 is taxable u/s. 56(2)(vii) for A.Y. 2010-11

(d) Mr. Y received cash gift of Rs. 1,00,000 from his grandfather-

(i) on 30-9-09

(ii) on 1-10-09

→ Section 56(2)(vi) is not applicable, as gift received from relative is not taxable. The term 'relative' includes grandfather for this purpose.

→ Section 56(2)(vii) is not applicable, as gift received from relative is not taxable. The term "relative" includes grandfather for this purpose.

(e) A HUF receives Cash Gift of Rs. 1,00,000 from a Charitable Institutions as follows-

(i) on 30-9-09

(ii) on 1-10-09

→ Section 56(2)(vi)-Gift from Charitable Institutions is not taxable.

→ Section 56 (2)(vii)- Gift from charitable Institutions is not taxable.

(f) Mr. A receives Rs. 1,00,000 without any consideration from Mr. B (a non-resident) on 21-10-2009.

→ The provisions of section 56(2)(vii) is applicable whether the donor is a resident or a non-resident. Hence, Rs. 1,00,000 is taxable u/s. 56(2)(vii).

(g) Mr. Johnson (Non-resident) receives Rs. 2,00,000 in India, without any consideration from Mr. B on 10-11-2009.

→ The provisions of section 56(2)(vii) is applicable whether the recipient is a resident or non-resident. Even a gift received by a non-resident in India is chargeable to tax. Hence Rs. 2,00,000 is taxable u/s. 56(2)(vii).

(h) A Trust received cash gift of Rs. 2,00,000 on 1-10-2009.

→ The provisions of section 56(2)(vii) covers only a receipt by an Individual or HUF. It has been judicially held by the Courts that the status of the trust is that of an Individual. Hence, trust would be liable to tax under this section.

(i) Mrs. X receives cash gift of Rs. 4,00,000 from MR. X on 1/10/2009.

→ Nothing taxable in the hands of Mrs. X because cash gift from relative not covered u/s. 56(2)(vii).

→ But income from sum of Rs. 4,00,000 to be clubbed in the hands of Mr. X.

CATEGORY 2

IMMOVABLE PROPERTY WITHOUT CONSIDERATION

- ▶ **Conditions:** If any immovable property is received Individual/ HUF on or after 1-10-09 without consideration and the stamp duty value of such property exceeds Rs. 50,000.
- ▶ **Treatment:** The Stamp duty value of such property shall be chargeable to tax.
- ▶ **Note:** (1) For the ceiling limit of Rs. 50,000 each transaction will be individually examined.
(2) Immovable Property – Land or building or both.

Example 2: Mr. A receives the following house properties from his friends without any considerations-

(a) on 30-9-09- Stamp duty value Rs. 5,00,000

(b) on 1-10-09- Stamp duty value Rs. 50,000.

(c) on 31-3-2010- Stamp duty value Rs. 10,00,000.

→ Nothing taxable, section 56(2)(vii) is not applicable before 1-10-2009. Further, Section 56(2)(vi) is not applicable in case of gift-in-kind.

→ The property is covered u/s. 56(2)(vii) as it is received on or after 1-10-2009. However nothing is taxable u/s. 56(2)(vii) as Stamp duty value does not exceed Rs. 50,000.

→ Rs.10,00,000 is taxable u/s. 56(2)(vii) for A.Y.2010-11 as the property is received on or after 1-10-09 during the previous year and the Stamp duty exceeds Rs.50,000.

Example 3: Mr. A receives a house property from Mr. B (Brother of Mr. A) without any consideration on 1-10-2009 (stamp duty value of which Rs. 1,00,000).

→ Nothing shall be taxable u/s. 56(2)(vii), as the property is received from relatives.

Example 4: CAPITAL GAINS VIS-A -VIS OTHER SOURCES.

Mr. A receives a piece of land having stamp duty value of Rs.1,00,000 from his friend Mr. B without any consideration as on 1-10-2009. Such land was acquired by Mr. B in 1995-96 for Rs. 20,000. On 25-03-2010 Mr. A sold such land for Rs. 3,00,000 (stamp duty value Rs. 4,00,000). Compute total Income of Mr. A for the A.Y 2010-11.

→

Computation of Total Income

Assessee – Mr. A
Status – Individual

A.Y: 2010-11
P.Y: 2009-10

A: Capital Gains	<u>Amount (Rs.)</u>
Full value of consideration –	
Section 50C - Actual consideration or stamp value; higher	4,00,000
Less: Cost of Acquisition as per section 49(4)	<u>1,00,000</u>
Short Term Capital Gains	3,00,000
B: Income From Other Sources	
Chargeable to tax u/s. 56(2)(vii), being Immovable property received without consideration Stamp value of which exceeds Rs.50,000.	<u>1,00,000</u>
Total Income	<u>4,00,000</u>

Notes:

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1) Since the transfer of capital asset has been subjected to Income tax u/s. 56(2)(vii), the cost of Acquisition of such asset shall be deemed to be the value which has been taken for the purpose of section 56(2)(vii) i.e, Rs. 1,00,000 [Sec. 49(4)]

2) The cost of the previous owner shall not be considered for the purpose of cost of acquisition as provided u/s. 49(1).

3) The period of holding of the previous owner shall also not to be considered. Because Explanation to section 2(42A) which provides that in case of transferred of capital asset without any consideration the period of holding of the previous owner shall be considered only in case where section 49(1) applicable. However, asset taxable u/s. 56(2)(vii) is covered u/s. 49(4), hence period of holding of the previous owner shall not be considered.

4) Nothing is taxable in the hands of Mr. B, since transferred of capital asset without any consideration is not considered as transfer u/s. 47.

Example 5: Mr. A receives following house property from his friends without any consideration –

(a) From Mr. B on 1-10-2009 (Stamp duty value Rs. 50,000). The property was acquired by Mr. B in 1982 for Rs. 10,000.

(b) From Mr. C on 21-3-2010 (Stamp duty value Rs. 40,000). The property was acquired by Mr. C in 2008-09 for Rs. 20,000.

→ Nothing shall be taxable u/s. 56(2)(vii) as Stamp duty value of the property at each case does not exceed Rs. 50,000.

Example 6: Suppose in Example 5, Mr. A sold the property on 31-03-2010 –

(a) for Rs. 50,000 (stamp duty value Rs. 70,000)

(b) for Rs. 80,000 (stamp duty value Rs. 1,00,000)

→ **Computation of Capital Gains**

	Case (a)	Case (b)
Period of Holding	1982-83 to 2009-10	2008-09 to 2009-10
Full value of consideration as per section 50C – Higher of Actual consideration or stamp value	70,000	1,00,000
Less: Indexed Cost Of Acquisition (10,000 × 632/632)	10,000	--
Less: Cost of Acquisition	--	20,000
Long Term Capital Gains	60,000	
Short Term Capital Gains		80,000

Notes:

1) Since the value of the asset is not subject to income tax u/s. 56(2)(vii), hence section 49(1) will applicable and not section 49(4). Therefore, cost of the previous owner shall be considered as cost of Acquisition.

2) Period of holding of the previous owner shall be considered, as section 49(1) is applied and not section 49(4).

3) Proviso to section 48 provides that Indexation would be done in the year of the transfer of asset and not the year in which previous owner acquired the asset, therefore in case 1, indexation shall be done for 2009-10 i.e, the year of transfer of property from Mr. B to Mr. A.

4) Nothing is taxable in the hands of Mr. B, since transferred of capital asset without any consideration is not considered as transfer u/s. 47.

Example 7: Mr. X purchased a building in 1990-91 for Rs. 1,00,000. The said property has been gifted to Mrs. X (spouse). On the date when property was gifted the stamp duty value was Rs. 7,00,000. Subsequently on 01/02/2010 Mrs. X sold the property for Rs. 9,00,000 (Stamp duty value Rs. 11,00,000). Discuss the tax implication.

→ **Whether the transaction takes place before or after 1/10/2009**

(1) No capital gain in the hands of Me. X upon transfer – section 47.

(2) Section 56(2)(vii) is not attracted on or after 1/10/2009 because gift from relative.

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- (3) Cost of acquisition and period of holding calculated with reference to previous owner Mr. X u/s. 49(1).
 (4) Capital Gains upon sale of property by Mrs. X

Full value of consideration - Higher of actual consideration or Stamp duty value – section 50C	Amount (Rs.) 11,00,000
Less: Indexed cost of acquisition [1,00,000 x 632/632]	<u>1,00,000</u>
Long term capital gain	10,00,000

(5) How the above Capital gains & Rental Income shall be taxed?

Rental Income: Mr. X is deemed owner by virtue of section 27. So income taxable in the hands of Mr. X.

Capital Gain: Section 64 attracted. So Long Term Capital Gain of Rs.10,00,000 taxable in the hands of Mr. X (clubbing).

CATEGORY 3

ACQUISITION OF IMMOVABLE PROPERTY AT CONCESSIONAL RATE

- ▶ **Conditions:** If any immovable property is received Individual/ HUF on or after 1-10-09 for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs. 50,000.
- ▶ **Treatment:** The difference between Stamp duty value and actual consideration is chargeable to tax.
- ▶ **Note: (1)** For the ceiling limit of Rs. 50,000 each transaction will be individually examined.
 (2) Immovable Property – Land or building or both.

Example 8: Mr. X purchases the following property during the P.Y 2009-10.

- (a) a House for Rs. 2 lakhs (Stamp duty value Rs. 2.5 lakhs) on 1-10-2009
- (b) a plot of land for Rs. 10 lakhs (Stamp duty value Rs.15 lakhs) on 31-03-2010
- (c) a Building for Rs. 5 lakhs (Stamp duty value Rs.15 lakhs) on 30-09-2009

→ Section 56(2)(vii) is applicable as the house is acquired on or after 1-10-2009. However, nothing shall be taxable as the excess of stamp duty value over consideration paid does not exceed Rs. 50,000.

→ Taxable amount u/s. 56(2)(vii) = Rs. 5 lakhs (Rs. 15 lakhs – Rs. 10 lakhs).

→ Since the asset is acquired before 1-10-2009 section 56(2)(vii) does not applied. Further section 56(2)(vi) is not applicable in case of gift in kind. Hence, nothing shall be taxable.

Example 9: CAPITAL GAINS VIS-A- VIS OTHER SOUCES.

Mr. X purchased a building on 1/10/2009 from Mr. B for a consideration of Rs. 5,00,000 (stamp duty value of Rs. 8,00,000). Mr. B has acquired such building for Rs.50,000 in 1980 (FMV as on 1/4/1981 Rs. 1,00,000). On 20/03/2010, Mr. A sold the building fro Rs. 10,00,000 (stamp duty value Rs.12,00,000). Compute the taxable income in the hands of Mr. A and Mr. B for the assessment year 2010-11.

→ Computation of Taxable Income in the hands of Mr. B

Capital Gains for AY: 2010 -11

Period of Holding: 1/4/1980 – 1/10/2009	<u>Amount (Rs.)</u>
Full value of Consideration as per sec. 50C - Higher of the following - Actual Consideration Rs. 5,00,000 Stamp duty value Rs. 8,00,000	 8,00,000
Less Indexed Cost of Acquisition [1,00,000 × 632/100]	<u>6,32,000</u>
Long Term Capital Gains	<u>1,68,000</u>

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→ Computation of Taxable Income in the hands of Mr. A

Assessee: Mr. A

A.Y: 2010-11

Status: Individual

P.Y: 2009-10

A: Capital Gains

Amount (Rs.)

P.H – 1/10/09 to 20/03/2010

Full value of consideration

Higher of the following as per sec 50C

Actual Consideration Rs. 10,00,000

Stamp duty value Rs. 12,00,000

12,00,000

Less: Cost of Acquisition u/s. 49(4)

8,00,000

Short Term Capital Gains

4,00,000

B: Income from other sources

U/s. 56(2)(vii) – Since the difference

between stamp value and actual consideration

exceeds RS. 50,000. Therefore, the taxable income

= [Rs. 8,00,000 – Rs. 5,00,000]

3,00,000

Total Income

7,00,000

Example 10: Mr. A acquired the following property during the P.Y 2009-10.

(a) a piece of land from Mr. B on 1-10-2009 for Rs.35,000 (Stamp duty value Rs.85,000)

(b) a house property on 2-2-2010 from Mr. C for Rs. 2,25,000 (Stamp duty value Rs. 2,65,000)

(c) a house property from Mr. D (a non-resident) for Rs. 60,000 (stamp duty value Rs. 1,00,000) on 10-10-09.

Determine the consequences in the hands of Mr. A.

→ For the ceiling limit of Rs. 50,000 each transaction will be individually examined. Hence, in the given cases nothing shall be taxable u/s. 56(2)(vii) as the difference between stamp duty value of the property and actual consideration at each case does not exceed Rs. 50,000.

Since section 56(2)(vii) does not applicable, hence the cost of acquisition and period of holding shall be as under –

(a) Cost of Acquisition – Rs. 35,000; Period of Holding – 1/10/2009.

(b) Cost of Acquisition – Rs. 2,25,000; Period of Holding – 02/02/2010.

(c) Cost of Acquisition – Rs. 60,000; Period of Holding – 10/10/2009.

Example 11: Mr. X purchased a property for 10 lakhs on 1/8/2008 sold the property to Mrs. X for Rs. 25 lakhs (Stamp duty value 28 lakhs). Mrs. X sold the property for Rs. 30,00,000 (stamp duty value 35,00,000) . Discuss

→ Whether the transaction takes place before or after 1/10/2009

(1) Capital Gains upon sale of property by Mr. X

Full value of consideration -

Amount (Rs.)

Higher of actual consideration or

Stamp duty value – section 50C

28,00,000

Less: Cost of Acquisition

10,00,000

Short term capital gain

8,00,000

(2) Section 56(2)(vii) is not attracted because purchased from relatives.

(3) Cost of Acquisition for Mrs. X at purchase price of Rs. 25,00,000.

(4) **Capital Gains upon sale of property by Mrs. X**

KS: The Tax-Age

Full value of consideration - Higher of actual consideration or Stamp duty value – section 50C	Amount (Rs.) 35,00,000
Less: Cost of Acquisition	<u>25,00,000</u>
Short term capital gain	10,00,000

(5) Mr. X might be considered as deemed owner u/s. 27 and Capital Gains might be clubbed in the hands of Mr. X if the A.O consider the consideration inadequate.

CATEGORY 4

MOVABLE PROPERTY WITHOUT CONSIDERATION

► **Conditions:** If any movable property is received by Individual/ HUF on or after 1-10-09 during the previous year without consideration and the aggregate Fair Market Value of such property exceeds Rs. 50,000.

► **Treatment:** The whole of the aggregate Fair Market Value of such property will be chargeable to tax.

► **Notes:**

(1) For the ceiling limit of Rs. 50,000 all transaction of the previous year will be considered.

(2) **Movable Property** – i) shares and securities; ii) jewellery; iii) archaeological collections; iv) drawings; v) paintings; vi) sculptures; or vii) any work of art.

Example 12: Mr. A received gold necklace from his friends without any consideration –

(a) on 30/09/2009 from Mr. B (Stamp duty value Rs. 1,00,000)

(b) on 1/10/2009 from Mr. C (Stamp duty value Rs. 2,00,000). Mr. C purchases such gold necklace a on 21/10/2008.

→ Since the asset is acquired before 1-10-2009 section 56(2)(vii) does not applied. Further section 56(2)(vi) is not applicable in case of gift in kind. Hence, nothing shall be taxable.

→ (i) Since Fair Market Value exceeds Rs. 50,000, hence section 56(2)(vii) is applicable and accordingly Rs. 2,00,000 shall be chargeable to tax in the hands of Mr. A under the head “Income from other Sources” for A.Y 2010-11.

(ii) Cost of acquisition of such Necklace is Rs. 2,00,000 being the value taken for computing income u/s. 56(2)(vii). [Section 49(4)]

(iii) Period of holding commenced from 1/10/2009. It is to be noted that the period of holding of previous owner shall not be considered as it is applicable only incase of section 49(1) and not incase of section 49(4).

(iv) Nothing is taxable in the hands of Mr. B, since transferred of capital asset without any consideration is not considered as transfer u/s. 47.

CATEGORY 5

ACQUISITION OF MOVABLE PROPERTY AT CONCESSIONAL RATE

► **Conditions:** If any movable property is received by Individual/ HUF on or after 1-10-09 during the previous year for a consideration which is less than the aggregate Fair Market Value of such property by an amount exceeding Rs. 50,000.

► **Treatment:** The difference between the aggregate Fair Market Value and the consideration is chargeable to tax.

► **Notes:**

(1) For the ceiling limit of Rs. 50,000 all transaction of the previous year will be considered.

(2) **Movable Property** – i) shares and securities; ii) jewellery; iii) archaeological collections; iv) drawings; v) paintings; vi) sculptures; or vii) any work of art.

Example 13: Mr. X purchased the following movable property from Mr. B during the P.Y. 2009-10 –

(a) Jewellery on 1/10/2009 for Rs. 2,00,000 (FMV Rs. 2,50,000)

(b) Drawings on 10/12/2009 for Rs. 4,00,000 (FMV Rs. 4,40,000)

(c) Paintings on 31/03/2010 for Rs. 3,00,000 (FMV Rs. 3,50,000)

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→ Section 56(2)(vii) applicable .

Aggregate Consideration = 2,00,000 + 4,00,000 + 3,00,000 = Rs. 9,00,000

Aggregate Fair Market Value = 2,50,000 + 4,40,000 + 3,50,000 = Rs. 10,40,000.

Since the difference between Aggregate of consideration and Aggregate of Fair Market Value exceeds Rs. 50,000, hence Rs. 1,40,000 is taxable under the head “Income from other sources” in the hands of Mr. X.

Note: (1) The Cost of Acquisition in the hands of Mr. X as per section 49(4) – i) Jewellery – Rs. 2,50,000; ii) Drawings – Rs. 4,40,000; iii) Paintings – Rs. 3,50,000.

(2) The full value of consideration in the hands of the Mr. B will be Rs. 2,00,000 for Jewellery, Rs. 4,00,000 for Drawings, Rs. 3,00,000 for paintings. It is to be noted that section 50C is not applicable in the case of Movable Asset.

Example 14: Mr. X purchased furniture of Rs. 1,00,000 from Mr. Y on 1/10/09 having Fair Market Value Rs.2,00,000. Mr. Y was acquired such furniture in 1982-83 for Rs. 80,000. Determine the tax liability of Mr. X and Mr. Y.

→ Nothing shall be taxable in the hands of Mr. X, since the term “movable property” as defined u/s. 56(2)(vii) does not include furniture.

→ Further there shall be no capital gains in the hands of the Mr. Y as furniture is not a capital asset for the said purpose.

Example 15: X Pvt. Ltd., a company in losses has issued 1000 equity shares of Rs. 10 each to Mr. Y for Rs. 500. On 1/08/2008 Mr. X a promoter purchased these shares on 1/12/2009 @ Rs. 2 per share.

→ In this case the market value of the shares be considered at Rs. 5,00,000 (Rs. 500 x 1000). The purchase price is Rs. 2,000 (2 x 1000).

Since Fair market value – purchase price i.e., Rs. 5,00,000 – Rs. 2,000 = Rs. 4,98,000 exceeds Rs. 50,000.

Therefore, Rs. 4,98,000 shall be taxable u/s. 56(2)(vii) under the head “Income from other sources” of Mr. X. Cost of Acquisition for Mr. X shall be Rs. 500 per share.

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

The existing provisions of Income-tax Act provide that income chargeable under the head “Profits and gains of business or profession” or “Income from other sources”, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. Further, **the Hon’ble Supreme Court, in the case of Rama Bai v. CIT (1990) 181 ITR 400 (SC) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis.**

This has caused undue hardship to tax payers.

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

(a) Clause (b) to section 145A inserted: The Act has amended section 145A to provide that the interest received by an assessee on compensation section 145A to provide that the interest received by an assessee on compensation or enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.

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

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

(10) CHANGES UNDER “SET OFF AND CARRIED FORWARD”

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

(1) Any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.

(2) Where for any assessment year any loss computed in respect of the specified business referred to in sub-section (1) has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—

(i) it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.”.

(11) CHANGES UNDER “CHAPTER VIA”

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

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

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

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

deduction in respect of profits and gains shall not be allowed under any provisions of section 10A/10AA/10B/10BA or under any other provisions of chapter VIA under the Heading “C- Deductions in respect of certain income” in any assessment year, if a deduction in respect of same amount under any of the aforesaid has been allowed in the same assessment year;

the aggregate of the deductions under the various provisions referred above shall not exceed the profit and gains of the undertaking or unit or enterprise or eligible business as the case may be; [Section 80A(4) – w.r.e.f A.Y. 2003-04]

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

No deductions under section 10A or section 10AA or section 10B or section 10BA or under any provision of this Chapter under the heading “C. –Deduction in respect of certain incomes” shall be allowed if the deduction has not been claimed in the return of income; [Section 80A(5) – w.r.e.f A.Y. 2003-04]

(3) Inter unit undertaking transfer should be at market value:

notwithstanding anything to the contrary contained in 10A or 10AA or 10B or 10BA or in any provisions of this chapter under the heading “C. – “deduction in respect of certain incomes”, that the transfer price of goods and services between the undertaking or unit or enterprise or eligible business and any other undertaking or unit or enterprise or business of the assessee shall be determined at the market value of such goods or services as on the date of transfer, if the recorded transfer price does not correspond to the market value of such goods or services. [Section 80A (6) – w.r.e.f A.Y. 2003-04]

Explanation—for the purposes of this sub section, the expression “market value”—

(i) in relation to any goods or services sold or supplied, means the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions if, any’

(ii) in relation to any goods or services acquired, means the price that such goods or services would cost if these were acquired by the undertakings or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any.’

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

The tax benefit under section 80CCD of the Income-tax Act, 1961 was hitherto available to “employees” only. However, the NPS now has been extended also to “self-employed”. Therefore, the Act has also amended sub-section (1) of section 80CCD so as to extend the tax benefit thereunder also to “self-employed” individuals.

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

The Act has also inserted sub-section (5) to section 80CCD to provide that for the purposes of the said section the assessee shall be deemed not to have received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year..

(37) Deduction for medical treatment of a dependent suffering from severe disability enhanced to Rs. 1,00,000 from the present limit of Rs. 50,000 [Section 80DD] [w.e.f. A.Y. 2010-11].

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

With the objective of fostering human capital formation in the country, the Act has amended the meaning of higher education given under section 80E of the Income Tax Act

“Higher Education” means any course of study pursued after passing the Senior Secondary Examination or its equivalent from any School, Board or University recognized by the Central Govt. or State Govt. or Local Authority or by any other authority authorised by the Central Govt. or State Govt. or Local Authority to do so”.

Note: With the objective of fostering human capital information in the country, the Finance Act, 2009 amended the provisions of section 80E so as to extend its scope to cover all field of studies(including vocational studies).

Meaning of “relative” enlarged: The Act has enlarged the definition of “relative”. As per the new definition “relative”, in relation to an individual, means the spouse and children of that individual **or the student for whom the individual is the legal guardian.**

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

Section 80G of the Income Tax Act, 1961 provides for a deduction in respect of donations to certain funds, charitable institutions, etc. subject to, *inter alia*, the condition that such institutions and trusts are established for ‘charitable purpose’.

However, the provisions to sub-section (15) of section 2 provides that **advancement of any other object of general public utility** shall not be a charitable purpose if it involves the carrying on of (i) any activity in the nature of trade, commerce or business; or (ii) any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of the income from any such activity. Consequently a number of organizations have ceased to be charitable for the purposes of the Income-tax Act. However, **such institutions and trusts continued to collect donation during the financial year 2008-09 for funding relief work for floods in Bihar and any other public purposes.** The donors made these donations under a *bona fide* belief that they would be entitled to benefit under section 80G.

With a view to mitigate hardship to the donors, the Act in order to give a **onetime relaxation** has inserted clause (vii) sub-section (5) of section 80G of the Income-tax Act so as to provide that where an institution of fund has been approved under clause (vi) of sub-section 5 of section 80G for the previous year beginning on 1-4-2007 and ending on 31-3-2008, such institution or fund shall, notwithstanding anything contained inn the proviso to clause (15) of section 2, be deemed to have been, -

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

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

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

KS: The Tax-Age

As per section 80G(5)(vi) of the Income-tax Act, 1961, the institutions or funds to which the donations are made have to be approved by the Commissioner of Income-tax in accordance with the rules prescribed in rule 11AA of the Income-tax Rule, 1962. The proviso to this clause provides that any approval granted under this clause shall have effect for such assessment year or years, not exceeding five assessment years, as may be specified in the approval. Due to this limitation imposed on the validity of such approvals, the approved institutions or funds have to bear the hardship of getting their approvals renewed from time to time. This is unduly burdensome for the *bona fide* institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

Therefore, the Act has omitted the proviso to clause (vi) of sub-section (5) of **section 80G to provide that the approval once granted shall continue to be valid in perpetuity**. Further, the Commissioner will also have the power of withdraw the approval if the Commissioner is satisfied that the activities of such institution or fund are not genuine or are not being carried out in accordance with the objects of the institution or fund.

This amendment will take effect from 1-10-2009. Accordingly, existing approvals expiring on or after 1-10-2009 shall be deemed to have been extended in perpetuity unless specifically withdrawn. However, in the case of approvals expiring before 1-10-2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

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

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

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

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

(12) CHANGES UNDER “TAX HOLIDAY”

(43) Section 10A and 10B

Extension of sunset clause for units in free trade zone under section 10A and for export oriented undertakings under section 10B by one year i.e., the deduction will be available up to assessment year 2011-12

Under the existing provisions, the deductions under section 10A and section 10B of the Income Tax Act are available only up to the assessment year 2010-11. The Act has amended sections 10A and 10B to extend the tax benefit under both these sections by one year i.e., the deduction will be available up to assessment year 2011-12 or for a period of 10 years whichever expires earlier.

(44) Section 10AA [W.e.f. A.Y.2010-11]

Clarification regarding computation of exempted profits in the case of units in Special Economic Zones (SEZs) - Computed with reference to the total turnover of the “undertaking” instead of “the business carried on by the assessee” Under section 10AA(7) of the Income-tax Act, the exempted profit of a SEZ unit is the profit derived from the export of articles or things or services and same is required to be calculated as under:

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

(45) AMENDMENTS IN SECTION 80-IA:

The entire provisions of Section 80IA and 80IB are given hereunder for your convenience with amendments highlighted in bold:

**Deductions for Industrial Undertakings or enterprises engaged in infrastructure development
[Section 80IA]**

Eligibility: All Assessee

<u>CLASSIFICATION OF INDUSTRIES</u>	<u>DEDUCTION OF PROFITS DERIVED</u>
i) Any enterprise carrying on the business of developing or maintaining and operating or developing, maintaining and operating any infrastructure facility	100% for 10 consecutive assessment years
ii) Any undertaking providing telecommunication services whether basic or cellular including radio paging, domestic satellite service network of trunking, broadband network and internet services	100% for first 5 years and 30% for the next 5 years
iii) An undertaking set up in any part of India for the generation or generation and distribution of power if it begins to generate power at any time during the period beginning on 1-4-1993 and ending 31-03-2011. [Finance Act, 2009 extended the date from 31-3-2010 to 31-03-2011 w.r.e.f. 1-4-2009]	100% for 10 consecutive assessment years
iv) An undertaking which starts transmission or distribution of power by laying a network of new transmission or distribution lines at any time during the period beginning on 1-4-1999 and ending 31-03-2011. [Finance Act, 2009 extended the date from 31-3-2010 to 31-03-2011 w.r.e.f. 1-4-2009]	100% for 10 consecutive assessment years
v) An undertaking which undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1-4-2004 and ending 31-03-2011. [Finance Act, 2009 extended the date from 31-3-2010 to 31-03-2011 w.r.e.f. 1-4-2009] “substantial renovation and modernisation” means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on the 1/4/2004.	100% for 10 consecutive assessment years
vi) an undertaking owned by an Indian Company and setup for reconstruction or revival of a power generating plant- if fulfills following condition a. such company is formed before 31.11.2005 with majority equity participation by public sector companies for enforcing the security interest of the lenders to the company owning the power generating plant ; b. Such Indian Company is notified by the Central Govt. before 31.12.2005 and c. the undertaking begins to generate or transmit or distribute power before 31-3-2011. [Finance Act, 2009 extended the date from 31-3-2008 to 31-3-2011 w.r.e.f 1-4-2008]	100% for 10 consecutive assessment years
vii) Undertaking which develops, operates or maintain an Industrial park or SEZ notified by Central Government on or after 1-4-1997 but up to 31-3-2011. [Finance Act, 2009 extended the date from 31-3-2006 to 31-3-2011 w.r.e.f 1-4-2008]	100% for 10 consecutive assessment years

Further, Profit-linked deduction provided under section 80-IA to the business of laying and operating a cross country natural gas distribution network specified in clause (vi) to section 80-IA(4) will be discontinued. [Clause (vi) to section 80-IA (4) deleted] w.e.f. A.Y. 2010-11.

Assessee not eligible for deduction under section 80-IA if he is executing a works contract: With a view to preventing the misuse of the tax holiday under section 80-IA of the Income-tax Act, the Act has again amended the

Explanation: For the removal of doubts it is here by declared that nothing contained in this section shall apply in relation to a business which is in the nature of a work contract awarded by any person (including Central Govt. or State Govt.) and executed by the above undertaking or enterprise. [w.r.e.f 1-4-2000]

(46) Amendments in section 80-IB:

The Bold italic portions in the following table are the amendments made by the Finance Act, 2009.

Deduction U/s 80IB to certain undertakings

NATURE OF BUSINESS	DEDUCTION	REMARKS
UNDERTAKING ENGAGED IN DEVELOPING AND BUILDING HOUSING PROJECTS	100% of Profits from the project	<p>1. The deduction is allowed to all the Assessees on account of housing projects on the size of land of minimum area of 1 acre approved by local authority before 31/3/2008.</p> <p>2. The built up area of the residential unit should not exceed 1,000 sq ft for Delhi and Mumbai and 1,500 sq ft for other cities.</p> <p>3. The project must be completed within 4 years from the end of financial year in which the housing project is approved or before 1/4/2008 whichever is later.</p> <p>4. not 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-</p> <p>i. spouse or minor child of such individual; ii. the HUF in which such individual is the karta; iii. any person representing such individual, the spouse or minor children of such individual or HUF in which such individual is the karta. [w.e.f 1-4-2010]</p> <p><u>Explanation:</u> For the removal of doubt it is hereby declared that nothing contained in the this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any person (including the Central or State Govt.) [w.r.e.f. 1-4-2001]</p>
HOSPITAL LOCATED IN CERTAIN AREAS (non-metro)	100% of the profits or gains for first 5 consecutive years.	<p>1. The hospital must be constructed at any time during the period beginning on 1/4/2008 to 31/3/2013.</p> <p>2. The hospital has at least 100 beds for patients</p> <p>3. The construction of the hospital is in accordance with the regulations of the local authority.</p> <p>4. The assessee shall furnish along with return an audit report in prescribed form and manner.</p> <p>5. Excluded area- the urban agglomerations of Greater Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Bangalore and Ahmedabad, the district of Faridabad, Gurgaon, Ghaziabad, Gatuaam Budh Nagar and Gandhinagar and the city of Secunderabad.</p>
UNDERTAKING ENGAGED IN THE PRODUCTION AND REFINING OF MENERAL OIL	100% of the profits derived from such business for 7 consecutive years including the initial assessment year.	<p>1) In case the undertaking is engaged in commercial production of mineral oil and is located in North- Eastern region or any part of India it should have begin the operation on or after 1-4-1997.</p> <p>2) In case the undertaking is engaged in the business of refining of mineral oil the undertaking should have begun</p>

		<p>its operations on or after 1-10-1998 <i>but not latter than 31-3-2012. [w.r.e.f 1-4-2000]</i></p> <p>3) <i>In case the undertaking is engaged in commercial production of natural gas from blocks which are licensed under the VII Round of bidding for award exploration contracts under the New Exploration Licensing Policy (NELP) announced by the Govt. of India on 10-02-1999 and begin commercial production of natural gas on or after the 1-4-2009.</i></p> <p>4) <i>In case the undertaking is engaged in commercial production of natural gas in blocks licensed under the IV Round of bidding for award of exploration contracts for Coal Bed Methane blocks and begins commercial production of natural gas on or after 1-4-2009.</i></p> <p><i>Explanation: For the purpose of claiming deduction all blocks licensed under a single contract which has been awarded under the NELP announced by the Govt. of India on 10-02-1999 or has been awarded in pursuance to any law for the time being in force or has been awarded by Central or State Govt. in any other manner, shall be treated as a single “undertaking”. [w.r.e.f. 1-4-2000]</i></p> <p>Note: The term “Undertaking” has not been defined and Therefore, in the context of mineral, the meaning of the term “has been the subject matter of considerable dispute. The taxpayer have been holding the view that every well in block licensed constitutes a single undertaking and accordingly tax holiday is available separately for each such well. However, this view is against the legislative intent. Accordingly the Finance Act, 2009 inserted the above explanation.</p>
<p>Undertaking engaged in processing, preservation or packaging of fruits and vegetables or <i>meat and meat products or poultry or marine or dairy products</i> or business of handling, storage and transportation of food grains.</p>	<p>100% for first 5 years and 25% (or 30% in case of company assessee) for next 5 years</p>	<p>Begins to operate such business on or after 1-4-2001 but in case of <i>meat and meat products or poultry or marine or dairy products, on or after 1-4-2009.</i></p>

(13) CHANGES UNDER “RELIEF U/S. 89”

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

(14) CHANGES UNDER “DTAA”

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

Back ground: Section 90 of the Income Tax Act empowers the Central Government to enter into Double Taxation Avoidance Agreement (‘DTAA’) with the Government of any other country outside India for granting double-taxation relief and facilitate exchange of information concerning avoidance or evasion of tax. The Government now wishes to expand the scope of this operation by entering into a DTAA or TIEA (Tax Information Exchange Agreement) with non-sovereign jurisdiction.

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

Section 90: Agreement with foreign countries or specified territories- For section 90 of the Income-tax Act, the following section shall be substituted with effect from the 1st day of October, 2009,

(1) The Central Government may enter into an agreement with the Government of any country outside India or specified territory outside India,—

(a) for the granting of relief in respect of—

(i) income on which have been paid both income-tax under this Act and income-tax in that country or specified territory, as the case may be, or

(ii) income-tax chargeable under this Act and under the corresponding law in force in that country or specified territory, as the case may be, to promote mutual economic relations, trade and investment, or

(b) for the avoidance of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or

(c) for exchange of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or

(d) for recovery of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be,

and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

(3) Any term used but not defined in this Act or in the agreement referred to in sub-section (1) shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification issued by the Central Government in the Official Gazette in this behalf.

Explanation 1.—For the removal of doubts, it is hereby declared that the charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall not be regarded as less favourable charge or levy of tax in respect of such foreign company.

Explanation 2.—For the purposes of this section, “specified territory” means any area outside India which may be notified as such by the Central Government.’

(15) CHANGES UNDER “TRANSFER PRICING”

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

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

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

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

With a view to **resolving this controversy**, the Act has amended the proviso to the most appropriate method; the arm’s length price shall be taken to be the arithmetical mean of such price. However, if the arithmetical mean, so determined, is within 5% of the transfer price, then the transfer price shall be treated as the arm’s length price and no adjustment is required to be made.

(16) CHANGES UNDER “ASSESSMENT OF TRUST”

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

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

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

1. Anonymous donations received by wholly religious institutions shall remain exempt from tax.
2. In the case of partly religious and partly charitable institutions, anonymous donations directed towards a medical or educational institutions run by such entities shall be taxable @ Tax @ 30.09 % (including EC+SHEC) on the aggregate of anonymous donation received in excess of the higher of the following, namely: -
 - (A) 5% of the total donations received by the assessee, or
 - (B) Rs. 1,00,000.
3. In the case of wholly charitable institutions, anonymous donation shall be taxable @ 30.09 % (including EC+SHEC) on the aggregate of anonymous donation received in excess of the higher of the following, namely
 - (A) 5% of the total donations received by the assessee, or
 - (B) Rs. 1,00,000.

Tax at the rate applicable to individuals on Balance Total Income i.e. Total Income –Aggregate of anonymous donations received.

(B) Meaning of ‘charitable purpose’ amended: Refer caption heading Definition.

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Illustration 1: A wholly Charitable trust received total donations of Rs. 30,00,000 during the P.Y. 2009-10, out of which Rs.10,00,000 are anonymous donations. Compute the total Income and tax payable by the trust.

Solution:	Amount
Aggregate of anonymous donations	10,00,000
Less: Higher of the following-	
(a) 5% of the total donations i.e., 5% of Rs.30,00,000 = Rs. 1,50,000	
(b) Rs.1,00,000	<u>1,50,000</u>
Taxable Anonymous Donations	<u>8,50,000</u>
Tax @ 30.09% of Rs.8,50,000	<u>2,62,650</u>

Illustration 2: A Trust received the following Income during the P.Y. 2009-10-

(a) Anonymous donations -	Rs. 10,00,000
(b) Other donations -	Rs. 20,00,000.
(c) Other Income from Property held under trust -	<u>Rs. 5,00,000</u>
Total:	<u>Rs. 35,00,000</u>

Amount utilized for Charitable purposes Rs.5,00,000. Compute the tax liability of the Trust- if,

(a) It is a wholly Charitable Trust.; (b) It is a wholly religious trust.

Solution:

A: Computation of Taxable Income of the Trust

	<u>AMOUNT</u>
(a) Anonymous donations	Rs. 10,00,000
(b) Other donations	<u>Rs. 20,00,000</u>
Total donations	<u>Rs. 30,00,000</u>
(c) Other Income	<u>Rs. 5,00,000</u>
	Rs. 35,00,000
Less: Exempt u/s.11	<u>Rs. 5,00,000</u>
Total Income:	<u>Rs. 30,00,000</u>

B: Computation of Tax Liability

	<u>Case (a)</u>	<u>Case (b)</u>
(1) On Anonymous Donations u/s. 115BBC		
Aggregate of Anonymous Donations received	10,00,000	
Less: higher of the following-		
(a)5% of Total Donation i.e. 5% of Rs. 30,00,000	<u>1,50,000</u>	
(b) Rs. 1,00,000	8,50,000	
Tax @ 30% Rs.8,50,000	2,55,000	N.A
(2) On balance Income (30,00,000-10,00,000)		
at the rate applicable to Individuals	5,04,000	-
(3) Tax on Rs. 30,00,000 on the rate applicable to Individuals		
	-	<u>8,04,000</u>
	<u>7,59,000</u>	8,04,000
Add: Education Cess @ 3%	<u>22,770</u>	<u>2,4,120</u>
	<u>7,81,770</u>	<u>8,28,12</u>

(17) CHANGES UNDER “MINIMUM ALTERNATE TAX”**(51) Rate of tax in case of MAT increased to 15% [w.e.f A.Y 2010-11]**

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

(52) Mat credit to be carried forward upto the tenth assessment year [w.e.f A.Y 2010-11]

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

(53) Clarification regarding add back of ‘provision for diminution in the value of asset’, while computing book profits [W.r.e.f. A.Y. 2001-02].

Back ground: Section 115JB of the Income-tax Act provides for levy of MAT on the basis of the book profits of a company. As per *Explanation 1* after sub-section (2), the expression “book profit” means net profit as shown in the profit and loss account prepared in accordance with the provisions of Part-II and Part III of Schedule VI to the Companies Act, 1956 as increased or reduced by certain adjustments, as specified in that section.

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

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

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

Note: The above amendments nullified the judgments held in the case of CIT vs. HCL Comnet Systems and Services Ltd.[2008] 305 ITR 409(SC) that *Provision for bad and doubtful debts – Not to be added in computing book profits*

(18) CHANGES RELATING TO “DIVIDEND DISTRIBUTION TAX”

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

(19) CHANGES RELATING TO “FBT”

(55) New section 115WM inserted: The Act has inserted a new section 115WM to abolish the FBT.

(20) CHANGES RELATING TO “SEARCH & SEIZURE”

(56) Clarificatory amendment in section 132 and section 132A to conduct search and seizure operations [W.r.e.f. A.Y. 1-6-1994]

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

- (i) Director General or Chief Commissioner;
- (ii) Director or Commissioner; and
- (iii) Such Joint Director or Joint Commissioner as are empowered by the Board to do so.

The Joint Director or Joint Commissioner are, in terms of the provisions of clause (28C) and clause (28D) of section 2 of the Income-tax Act are understood to include Additional Director or Additional Commissioner. Based on this understanding in the Department, Additional Directors and Additional Commissioners have issued warrant of authorization since the institution was

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created on 1-4-1994. However, the Courts have held that Joint Directors or Joint Commissioners referred to in section 132 of the Income-tax Act does not include “Additional Director or Additional Commissioner” and, therefore, the warrants of authorization issued by the latter is illegal. Accordingly, all search and seizure operation have been declared to be illegal.

Therefore, the Act has made Clarificatory amendment to section 132 to provide explicitly that **Additional Director or Additional Commissioner always had the power to issue warrant of authorization** under the said provisions.

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

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

(21) CHANGES UNDER “ASSESSMENT PROCEDURES”

(57) Amendment of section 140: Signing of return of income of limited liability partnership [W.e.f. A.Y. 2010-11]

In the case of a limited liability partnership, by the designated partner thereof, or where for any unavoidable reason such designated partner is not able to sign and verify the return, or where there is no designated partner as such, by any partner thereof.”

(58) Amendment of section 143: Power u/s. 143(1B) extended by one year due to delay in Centralized Processing of Returns.

Back ground: The Income-tax Department is in the process of setting up a Centralised Processing Centre (CPC) at Bengaluru for Centralised processing of Income tax and Fringe benefits tax returns. For this purpose the Board had been empowered to relax, modify or adaptation any provision of law relating to processing of returns subject to the condition that the notification for such relaxation, modification or adaptation is issued on or before 31-3-2009 and the said notification is laid on the table of the House.

Since the centre has still not been operationalised, it is necessary to allow the Board a further period of one year i.e. up to 31-3-2010 to relax, modify or adapt any provision of law relating to processing of returns.

(59) Insertion of new section 144C: Reference to dispute resolution panel.

Provisions for constitution of alternate dispute resolution mechanism for order of the Transfer Pricing Officer, and foreign company [W.e.f. A.Y. 1-10-2009]

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

Section 144C: (1) The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the ELIGIBLE ASSESSEE if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.

(2) On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—

- (a) file his acceptance of the variations to the Assessing Officer; or**
- (b) file his objections, if any, to such variation with,—**
 - (i) the Dispute Resolution Panel; and**
 - (ii) the Assessing Officer.**

(3) The Assessing Officer shall complete the assessment on the basis of the draft order, if—

- (a) the assessee intimates to the Assessing Officer the acceptance of the variation; or**

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(b) *no objections are received within the period specified in sub-section (2).*

(4) *The Assessing Officer shall, notwithstanding anything contained in [section 153](#), pass the assessment order under sub-section (3) within one month from the end of the month in which,—*

(a) *the acceptance is received; or*

(b) *the period of filing of objections under sub-section (2) expires.*

(5) *The Dispute Resolution Panel shall, in a case where any objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.*

(6) *The Dispute Resolution Panel shall issue the directions referred to in sub-section (5), after considering the following, namely:—*

(a) *draft order;*

(b) *objections filed by the assessee;*

(c) *evidence furnished by the assessee;*

(d) *report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;*

(e) *records relating to the draft order;*

(f) *evidence collected by, or caused to be collected by, it; and*

(g) *result of any enquiry made by, or caused to be made by, it.*

(7) *The Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5),—*

(a) *make such further enquiry, as it thinks fit; or*

(b) *cause any further enquiry to be made by any income-tax authority and report the result of the same to it.*

(8) *The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.*

(9) *If the members of the Dispute Resolution Panel differ in opinion on any point, the point shall be decided according to the opinion of the majority of the members.*

(10) *Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.*

(11) *No direction under sub-section (5) shall be issued unless an opportunity of being heard is given to the assessee and the Assessing Officer on such directions which are prejudicial to the interest of the assessee or the interest of the revenue, respectively.*

(12) *No direction under sub-section (5) shall be issued after nine months from the end of the month in which the draft order is forwarded to the eligible assessee.*

(13) *Upon receipt of the directions issued under sub-section (5), the Assessing Officer shall, in conformity with the directions, complete, notwithstanding anything to the contrary contained in [section 153](#), the assessment without providing any further opportunity of being heard to the assessee, within one month from the end of the month in which such direction is received.*

(14) *The Board may make rules for the purposes of the efficient functioning of the Dispute Resolution Panel and expeditious disposal of the objections filed under sub-section (2) by the eligible assessee.*

(15) *For the purposes of this section,—*

(a) *“Dispute Resolution Panel” means a collegium comprising of three Commissioners of Income-tax constituted by the Board for this purpose;*

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(b) “eligible assessee” means,—

- (i) any person in whose case the variation referred to in sub-section (1) arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of [section 92CA](#); and
- (ii) any foreign company.]

► Further, the following consequential amendments have been made –

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

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

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

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

(60) Amendment of section 147.

Explanation 3 (Newly Introduced By The Finance Act, 2009(2) W.R.E.F 1-4-1989):-

For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.”

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

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

With a view to further clarifying the legislative intent, the Act has inserted *Explanation 3* in section 147, hence now **Assessing Officer empowered to touch upon any other issue for which no reasons have been recorded notwithstanding that the reasons for such issue have not been included inn the reasons recorded.**

SERVICE OF NOTICE

(61) Substitution of new section for section 282: *Service of notice generally* [W.e.f. 1-10-2009]

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

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

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

(22) CHANGES RELATING TO “TDS AND TCS”

There have been massive amendments in TDS provisions. We are appending the new notes for your convenience with amendments highlighted in bold:

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

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

Section	Nature of Payment	Monetary Limit	Rate of Tax	Notes
192	Salaries	The tax is to be deducted on the basis of estimated income of the employee and is to be made on the basis of average of income tax computed on the basis of rate in force and is deducted monthly on average basis.		<p>(i) Tax is to be deducted at the time of payment</p> <p>(ii) Where employee is working under two employees simultaneously or has changed employment then he may furnish to the employer of his choice or subsequent employer the details of his salary from other employers for the purpose if TDS.</p> <p>(iii) An employee at his option furnish to the employer the details of other income and the employer shall consider such income for tax deduction at source. However Losses from House property can only be considered and not other losses.</p> <p>(iv) Section 192(1A) provides that the person responsible for paying any income in the nature of non monetary perquisite referred to in Section 17(2) may pay at his option pay tax on the whole or part of such income without making any deduction therefrom. For this purpose tax shall be determined at the average rate of tax</p>

				computed on the basis of rates in force for the financial year, on the income chargeable under the head Salaries and the tax so payable shall be so construed as if it were tax deductible at source from the income under the head Salaries.
193	Interest on Securities	Rs. 2,500 p.a.	<p>If the payee is domestic Co.: 20%</p> <p>For Others: @ 10% in all cases whether debenture are quoted or not (w.e.f 1-4-2009)</p>	<p>No tax is to be deducted if interest on securities is payable on account of the following:</p> <p>(i) Any such debenture, issued by an institution or authority, or any public sector company, or any co-operative society (including Co-operative Land Mortgage Bank or Co-operative Land Development Bank) as the Central Government may notify.</p> <p>(ii) Any interest payable on any security of the Central Government or State Government.</p> <p>(iii) Any interest payable to—(a) Life Insurance Corporation of India; (b) General Insurance Corporation of India or any of four companies formed under it; (c) Any other insurer, in respect of any securities owned by them, or in which they have full beneficial interest.</p> <p>(iv) Securities of Central or State Government. Tax is deductible on 8% Savings (Taxable) Bonds, 2003 if interest exceeds Rs. 10,000 p.a.</p> <p>(v) any interest payable to a resident on any security issued by a company, where such security is in dematerialised form and is listed on a recognised stock exchange in India in</p>

				accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.
194	Deemed Dividends u/s. 2(22)(e)	Paid by Domestic company to Resident Shareholder.	10%	(i) Tax is deducted at the time of payment. (ii) No deduction in case of Dividend covered by section 115O.
194A	Interest other than Interest on Securities	If the payer is a banking company including co-operative banks or in case of deposit under post office - Rs.10,000 p.a. (The ceiling limit applies with respect to each branch of bank) In any other case: Rs.5000 p.a.	10% (even if recipient is Corporate assessee) - w.e.f 1-4-2009	(i) Tax is to be deducted at the time of payment or interest whichever is earlier. (ii) Tax need not be deducted in the following cases: (a) Interest paid or credited by firm to its partners (b) Interest paid to Banking companies, UTI, notified institution etc. (c) Infrastructure capital fund/company or public sector company or Schedule Bank on ZCB. (d) Interest paid by primary agriculture credit society, cooperative land mortgage bank and copoertaive land development bank (e) Interest other than on term deposits paid by Banking companies, co-operative society (f) For interest on compensation awarded by Motor Accidents Claims Tribunal tax need not be deducted upto Rs. 50,000.
194B	Winning From Lotteries , crossword puzzle or card game	5000	30%	(i) Tax is deducted at the time of payment (ii) Where winnings are wholly or partly in kind and the amount in cash is not sufficient to meet the liability of deduction of tax then the person responsible for paying shall before

				<p>releasing the winnings shall ensure that tax has been paid in respect of such winnings</p> <p>(iii) Unclaimed and/ or undisbursed prize money is not a winning from lottery and, as such the provisions of section 194B for deduction of income-tax at source are not applicable in respect thereof- Director of State Lotteries v. CIT [1999] 238 ITR 1 (Gauhati).</p> <p>For instance, X wins a lottery prize of Rs. 200000 on March 11, 2008 out of which Rs. 20000 is payable to the agent. Out of Rs. 180000 payable to the winner, Rs. 55620 (being 30.9 per cent of Rs. 180000) shall be tax deduction at source under section 194B.</p> <p>(iv) State Government's District Level Gift Linked Savings Mobilisation Scheme cannot be treated as lottery merely because of prizes were distributed on basis of gift coupons issued- Director of Small Savings V. ITO [2000] 75 ITD 152 (Mad.).</p>
194BB	Winnings from Horse Race (including Jackpot)	2500	30%	
194C	Payment to Contractor. (substitution of new section w.e.f 1.10.2009)	(i) Either Rs. 20,000 in a single contract or Rs. 50,000 p.a.	<p>TDS rate upto 30/09/2009 -</p> <p>(i) In case of Advertising Contracts = 1%</p> <p>(ii) In case of other contracts 2%</p> <p>(iii) In case of</p>	<p>(i) Tax is deducted on Works contract (Contract includes sub-contract).</p> <p>For this purpose Works contract includes</p> <p>(a) supply of labour for carrying out any work ((b) Advertising (c) broadcasting and telecasting including production of programs (d)</p>

			<p>payment to sub contractor 1%</p> <p>TDS rate from 1/10/2009 -</p> <p>where payment for a contract(including sub-contract) are to</p> <p>(i)individuals/ HUF @1%</p> <p>(ii) In case of any other entity @ 2%</p> <p>No TDS incase of Individual/ HUF if paid or credited to contractor “exclusively” for personal purpose”.</p>	<p>carriage of goods and passengers other than by railways (e) catering</p> <p>(f) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, but does not include if material purchased from a person other than such customer. [w.e.f - 1-10-2009]</p> <p>(ii) For the work mentioned in point (f) above, tax deduction shall be made - on the invoice value (excluding the value of material) if such value is separately mentioned in the invoice otherwise on the gross invoice value. [w.e.f 1-10-2009]</p> <p>(iii) Where any sum referred to in sub-section (1) is credited to any account, whether called “Suspense account” or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.</p> <p>(iv) The TDS provision shall not be applicable (a) if the recipient is a transport operator (person in the business of plying, hiring or leasing of goods carriages) (b) where the operator furnishes his PAN to the deductor.</p> <p>The deductor is required</p>
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				<p>to intimate these PAN details to the IT Dept. in prescribed Format.</p> <p>(v) The deduction shall be made on the gross amount of bills (including the cost of materials), unless the contract itself is for only work. [Case of Associated Cement Co. Ltd.]</p> <p>(vi) The contract for putting up hoardings is in the nature of advertising and therefore 194C is applicable. Section 194C would also be on routine, normal maintenance contracts and electric works which includes supply of spares.</p> <p>(vii) The provision of section 194C will be applicable to the amounts paid as cooling charges by the customers of the cold storage. – Circular 1/2008</p>
194D	Insurance Commission	Rs. 5000 p.a.	10% (even if recipient is Corporate assessee) w.e.f 1-4-2009	
194E	Payment to Non Resident sportsman, who is not an Indian citizen or a non resident sports association or institution	Any Amount	10%	Tax is to be deducted on income arising to non resident sportsperson from (i) participation in any game or sport in India (ii) advertisement (iii) contribution of articles to Newspapers, magazines or journal.
194EE	Payments in respect of deposits under NSS covered U/s 80CCA	Rs. 2,500 p.a.	20%	
194F	Repurchase of units by Mutual Fund or UTI	Any Amount	20%	
194G	Commission on Sale of lottery tickets	Rs. 1000	10%	1. If an authorized lottery ticket agent purchases lottery tickets in bulk at a discount from the State Government and sells the same at the price of his choice, section 194G is not applicable – M.S.Hameed v. Director of State of Lotteries [2001] (Ker.).

194H	Commission or Brokerage	Rs. 2,500 p.a.	10%	<p>Commission or brokerage includes any payment received or receivable, by a person acting on behalf of another person for services rendered, or for any services in the course of buying or selling of goods, assets, valuable article or thing other than securities. However, no deduction shall be made on brokerage payable by BSNL to their public call offices.</p> <p>2. Tax would not be required to be deducted by RBI on the amount of Turnover Commission paid or credited by it-Circular No. 6/2003, dated September 3, 2003.</p>
194I	Rent	120000 p.a.	<p>TDS rate upto 30.09.2009-</p> <p>For Rent on Plant, Machinery and equipment @ 10%</p> <p>For Rent on Land & Building, furniture and fixture</p> <p>(a) If payee is individual or HUF 15%</p> <p>(b) In other cases 20%</p> <p>TDS rate from 1.10.2009</p> <p>For Rent on Plant, Machinery and equipment @ 2%</p> <p>For Rent on Land & Building (including factory building), and appurtenant to building(including factory building) , furniture and fixture @ 10% for all person</p>	<p>1. Rent means any payment, by whatever name called, under any lease, sub lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings, plant & machinery and the land appurtenant thereto, whether or not such building is owned by the payee.</p> <p>2. As per CBDT circular where there are various co-owners then the limit of Rs. 1,20,000 shall separately apply to each co-owner</p> <p>3. Rent includes any non – refundable deposit. [Circular No. 718, dated August 22, 1995.]</p> <p>4. Landing of aircraft or parking aircraft amounts to user of land of airport and, hence, landing fee and parking fee amounts to rent within meaning of to section 194-I-United Airlines v. CIT [2006] 152 Taxman 516 (Delhi).</p>

				<p>5. Therefore, the warehousing charges will be subject to deduction of tax under section 194-I- Circular No. 718, dated August 22, 1995.</p> <p>6. Circular No. 4/2008, DT. 28-04-2008: TAX NOT DEDUCTIBLE ON SERVICE TAX COMPONENT ON RENT</p>
194J	Fees for Professional or technical Services and royalty	Rs. 20,000 p.a. (separate limits for each professional and technical services)	10%	<p>(i) The Section applies to notified professions and does not apply to teaching, sculpture, painting etc.</p> <p>(ii) Technical Services include Managerial Services, Technical Services, Consultancy Services, etc. It shall not include and income chargeable under the Head Salaries or consideration for construction or assembly or mining or like project.</p> <p>(iii) The Central Board of Direct Taxes vide Circular No. 715 dated 8-8-95 has clarified that in case the amount paid towards fees is inclusive of reimbursement of expenses, TDS shall be made under section 194J on the gross amount of the bill. The Delhi Bench of the Income Tax Appellate Tribunal on ITO VS. Dr. Willmar Schwabe India (P) Ltd .[2005] 3 SOT examined the scope of Circular No.715, dated August 8,1995 on the subject of deduction of tax at source on expenses reimbursement and upon of the same, it held that reimbursement of expenses for which bill is separately raised did not attract the provisions of section 194J.</p> <p>(iv) Notification No. S.O. 2085(E) dated 21/8/2008: For the purposes of Section</p>

				<p>194J the following persons shall also be regarded as "Professionals" :</p> <p>(1) Sports Persons (2) Umpires and Referees (3) Coaches and Trainers (4) Team Physicians and Physiotherapists (5) Event Managers (6) Commentators (7) Anchors and (8) Sports Columnists.</p> <p>(v) In the case of Hutchison Telecom East Ltd. Vs. CIT [2007] 16 SOT 404 (Kol.) the company made payment to BSNL on account of lease line rental charges, port charges and access charges without tax deduction at source. Held that the service provided by BSNL to assessee were based on technology and assessee without technical services by BSNL would not be able to continue its business to transmit calls etc. Therefore, payments made in respect of port charges and access charges is in the nature of technical services subject to TDS U/s 194J. However payments in respect of lease rent charges could not be considered U/s 194J.</p>
194LA	Payment of Compensation or acquisition of certain immovable property (including enhanced compensation)	Rs. 1,00,000 p.a.	10%	No tax shall be deducted on agricultural Land. In the case of compulsory acquisition of land, tax is deductible at source on compensation and interest on the date of payment. The liability to deduct tax at source under section 194LA arises only on the date of payment even the though the acquisition may have been made before State of Kerala vs. Mariamma (2006) 280 ITR 225 (Ker.).
195	All sums payable to Non resident (other than Salaries)	Any Amount	Rates prescribed by the relevant Annual Finance Act	No tax is to be deducted on Dividend which is exempted U/s 10(34)

Note: W.e.f 1-4-2009 Surcharge and Education cess will not be added to TDS except in following two cases-

i) under section 192, EC and SHEC will be added to rate of TDS.

ii) If the recipient is a foreign company and the payment subject to TDS exceeds Rs. 1 Crore, surcharge @ 2.5% will be applicable.

**Requirement to furnish permanent account number
[Sec. 206AA- Inserted w.e.f 1-4-2010]**

(1) Notwithstanding anything contained in any of the provisions of this Act, any person whose receipts are subject to deduction of tax at source i.e., the deductee, shall mandatorily furnish his PAN to the deductor falling which the deductor shall deduct tax at source at the higher of the following rates—

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

(ii) at the rates or rates in force, or

(iii) at the rate of 20%.

(2) TDS at the above mentioned rate will also apply in case where the tax payer files a declaration u/s 197A(i.e., in form 15G or 15H) but does not provide his PAN.

(3) No certificate u/s. 197 shall be granted unless the application contains the “PAN” of the applicant

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

(5) Where the PAN. provided to the deductor is invalid or does not belong to the deductee, it shall be deemed that the deductee has not furnish his PAN to the deductor and the provision subsection (1) shall apply accordingly.

Deduction of tax at source and advance payment [section 190]

The total income of an assessee for the previous year is taxable in the relevant assessment year. However, tax on such income is payable in the previous year itself in the following two manners –

- (1) Tax deducted / collected at source
- (2) Advance tax.

Another mode of recovery of tax id from the employer through tax paid by him under section 192(1A) on the non-monetary prerequisites provided to the employee.

Direct payment [Section 191]

Section 191 provides that in the following cases, tax is payable by the assessee directly -

- i) in the case of income in respect of which tax is not required to be deducted at source; and
- ii) income in respect of which tax is liable to be deducted but is not actually deducted.

Explanation: If 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 after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of section 201(1), in respect of such tax.”.

Who is liable to deduct tax at source?

Section	Nature of Payment	Person responsible for deduction of Tax
192	Salaries	The Employer himself
194	Deemed dividend	The principal officer of the Domestic company
194BB	Winnings from Horse Race (including Jackpot)	The bookmaker or the person to whom the licence has been granted by the government for horse racing etc. making such payment

194C	Payment to Contractor and Sub Contractor	(i) Government (ii) Local Authority (iii) any corporation established under a Central, State or Provincial Act (iv) Company (v) any Society registered under Societies Registration Act (vi) any trust (viii) any university (ix) any firm or (x) Any individual or <i>HUF or AOP or BOI, whether incorporated or not [other than person u/s 194C(1)]</i> who is liable to get the accounts audited U/s 44AB in the immediately preceding year will have to deduct tax at source. (xi) any Govt. of a foreign State or a foreign enterprise or any association or body established outside India. (w.e.f 1-10-2009)
194B 194D 194E, 194G; 194LA	(1)Winning From Lotteries , crossword puzzle or card game (2)Insurance Commission; (3)Payment to Non Resident sportsman; (4)Commission on Sale of lottery tickets; (5)Payment of Compensation or acquisition of certain immovable property	Any person responsible for making such payment
194A 194H 194I 194J	Interest other than Interest on Securities Commission or Brokerage Rent Fees for Professional or technical Services	Any person responsible for paying interest on securities, other than individual and HUF. However, Any individual or HUF who is liable to get the accounts audited U/s 44AB in the immediately preceding year will have to deduct tax at source. In case of individual there shall be no obligation to deduct tax at source where payments are exclusively for personal purposes.

When to deduct tax at Source?

1. For Sections 192, 194B, 194BB, 194LA – tax is to be deducted at the time of payment.
2. For Section 193, 194A, 194C, 194D, 194E, 194G, 194H, 194I, 194J, 195: At the time of credit or payment whichever is earlier

Due Date for depositing tax at source to the credit of Central Government

- (1) In case of any payment other than Salaries; 194B, 194BB, 194LA
 - (a) Where tax is deducted by or on behalf of Government – on the same day
 - (b) Where tax is deducted by any other person : (i) In case the tax is deducted on the credit entry on last day of the financial year then it must be paid within 2 months from the end of the financial year (ii) In any other case within 1 week from the end of the month in which tax is deducted at source.
- (2) In case of payment of Salaries; 194B, 194BB, 194LA
 - (a) Where tax is deducted by or on behalf of Government – on the same day
 - (b) Where tax is deducted by any other person : Within 1 week from the end of the month in which income tax is deducted.

The Assessing Officer may in special cases, on application, permit the assessee to pay TDS on Salaries, quarterly, on June 15, September 15, December 15 and March 15 of financial year. Similarly, in case of other payments the Assessing Officer may in special cases, on application, permit the assessee to pay TDS quarterly on July 15, October 15, January 15 and April 15. This option is however not applicable in case of interest other than interest on securities, insurance commission and brokerage or commission.

KS: The Tax-Age

No Deduction of tax on Payment to certain persons [Section 196]

- (1) No deduction of tax shall be made by any person from any sums payable to –
- (a) the government, or
 - (b) the Reserve bank of India, or
 - (c) a corporation established by or under a central act, which is, under any law for the time being in force, exempt from income-tax on its income, or
 - (d) a Mutual fund specified under Section 10(23D).

Certificate for deduction of tax at a lower rate [Section 197]

(1) This section applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payments, as the case may be at the rates in forces as per the provisions of sections 192, 193, 194A, 194C, 194D, 194G, 194H, 194I, 194J, 194LA and 195.

(2) In such cases, the assessee can make an application to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax.

(3) If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, as the case may be, he may give to the assessee such certificate, as may be appropriate.

(4) Where the Assessing Officer issues such a certificate, then the person responsible for paying the income shall deduct income-tax at such lower rates specified in the certificate or deduct no tax, as the case may be, until such certificate is cancelled by the Assessing Officer.

No deduction in certain cases [Section 197A]

(1) No deduction of tax shall be made under sections 193 or 194A or 194K, where a person, who is not a company or a firm, furnishes to the person responsible for paying such income a declaration in writing in the prescribed form to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be nil.

(2) The provisions of this section will, however, not apply where the aggregate of above sums exceeds the maximum amount which is not chargeable to income-tax

(3) For a senior citizen, who is of the age or 65 years or more at any time during the previous year, no deduction of tax shall be made under section 193 or section 194 or section 194A, if they furnish a declaration in writing to the payer, of any amount or income mentioned in the above sections.

(4) No deduction of tax shall be made by an Offshore Banking Unit from the interest paid on deposit or borrowing made by a non-resident/not-ordinarily resident.

(5) No deduction shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred to in section 10(44).

(6) On receipt of the above declarations the person responsible for making the payment will be required to deliver to the Chief Commissioner or Commissioner, one copy of the declaration on or before the 7th day of the following month in the declaration is furnished to him.

Tax deducted is income received [Section 198]

All sums deducted in accordance with the foregoing provisions shall, for the purpose of computing the income of an assessee, be deemed to be income received.

Credit for tax deducted at source [Section 199]

(a) Any deduction made in accordance with the foregoing provisions of this Chapter and paid to the Central Government shall be treated as a payment of tax on behalf of the person from whose income the deduction was made, or of the owner of the security, or of the depositor or of the owner of property or of the unit-holder, or of the shareholder, as the case may be. [s. 199(1)]

(b) Any sum referred to in sub-section (1A) of section 192 and paid to the Central Government shall be treated as the tax paid on behalf of the person in respect of whose income such payment of tax has been made. [S. 199(2)]

(c) The Board may, for the purposes of giving credit in respect of tax deducted or tax paid in terms of the provisions of this Chapter, make such rules as may be necessary, including the rules for the purposes of giving credit to a person other than those referred to in sub-section (1) and sub-section (2) and also the assessment year for which such credit may be given. [S. 199(3)]

NOTIFICATION NO.28/2009, DATED 16-3-2009**Rule 37BA: Credit for tax deducted at source for the purpose of section 199**

(1) Credit for tax deducted at source and paid to the Central Government, shall be given to the persons to whom payment has been made or credit has been given (deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority.

(2) (i) If the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for tax deducted at source shall be given to the other person in cases where-

(a) the income of the deductee is included in the total income of another person under the provisions of section 60, section 61, section 64, section 93 or section 94;

(b) the income of a deductee being an association of persons or a trust is assessable in the hands of members of the association of persons, or in the hands of trustees, as the case may be;

(c) the income from an asset held in the name of a deductee, being a partner of a firm or a karta of a Hindu undivided family, is assessable as the income of the firm, or Hindu undivided family, as the case may be;

(d) the income from a property, deposit, security, unit or share held in the name of a deductee is owned jointly by the deductee and other persons and the income is assessable in their hands in the same proportion as their ownership of the asset:

Provided that the deductee files a declaration with the deductor and the deductor reports the tax deduction in the name of the other person in the information relating to deduction of tax .

(ii) The declaration filed by the deductee shall contain the name, address, permanent account number of the person to whom the credit is to be given, payment or credit in relation to which the credit is to be given and reasons for giving credit to such person.

(iii) The deductor shall issue the certificate for declaration of tax at source in the name of the person in whose name credit is shown in the information relating to deduction of tax and shall keep the declaration in his safe custody.

(3) (i) Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

(ii) Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

(4) Credit for tax deducted at source and paid to the Central Government shall be granted on the basis of:

(i) the information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorised by such authority; and

(ii) the information in the return of income in respect of the claim for the credit, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

E-filing of quarterly statement of TDS mandatory for certain deductors

(i) E-filing of quarterly return mandatory for the company and for government [Proviso 1 to Rule 31A W.e.f 01-09-2007]: Where-

- (a) the deductor is an office of Government: or
- (b) the deductor is a company: or
- (c) the deductor is a person required to get his accounts audited u/s 44AB in the immediately preceding financial year; or
- (d) the number of deductees records in a quarterly statement for any quarter for the immediately preceding financial year is equal to or more than fifty,

the person responsible for recording tax at source, and the principal officer in the case of a company shall delivered or caused to be delivered such quarterly statement on computer media (3.5” 1.44 MB floppy diskette or CD-ROM of 650 MB capacity).

(ii) A person other than mentioned above in clause (i), responsible for deducting tax at source, may at his option, deliver or cause to be delivered the quarterly statements on computer media (3.5” 1.44 MB floppy diskette or CD-ROM of 650 MB capacity) [Proviso 2 to rule 31A]

(iii) Quarterly return in case of payment to non-resident [Proviso 3 to rule 31A]: The person responsible for deducting tax at source in accordance with section 194E, 195, 196A, 196B, 196C and 196D of the Act from any payment made to-

- a. a person, not being a company, who is a non-resident or a resident but not ordinarily resident, or
- b. a company which is neither an Indian company nor a company which has made the prescribed arrangements for the declaration and payment of dividends within India;

Due dates of Quarterly Returns

	Salary (Form No. 24Q)	Payment other than salary to a resident (Form No. 26Q)	Payment other than salary to a non-resident (Form No. 27Q)
For the Quarter ending June 30	July 15	July 15	July 14
For the Quarter ending September 30	October 15	October 15	October 14
For the Quarter ending December 31	January 15	January 15	January 14
For the Quarter ending March 31	June 15	June 15	April 14 (June 14 in case the amount is credited on last date of accounting year.

Duty of person deducting tax [Section 200]

(1) The persons responsible for deducting the tax at source should deposit the sum so deducted to the credit of the Central Government within the prescribed time.

(2) Further, an employer paying tax on non-monetary perquisites provided to employees in accordance with section 192 (1A), should deposit within the prescribed time, the tax to the credit of the Central Government or as the Board directs.

(3) These persons are responsible for preparing quarterly statements. The quarterly statements are to be submitted for the quarter ended 30th June, 30th September, 31st December and 31st March as 15th July, 15th October, 15th January and 15th June respectively.

Note: W.e.f 1-10-2009 for point 3 above following point shall be substituted –

(3) These persons are responsible for preparing **such statements for such period as may be prescribed.**

Processing of statements of tax deducted at Source[Section 200A]

(Inserted w.e.f 1-4-2010 by the Finance Act, 2009)

1) The following adjustment can be made during the computerized processing of statements of tax deducted at source -

i) any arithmetical error in the statement; or

ii) an incorrect claim, apparent from any information in the statement.

2) After making adjustments, tax and interest [e.g., u/s 201(1A)] would be calculated and sum payable by the deductor or refund due to the deductor will be determined.

3) An intimation will sent to the deductor informing him of his tax liability or granting him the refund due within 1 year from the end of the financial year in which the statement is filed.

4) The processing of these statements can be done in Centralized processing centre.

Explanation: For this purpose “an incorrect claim apparent from any information in the statement” shall mean a claim, on the basis of an entry, in the statement –

i) of an item, which is inconsistent with another entry of the same or some other item in such statement

ii) in respect of rate of TDS , where such rate is not in accordance with the provisions of this Act.

Consequences of failure to deduct or pay [Section 201]

FAILURE	INTEREST	PENALTY
For Failure to deduct tax at source	U/s 201 interest is chargeable @ 1% p.m. or part of the month from the date on which tax was deductible to the date of payment	U/s 221 a maximum penalty of 100% of the amount of TDS may be levied
Default in filing of returns	Nil	U/s 272A(2) 100 per day during which the default continues but not exceeding the amount of TDS

Time limit for passing order [Section 200(3) – inserted w.e.f 1-4-2010] -

1. No order shall be made u/s. 200(1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax of a person resident in India at any time after the expiry of –

(i) In case statement is filed by the deductor u/s. 200 - 2 years from the end of the financial year in which the statement is filed.

(ii) In any other case: 4 years from the end of the financial year in which payment is made or credit is given.

However, order pertaining to the financial year 2007-08 or earlier years can be passed at any time up to 31-3-2011.

Certain period to be excluded : In computing the period of limitation for above purposes, certain period prescribed under Explanation 1 to section 153 shall be excluded.

Note: No time limit has been prescribed for order u/s. 200(1) in the following cases –

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

b. the employee has failed to pay tax wholly or partly u/s. 192(1A), as the employee would not have paid tax on such perquisites,

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

Certificate for tax deducted [Section 203]

(1) Every person deducting tax at source shall issue a certificate to the effect that tax has been deducted and specify the amount so deducted, the rate at which tax has been deducted and such other particulars as may be prescribed.

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(2) Every person, being an employer, referred to in section 192 (1A) shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

(3) Where the tax has been deducted or paid in accordance with the foregoing provisions of this Chapter on or after 1-4-2010, there shall be no requirement to furnish a certificate for tax deducted u/s. 203 in respect of such tax deducted or paid on or after 1.4.2010.

Common number for TDS and TCS [Section 203A]

Person responsible for deducting tax or collecting tax source apply to the Assessing Officer for the allotment of a “tax-deduction and collection-account number”. Such number is required to be quoted in Challans for payments, TDS certificates, *Quarterly* statements prepared U/s 200 and other prescribed documents.

Note: w.e.f 1-10-2009 the word “Quarterly” shall be Omitted.

Furnishing of statement of tax deducted [Section 203AA]

The Director General of Income-tax (Systems) or the person authorised by the Director General of Income-tax (Systems) referred to in section 200(3) shall, within the prescribed time (i.e, by 31st July) after the end of each financial year beginning on or after 1-4-2009 prepare and deliver to every person from whose income the tax has been deducted or in respect of whose income the tax has been paid a statement in the Form No. 26AS specifying the amount of tax deducted or paid.

Person responsible for paying taxes deducted at source [Section 204]

For purpose of deduction of tax at source the expression “person responsible for paying” means:

	Nature of income/payment	Person responsible for paying tax
(1)	Salary (other than payment of salaries by the Central or State Government)	(i) the employer himself; or (ii) if the employer is a company, the company itself, including the principal officer thereof.
(2)	Interest on securities (other than payments by or on behalf of the Central or State Government)	the local authority, corporation or company, including the principal officer thereof.
(3)	Any sum payable to a non-resident Indian, representing consideration for the transfer by him of any foreign exchange asset	the authorized dealer responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External Account maintained in accordance with the Foreign Exchange Regulation Act, 1973 and any rules made thereunder.
(4)	Credit/payment of any other sum chargeable under the provisions of the Act	(i) the payer himself; or (ii) if the payer is a company, the company itself including the principal officer thereof.

Bar against direct demand on assessee [Section 205]

Where tax is deductible at the source under the provisions of section 192 to 196D, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

Furnishing of return in respect of payment of interest to residents without deduction of tax [Section 206A]

(1) This section casts responsibility on every banking company or co-operative society or public company referred to in the proviso 194A(4) (i) to prepare quarterly return -

- if they are responsible for paying to a resident,
- the payment should be of any income not exceeding Rs. 5,000

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- such income should be by way of interest (other than interest on securities)

(2) Such *quarterly returns have to be prepared for the period ending on the 30th June, the 30th September, the 31st December and the 31st March in each financial year* to prescribed income-tax authority or the person authorized by such authority.

(3) The *quarterly return* have to be in the prescribed form, verified in the prescribed manner and to be filed within the prescribed time, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

Note: W.e.f 1-10-2009 for the point (2) and (3) above, following points shall be substituted –

(2) *Such statements for such period as may be prescribed* have to be prepared and delivered to prescribed income-tax authority or the person authorized by such authority.

(3) The *Such Statements* have to be in the prescribed form, verified in the prescribed manner and to be filed within the prescribed time, on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media.

TDS ON NON RESIDENTS OR FOREIGN COMPANIES [SECTION 195]

1) Any person making payment to any non-resident other than company or any foreign company by way of interest or any sum chargeable as income (other than salary) is liable to deduct tax at the rate specified.

2) Where the person responsible for paying any sum chargeable under the Act (other than salary) to a non-resident considers that the whole of such sum would not be the income chargeable in the case of the recipient, he may make an application to the assessing officer to determine the appropriate proportion of such sum so chargeable. Based on such application, if the amount is so determined, tax shall be deducted only on that proportion of the sum, which is chargeable.

3) For the purpose of deduction of tax at source u/s. 195, 'rate of tax' shall mean the rate of tax specified in-

- a) the Finance Act; or
- b) an agreement u/s.90; or
- c) an agreement u/s.90A.

4) The recipient of the income on which TDS is to be effected may make an application to the assessing officer for grant of a certificate authorizing him to receive such income without deduction of tax. Once such certificate is granted, every person responsible for paying income shall make payment without TDS so long as the certificate is in force.

5) A certificate granted as above shall remain in force till the expiry of the period specified therein or if it is cancelled by the assessing officer before the expiry of such period till such cancellation.

6) The person referred to in sub-section (1) shall furnish the information relating to payment of any sum in such form and manner as may be prescribed by the Board.

GROSSING UP – INCOME PAYABLE NET OF TAX [SECTION 195A]

a) Where, under any agreement, the tax chargeable on any income referred to in the above provisions is to borne by the parson by whom the income is payable, then for the purpose of deduction of tax, under those provisions such income shall be increased to such amount as would after deduction of tax be equal to the net amount payable under such agreement or arrangement.

b) In a case where tax is borne by the Indian company by grossing up principle, one significant issue that arises is about issuing the certificate for deduction of tax at source to the payee to enable the payee to avail appropriate credit in the home country subject to the law prevalent in that country. Since the tax is borne by the Indian company, a doubt arises about the entitlement of the payee to be issued with the TDS certificate.

INCOME FROM UNITS [SECTION 196B]

In respect of income from units referred to in Sec.115AB purchased in foreign currency or income by way of long term capital gains from such units received by any off shore fund, the person responsible for making the payment is liable to deduct tax at the rate of 10% (+ S.C. and E.C.) as applicable.

INCOME FROM FOREIGN CURRENCY BONDS OR SHARES OF INDIAN COMPANY [SECTION 196C]

Any person responsible for making the following payments to a non-resident shall deduct tax at source at 10% (+ S.C. and E.C.) as applicable:

- (a) Income by way of interest or dividends (other than those covered U/s 115O) in respect of bonds or Global Depository Receipts referred to in Sec.115AC; or
- b) long term capital gains arising from the transfer of such bonds or Global Depository Receipts.

INCOME OF FOREIGN INSTITUTIONAL INVESTORS [SECTION 196D]

Income from securities referred to in Sec. 115AD(1)(a) received by any foreign institutional investor from any person, the payer is required to deduct tax at the rate of 20% (+ S.C. and E.C.) as applicable.

However, no deduction shall be made in respect of the following income payable to a Foreign Institutional Investor:

- a) any dividends covered u/s. 115-O; and
- b) any capital gains arising from transfer of securities mentioned u/s. 115AD.

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

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

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

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

(23) CHANGES RELATING TO “ADVANCE TAX”

(64) Amendment of section 208

The limit for payment of advance tax has been enhanced from the present Rs. 5,000 to Rs. 10,000 for the financial year 2009-10 and onwards

(24) CHANGES UNDER “APPEALS AND REVISION”

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

The Act has amended section 246A (1)(a) to provide that the appeal against the order passed by the Assessing Officer under section 143(3) or order of re-assessment under section 147 *except an order passed in pursuance of directions of Dispute Resolution Panel* shall lie to the Commissioner(Appeals).

(66) Amendment to section 253(1) regarding appeals to ITAT [W.e.f. 1-10-2009]

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

(25) CHANGES UNDER “PENALTY AND PROSECUTION”**(67) Amendment of section 271**

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

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

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

“where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of—

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

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

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

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

(68) Amendment of section 272A: Section 272A(2)(i) relating to non-filing of quarterly statement of TDS/TCS has been amended in order to delete the word ‘quarterly’ given for such statements. – Refer Heading TDS.

(26) “MISCELLANEOUS AMENDMENTS”**(69) Amendment of section 281B [W.e.f. A.Y. 1988-89]**

Rationalisation of provisions relating to provisional attachment of asset – Period during which the proceedings for assessment or reassessment are stayed by an order or injunction of any Court (writ petitions in High Courts and Supreme Court) shall be extended

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

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In many cases, the assesseees have filed writ petitions in High Courts and Supreme Court and have obtained stay of the assessment proceedings. Often, such stay remains in force for many years during which the validity of provisional attachment order expires. Therefore, it is proposed to amend sub-section (2) of section 281B to provide that the period, during which the proceedings for assessment or reassessment are stayed by any Court, shall be excluded in calculating the period specified therein.

(70) Insertion of new section 282B: Allotment of Document Identification Number

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

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

With a view to give effect to the aforesaid, the Act has inserted a new section 282B so as to provide that –

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

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

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

(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, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.”.

(71) Insertion of new section 293C: Power to withdraw approvals section 293C [W.e.f. 1-10-2009]

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

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

(72) Amendment of First Schedule: Taxation of investment income/loss of Non life insurance business [W.e.f. A.Y.2011-12]

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

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

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

(73) Amendment of Fourth Schedule: Recognition of Provident Fund [W.e.f. 1-4-2009]

Extension of time limit for obtaining Exemption from EPFO under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 from 31-3-2009 to 31-12-2010

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

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

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

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

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

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

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

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

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

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

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

WEALTH-TAX

(76) Amendment of section 3:

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

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

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

(Refer heading DTAA above)
