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1st March, 2010

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The Budget making for a Finance Minister is essentially an art of reconciling contradictions. It is an art how well you answer the questions on how will you spend the public money? Or to put it differently, where will you get the money to be spent on public?

The Budget proposals of Hon'ble FM are largely concentrated on fiscal consolidation as targeted in his last Budget.

A look at the media and the news and views running around on the quality of the Union Budget shows that every one is happy. Even going by the market cheer, the Budget 2010 scores positive on the feel good factor. "This Union Budget has turned out to be a statement of enhanced economic aspirations with expansive social development", according to some of the industrialists.

Justifying his budget, the Hon'ble FM says that "*I must come back to higher growth trajectory. I cannot indulge in the fiscal expansion which I did last year. It will cause harm in the long term. There is a concern over prices, but it is a short term concern.*"

In our view, the Hon'ble FM has been able to come out of the humdrum budget of 2009 to a budget with a fine balance between fiscal discipline and growth.

The effects of these proposals may have positive impact on the economy in times to come. We have tried to analyze the Budget proposals as enunciated in the Finance Bill, 2010.

The copy is also available on our website <http://www.amcount.com>.

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**Union Budget 2010-11**

**FINANCE BILL, 2010  
HIGHLIGHTS & COMMENTS**

*Thus, a wise Collector General shall conduct the work of revenue collection.... in a manner that production and consumption should not be injuriously affected.... financial prosperity depends on public prosperity, abundance of harvest and prosperity of commerce among other things.*

- Kautilya

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**direct taxes.....**

Sr. No.	Subject	
A1	Business expense – Weighted deduction	
<b>Amended</b>		
Sec.	+/-	w.e.f.
35(1)	+	2011-12

**Highlights**

1. Presently, weightage deduction is granted to the extent of 125% of any sum paid by an assessee to the approved and notified Scientific Research Association or to a University, College, Other Institution to be utilized for scientific research.
2. It is proposed to increase the deduction to 175% of the sum paid.
3. Corresponding exemption is also granted in Section 10(21) to such associations.
4. Further, benefit of similar deduction is also extended to approved Research Associations engaged in Social Science and Statistical Research.

**Comments**

The weightage deduction for scientific and research development was initially granted at 125% of the sums paid. The increase of quantum of deduction to 175% and extension of such benefits to other Associations would encourage the R & D facilities carried on by the Scientific Research Association, University, College etc.

Sr. No.	Subject	
A2	Business expense – In-house R & D	
<b>Introduction</b>		
Sec.	+/-	w.e.f.
35(2AB)	+	A.Y. 2011-12

**Highlights**

1. Under the existing provisions of Section 35(2AB), companies are allowed weightage deduction of 150% of the expenditure incurred on enhanced R & D facility.
2. It is proposed to increase the weighted deduction from 150% to 200%.

**Comments**

The increase in the weightage deduction is introduced primarily to incentivise the corporate sector to invest in Research & Development.

Sr. No.	Subject	
A3	Business Expense – P&NG/Hotel	
<b>Amended</b>		
Sec.	+/-	w.e.f.
35AD	+	A.Y. 2011-12

**Highlights**

1. One of the conditions for such specified business of operating a cross country pipeline is that it should have not less than 1/3<sup>rd</sup> of its total pipeline capacity available for use on common carrier basis by any person other than assessee or an associated person. It is now proposed to amend this condition so as to provide that the proportion of total pipeline capacity should be as specified by regulations made by Petroleum & Natural Gas Regulator Board instead of 1/3<sup>rd</sup> as provided hitherto.
2. The investment linked deduction at 100% at capital expenditure is allowable to specified business is now proposed to be extended to building and operating a new hotel at 2 star grade or above.

**Comments**

This provision will simplify the calculations in respect of P&NG and boost the competitive business of hotel industries.

Sr. No.	Subject	
A4	Business deduction – TDS	
<b>Amended</b>		
Sec.	+/-	w.e.f.
40(a)(ia)	+	A.Y. 2010-11

**Highlights**

1. As per the existing proviso to Section 40a(ia) if in respect of any expenditure, tax has been deducted during any month from April to February but paid after the end of the previous year, such expenditure shall not be allowed as a deduction in computing the income of the previous year in which such tax is not paid.
2. However, in case of tax deducted during the last month of the previous year, expenditure is allowed if the same is paid before the due date of filing the return.
3. It is now proposed to allow the expenditure in cases where the tax is deducted in any month during the year

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but paid before the due date of filling the return of income.

**Comments**

The present amendment has sought to remove the disparity between the tax deducted during months upto February and payments made in March.

Sr. No.	Subject	
A5	Business – Audit	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
44AB/271B	+	A.Y. 2011-12

**Highlights**

- U/s. 44AB, every person is liable to carry out audit if the turnover of the business exceeds Rs. 40,00,000 or the turnover of the profession exceeds Rs. 10,00,000/-.
- It is now proposed to revise these limits from Rs. 40,00,000/- to Rs. 60,00,000/- in case of business and from Rs. 10,00,000/- to Rs. 15,00,000/- in case of profession.
- The penalty for not carrying out audit is increased from Rs. 1,00,000/- to Rs. 1,50,000/- u/s. 271B.

**Comments**

- The liability to tax audit was determined under the statute way back in 1985 when the limit of turnover was fixed at Rs. 40,00,000 and Rs. 10,00,000/- for business and profession respectively.
- Since then, for almost 26 years, these limits were remained untouched although the business had expanded and the economy had grown multi fold.
- In order to reduce the compliance burden of small businesses and professionals, it is proposed to increase the threshold limit of the turnover liable to audit.
- Similar amendments are also introduced by increasing the threshold limit in s. 44AD relating to presumptive taxation.

Sr. No.	Subject	
A6	Charitable purpose	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
2(15)/11	+	A.Y.2009-10

**Highlights**

- The definition of charitable purpose for the purpose of Section 2(15) includes “the advancement of any other object of general public utility”. However, the activity will not be for a charitable purpose if it involves in carrying on any activity in the nature of trade, commercial or business for a cess or fee or any other consideration irrespective of the nature of use or application of such income.
- It is now proposed that if income from such activity is Rs.10 lakhs or less, such activity would not be out of purview of charitable purpose and hence, it would be considered as part of charitable activity.

**Comments**

- The first proviso to Section 2(15) which restricted the definition of charitable purpose to exclude any income of commercial nature created substantial hardship to many organizations. The absolute restriction on any receipt of commercial nature was creating hardship to the organizations which receive small and sundry consideration for such activities.
- As such, an amendment brought in by Finance Act 2008 by restricting definition of charitable purpose to exclude the activity of commercial nature is liberalized to the extent the organization earns on such income upto Rs.10 lakhs.
- It is not clear as to whether the expression “receipts” used in this regard has to be understood in absolute simple meaning or as per the method of accounting followed by the assessee?
- Further, it may be the matter of dispute as to what would be the quantum of exemption if the aggregate receipt from such activity exceeds Rs.10 lakhs.

Sr. No.	Subject	
A7	Charitable Trust	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
12AA	-	01.06.2010

**Highlights**

- 12AA is amended to provide the power to the commissioner to cancel the registration already granted if the activities of the trust is not in accordance with the objects of the trust.

**Comments**

- Section 12AA provides for Registration and Cancellation of Registration of Charitable Trusts / Institutions. Section 12AA(3) provides power to Commissioner for cancellation of Registration of Charitable

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Trust / Institution in case such trust / institution are not genuine or are not carrying activities in accordance with their objects. This law was inserted w.e.f. A.Y. 97-98.

2. Accordingly, it was held in several cases including Bharati Vidyapeeth v. ITO [119 TTJ 261 (Pune)] that the above law was not applicable to the Trusts / Institution who were registered before sec. 12AA came into existence i.e. A.Y. 1996-1997 and earlier years.

3. Since this was found to be a lacuna for which undue advantage was taken by certain trusts, it is proposed to amend section 12AA(3) to include such old trusts / institutions also. Accordingly it is proposed to give power to the commissioner to cancel registration for trusts / institutions registered in A.Y. 96-97 and earlier years also.

Sr. No.	Subject	
A7	Deductions – SEZ	
	<b>Clarified</b>	
Sec.	+ /-	w.e.f.
10AA	-	A.Y. 2006-07

#### Highlights

1. Vide Finance (No. 2) Act, 2009, the deduction to SEZ units were made qua the assessee as against qua undertaking prior to the said amendment. The said amendment was made effective from A.Y. 2010-11.

2. It is now proposed to extend the said amendment w.e.f. the date when the deduction to SEZ units was introduced in Income-tax Act., i.e. A.Y. 2006-07.

#### Comments

1. The deduction to SEZ units initially from A.Y. 2006-07 to A.Y. 2009-10 was computed qua the undertaking. Thus, deduction u/s. 10AA(7) shall be of the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking.

Vide Finance (No. 2) Act, 2009, w.e.f. A.Y. 2010-11, the deduction was made qua the assessee.

2. However, the said amendment of Finance (No. 2) Act, 2009 is now proposed to be introduced retrospectively w.e.f. A.Y. 2006-07 instead of A.Y.2010-11.

Sr. No.	Subject
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A8	Deductions – infrastructure bonds	
	<b>Inserted</b>	
Sec.	+ /-	w.e.f.
80CCF	+	A.Y. 2011-12

#### Highlights

It is proposed to provide that subscription during the F.Y. 10-11 made to long-term infrastructure bonds as notified by the Central Government to the extent of Rs. 20,000, shall be allowed as deduction in computing the income of an individual or a Hindu undivided family.

#### Comments

1. The deduction on account of investment in Infrastructure bonds to the extent of Rs. 20,000/- is re-introduced after a period of 5 years; over and above deduction on savings of upto Rs.1,00,000 under section 80C, 80CCC and 80CCD of the Act.

2. However, there are certain issues left unanswered. The deduction is granted in respect of subscription to such bonds which means that the investment through purchase from third party may not be eligible for deduction.

3. Further, the said amendment is available only in respect of 1 year, i.e. A.Y. 2011-12.

Sr. No.	Subject	
A9	Deduction – C. Govt Health Scheme	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
80D	+	A.Y. 2011-12

#### Highlights

It is proposed to allow the deduction in respect of payment made under the Central Government Health Scheme (CGHS) which is a medical facility available to serving and retired Government servants.

#### Comments

1. Under the existing provisions of s. 80D, deduction in respect of premium paid towards a health insurance policy upto a maximum of Rs. 15,000 is available for self, spouse and dependent children. A further deduction of Rs. 15,000 is also allowed for buying an insurance policy in respect of dependent parents. The deduction is enhanced to Rs. 20,000 in both cases if the person insured is of age of 65 years or above.

2. It is now proposed to allow the deduction in respect of payment made under the Central Government Health Scheme (CGHS) which is a medical facility available to serving and retired Government servants. This facility is

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similar to the facilities available through health insurance policies.

3. The deduction will be limited to the current aggregate as mentioned in s. 80D.

Sr. No.	Subject	
A10	Deduction – Housing projects	
<b>Amended</b>		
Sec.	+ /-	w.e.f.
80IB	+	A.Y. 2010-11

#### Highlights

- Under the existing provisions of section 80-IB(10), 100 per cent deduction is available in respect of profits derived by an undertaking from developing and building housing projects approved by a local authority before 31.3.2008.
- It is now proposed to amend the provisions by permitting the projects approved after 1.4.2005 to complete the project within 5 years from the end of the year in which the approval is received as against the earlier period of 4 years.
- Similarly, it is also proposed to permit the commercial premises to the extent of 3% of the total built up area or 5,000 sq. ft. whichever is higher as against the existing 5% of the built up area or 2,000 sq. ft. whichever is lower.

#### Comments

- The provisions of s. 80-IB allows the deduction in respect of the projects approved after 1.4.2004 in case if the project is completed within 4 years from the end of the year in which the approval was obtained.
- To allow for extraordinary conditions due to the global recession and the resultant slowdown in the housing sector, it is proposed to increase the period allowed for completion of a housing project in order to qualify for availing the tax benefit under the section, from the existing 4 years to 5 years from the end of the financial year in which the housing project is approved by the local authority. This extension will be available for housing projects approved on or after 1.4. 2005.
- Similarly, the aggregate area of commercial premises allowed within the housing project is also enhanced to minimum permissible area of 5,000 sq. ft. in order to enable basic facilities for the residents. These limits are also applicable to the projects approved after 1.4.2005.

Sr. No.	Subject
A11	Deduction – Hotel in NCTD
<b>Amended</b>	

Sec.	+ /-	w.e.f.
80ID	-	A.Y. 2011-12

#### Highlights

- S. 80-ID provides for 100 % deduction for 5 years, of profits derived by an undertaking from the business of a 2-star, 3-star or 4-star category hotel or from the business of building, owning and operating a convention centre located in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad, provided such hotel has started functioning or such convention centre is constructed during the period 1.4.2007 to 31.3.2010.
- The outer limit of 31.3.2010 is extended to 31st July, 2010.

#### Comments

- The last date of functioning of the hotel/ convention centre is extended from 31.3.2010 to 31.07.2010.
- The said time limit is extended to provide some more time for these facilities to be set up in light of the Commonwealth Games in October, 2010.

Sr. No.	Subject	
A12	High Court – power of Condonation	
<b>Amended</b>		
Sec.	+ /-	w.e.f.
260A	+	01.10.1998

#### Highlights

- The power to file appeal against the order of Hon'ble Tribunal is provided u/s. 260A.
- However, there is no express provision for condonation of delay for filling such appeals thereby causing substantial difficulties for the tax payers and the department.
- It is now proposed to grant power to the High Court to condone such delays if the appeals are file belatedly

#### Comments

- The existing provisions of s. 260A(2) provide that an appeal against the order of Income-tax Appellate Tribunal can be filed before the High Court within a period of 120 days from the date of the receipt of the order by the assessee or the Commissioner.
- S. 260A(7) provides that the provisions of Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, apply in the case of an appeal filed under this section before the High Court.



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3. The question whether courts have the power to condone delay in filing of appeals u/s. 260A arose because of drafting of s. 260A. While all other provisions of the Act provide that the authority therein can condone a delay in filing an application/appeal, the draftsman forgot to add a similar provision in s. 260A. This bit of careless drafting lead to a spate of litigation.

4. Due to such lacuna, the Full Bench of the Bombay High Court took the view in Velingkar Brothers [289 ITR 382] while interpreting provisions of section 260A, has held that the High Court has the power to condone delay in filing of an appeal.

5. However, the Hon'ble Supreme Court took a different view in the case of Singh Enterprises [221 ELT 163] and Punjab Fibres [223 ELT 337] in the context of the pari-materia provisions of the Excise and Customs Act and held that the power of the Court to condone delay flows from the provisions of the relevant law and the inherent powers of Court to condone delay under the Limitation Act does not apply. Following this, the Bombay High Court in several other cases held that the High Court did not have power to condone the delay. Similar views were taken by Allahabad, Bombay, Kolkata, Guwahati and Chattisgarh High Courts have held otherwise.

6. In order to settle the controversy and provide a sign of relief to tax payers and the department, it is now proposed to retrospectively insert s. 260(2A) to specifically provide that the High Court may admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within such period.

Sr. No.	Subject		
A13	Income of Non-Resident		
	<b>Amended</b>		
Sec.	+/-	w.e.f.	
9	-	1977-78	

#### Highlights

- As per Section 9, the income in the nature of interest, royalty and fees for technical services is deemed to accrue or arisen in India to the non-resident Indians specified therein.
- It is now proposed to include any such income whether or not the non-resident Indian has rendered services in India.

#### Comments

- Subject to Section 90 and DTAA, as per Section 9(i)(v)/(vi)(vii), income by way of interest,

royalty and fees for technical services payable to the non-residents are considered to be the income deemed to accrue or arisen in India.

2. The intention of said provisions was to bring the aforesaid income to the tax by creating illegal fiction in cases where services have been provided outside India but are utilized in India.

3. However, the Hon'ble Supreme Court in the case of Ishikawajima Harima Heavy Industries Ltd. vs. DIT [288 ITR 408] held that despite Section 9, for any such income to be taxable in India, there must be sufficient territorial nexus between such income and territory in India. It was, therefore, held that for establishing such a nexus, services have to be rendered in India as well as utilized in India.

4. In order to overcome the ratio laid down by Supreme Court, an amendment was brought in by Finance Act, 2007 whereby Section 9 would be attracted regardless of whether the non-residents have place of business or business connection in India.

5. However, the Hon'ble Bombay High Court in Clifford Chance [318 ITR 237] and Hon'ble Karnataka High Court in the case of Jindal Thermal Power Company Ltd. vs. DCIT (TDS) [225 CTR 220] has held that even after the amendment brought by Finance Act, 2007, the ratio laid down by Supreme Court still holds the forte. Hence, as long as services are not rendered in India, Section 9 is not attracted.

To overcome this lacuna, the present amendment has

Sr. No.	Subject	
A14	Income- Presumptive Taxation	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
44BB	+	A.Y. 2011-12

#### Highlights

It is proposed to amend s. 44BB to exclude, within its scope, the incomes of the nature covered u/s. 44DA.

#### Comments

- The reading of provisions of s. 44BB, 44DA and 115A suggests that if the income of a non-resident is in the nature of fee for technical services, it shall be taxable under the provisions of either section 44DA or section 115A and not u/s. 44BB..
- However, owing to judicial pronouncements, doubts have been raised regarding the scope of section 44BB vis-à-vis section 44DA as to whether fee for technical services relating to the exploration sector would also be covered under the presumptive taxation provisions of section 44BB.
- In order to remove doubts and clarify the distinct scheme of taxation of income, it is proposed to amend the



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s. 44BB so as to exclude the applicability of s. 44BB to the income which is covered under s. 44DA. Similarly, section 44DA is also proposed to be amended to provide that provisions of section 44BB shall not apply to the income covered under section 44DA.

Sr. No.	Subject	
A15	Income- gift	
	<b>Clarified</b>	
Sec.	+ /-	w.e.f.
56	+	01.10.2009

#### Highlights

- S. 56 was amended to tax the fair market value on transfer of immovable property without consideration. Similarly, if the property is transferred for a consideration lower than the fair market value of the property, the difference between the consideration and the fair market value is also liable to tax u/s. 56 as income.
- It is now proposed exclude the difference between the consideration and the fair market value out of the purview of income u/s. 56.

#### Comments

- The Finance (No. 2) Act, 2009 had introduced the taxability of the income on account of difference arising out of the consideration paid for purchase of immovable property and the fair market value of the said property.
- However, in several property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable difference. In order to avoid such practical difficulties and the burden on the property buyers, it is proposed to amend clause (vii) of s. 56(2) to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property.

Sr. No.	Subject	
A16	Income – Gift-Scope	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
56	-	01.06.2009/ 01.10.2009

#### Highlights

- The existing definition of property for the purposes of taxing income u/s. 56(2)(vii) includes

immovable property being land or building or both, shares and securities, Jewellery, archeological collection, drawings, paintings, sculpture or any work of art.

- It is now proposed, w.e.f. 01.10.2009, to clarify that only the items constituting 'capital assets' are covered u/s. 56 and the items of business assets/stock in trade are kept out of purview of s. 56.
- Similarly, w.e.f. 01.10.2009, the scope of the property is expanded to cover the 'bullion' within its scope.
- Further, the scope of s. 56 for taxability of the income from transfer of property is also extended to assessee other than individual and HUFs w.e.f. 01.06.2009.

#### Comments

- The income arising from transfer of 'property' without consideration or without adequate consideration is liable to tax as income to the extent the consideration is short of fair market value.
- The provisions of s. 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income.
- It is, therefore, proposed to amend the definition of property so as to provide that s. 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.
- Similarly, the item of 'Bullion' was not covered under the definition of 'property'. In order to cover all the assets, 'bullion' is also included in the definition of the 'property' for the purpose of s. 56.
- The provisions of s. 56 are anti-abuse provisions which are currently applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision.
- In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, it is proposed to amend s. 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested).
- As a corollary, it is also proposed to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of s. 47 of the Act. Consequent amendments are made in s. 2(24) to include the value of such shares in the definition of income

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and s. 49 to provide that the cost of acquisition of such shares to be the value subjected to tax under the provisions of section 56 (2).

8. It is surprising that the provisions on the lines of exclusion of business assets and of transactions for inadequate consideration, which have been made in respect of individuals and properties is not made in the context of transfer between the companies.

Sr. No.	Subject	
A17	LLP - VRS Expense	
	<b>Introduced</b>	
Sec.	+ /-	w.e.f.
35DDA	+	A.Y. 2011-12

**Highlights**

It is proposed that the VRS expense claimed in installments by a company shall be allowed to the LLPs formed on conversion from a limited company to LLP.

**Comments**

- The provisions of s. 35DDA allows an assessee to claim deduction of expense in connection with VRS of an employee in 5 annual equal annual installments.
- The provisions for allowing such expense to a successor assessee in case of amalgamation, demerger or re-organization is already available on statute.
- In order to cover the cases of conversion of companies to LLP, it is also proposed to allow the balance installments in the hands of LLP.

Sr. No.	Subject	
A18	LLP-Actual cost for Depreciation	
	<b>Introduced</b>	
Sec.	+ /-	w.e.f.
43(6)	+	A.Y. 2011-12

**Highlights**

1. In case of re-organization of business from Company to LLP, it is proposed to consider the WDV of the company as the actual cost to LLP for the purpose of allowing depreciation on the assets transferred to LLPs.

2. Further, if deduction on such capital expenditure on Fixed assets is already claimed in s. 35AD, the cost of such assets for LLP is proposed to be taken to be NIL.

**Comments**

- As per s. 43(6), in case of demerger of company, the WDV of the resulting company shall be the WDV of the demerged company immediately prior to demerger.
- Since no such provisions defining the WDV in case of conversion of company to LLP were available on statute, Explanation 2C is proposed to be introduced to s. 43(6) by defining the WDV of the LLP to be the WDV of the fixed assets immediately prior to conversion.
- Similarly, if the cost is already written off by the company u/s. 35AD, the value of the assets taken over by LLP is proposed to be taken at NIL.

Sr. No.	Subject	
A19	LLP-Capital Gains on conversion	
	<b>Introduced</b>	
Sec.	+ /-	w.e.f.
47/47A	+	A.Y. 2011-12

**Highlights**

The provisions of s. 47 are extended to cover the conversion of private companies or unlisted public companies whereby the conversion of such companies to LLP are held not liable to transfer for the purpose of capital gains tax subject to certain conditions.

- the total sales, turnover or gross receipts in business of the company do not exceed Rs. 60,00,000 in any of the three preceding previous years;
- the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;
- no consideration other than share in profit and capital contribution in the LLP arises to partners;
- the erstwhile shareholders of the company continue to be entitled to receive at least 50 % of the profits of the LLP for a period of 5 years from the date of conversion;
- all assets and liabilities of the company become the assets and liabilities of the LLP; and
- no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

2. These benefits are also proposed to be withdrawn if the conditions are not fulfilled.

**Comments**

1. The Finance (No. 2) Act, 2009 had introduced the concept of LLP under the Income-tax Act by giving it the

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status of a firm. The provisions of LLP also permit the conversion of a company into LLP subject to certain conditions.

2. Although such conversion was permitted under the provisions of Limited Liability Partnership Act, 2008, there was no clarity or provisions relating to the taxability of the conversion of the company into LLP.

3. In order to bring clarity with respect to the taxability of the conversion of company into LLP, the proposed clause (xiiib) is introduced to exempt such conversion if certain conditions as enumerated above are fulfilled.

4. It is also proposed that if the conditions stipulated above are not complied with, the benefit availed by the company shall be deemed to be the profits and gains of the successor LLP chargeable to tax for the previous year in which the requirements are not complied with.

Sr. No.	Subject	
A20	LLP- Cost of capital assets	
<b>Extended</b>		
Sec.	+ /-	w.e.f.
49	+	A.Y. 2011-12

#### Highlights

It is proposed that the cost of acquisition for the capital assets in case of conversion of company to LLP shall be the cost to the company prior to such conversion.

#### Comments

The 'cost to previous owner' concept is also introduced for the cost of acquisition of assets acquired under the conversion of company to LLP.

Sr. No.	Subject	
A21	LLP-Carry forward of losses	
<b>Introduced</b>		
Sec.	+ /-	w.e.f.
72A	+	A.Y. 2011-12

#### Highlights

It is proposed to allow carry forward and set-off of business loss and unabsorbed depreciation to the successor LLP which fulfils the specified conditions u/s. 47(xiiib).

#### Comments

The provisions of carry forward and set-off of business loss and unabsorbed depreciation are also extended to the LLP.

Sr. No.	Subject	
A22	LLP- Carry forward MAT credit	
<b>Introduced</b>		
Sec.	+ /-	w.e.f.
115JAA	-	A.Y. 2011-12

#### Highlights

It is proposed that upon conversion of company into LLP, the MAT credit available to a company shall stand lapse and shall not be allowable to LLP.

#### Comments

1. The provisions of MAT credit are only applicable to the companies.

2. As per the proposed amendment, the provisions of MAT credit available to a company shall not be extended to LLPs on succession of business by the LLPs.

3. This amendment was necessary since the conversion of business was made as and by way of succession and hence there could have been debate as to the allowability of the MAT credit to such LLPs, more so when such conversions are not regarded as transfer.

Sr. No.	Subject	
A23	MAT Tax	
<b>Amended</b>		
Sec.	+ /-	w.e.f.
115JB	-	A.Y. 2011-12

#### Highlights

The tax rate of the income liable u/s. 115JB (MAT) is 15%. The said tax rate is enhanced to 18%

#### Comments

1. The companies are liable to minimum alternative tax u/s. 115JB @ 15%.

2. However, in order to mobilize the funds to consolidate gains, Hon'ble FM has increased the tax rates to 18%. This may increase the tax liability in the hands of India Inc.

Sr. No.	Subject	
A24	Settlement Commission	
<b>Amended</b>		
Sec.	+ /-	w.e.f.
245C	+	01.06.2010

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**Highlights**

- Under the existing provisions, the search and seizure and the cases where the books are requisitioned are not entitled to approach Settlement Commission. The said limitation is done away with and the search and requisitioned cases are also made eligible to approach Settlement Commission.
- However, the minimum income disclosure to approach the settlement commission in case of search and requisition is kept at Rs. 50 Lakhs and the minimum tax liability to be Rs. 10 Lakhs.
- It is also proposed that the time limit for passing the order in cases filed before 01.06.2010 to be 12 months and for the application file after 01.06.2010 to be 18 months.

**Comments**

- The doors of settlement commission are opened up for the cases of search and requisition thereby giving a substantial relief to search cases. This is a welcome provision for the tax payers.
- Similar amendments are also proposed under the Wealth tax cases.

Sr. No.	Subject	
A25	Surcharge on companies	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
--	+	A.Y. 2011-12

**Highlights**

The surcharge of 10% applicable on the domestic company is proposed to be reduced to 7.5%.

**Comments**

This is a welcome move on part of the Hon'ble FM by giving an adjusting relief against the increase in MAT rate.

Sr. No.	Subject	
A26	TDS provisions	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
Ch. XVIIIB	+	01.07.2010

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The TDS provisions have been rationalized by enhancing the limits of several payments covered under various provisions of Chapter XVII-B as under:

TDS – Section	Nature of payments	Existing Limit	Proposed Limit
194B	Winning of lotteries	5,000	10,000
194BB	Winning of horse race	2,500	5,000
194C*	Contractor	20,000	30,000
194D	Insurance commission	5,000	20,000
194H	Commission / Brokerage	2,500	5,000
194I	Rent	1,20,000	1,80,000
194J	Professional fees	20,000	30,000

\* Aggregate limit is increased from Rs. 50,000 to Rs. 75,000

**Comments**

The limits for deduction of tax on various payments are enhanced to adjust the inflation and the compliance burden of the tax payers.

Sr. No.	Subject	
A25	TDS – Issue of certificates	
	<b>Amended</b>	
Sec.	+ /-	w.e.f.
203(3)	+	A.Y. 2011-12

**Highlights**

- The existing provisions of s. 203(3) dispense with the issue of TDS certificates w.e.f. 31.03.2010.
- Since the preparation for online process is not yet complete, the said deadline is extended to 31.03.2011 and the assessee are made liable to issue TDS certificates even after 31.03.2010.

**Comments**

The proposed amendment seeks to extend the time limit for permitting the department to get prepared for online tax collection and hence makes it obligatory for the assessee to issue TDS certificates even after the 31.03.2010.



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**rates of tax on income .....**

The comparative chart showing the tax rates for various levels of income during A.Y. 2009-10 and A.Y. 2010-11 is given below:

**For Male (below 65 years of age)**

Slab Rates	A.Y. 2009-10				A.Y. 2010-11			
	Tax	SC	EC	Total	Tax	SC	EC	Total
Upto 1,50,000	0	0	0	0	0	0	0	0
1,50,001 to 1,60,000	0	0	0	0	0	0	0	0
1,60,001 to 2,50,000	10.00	0.00	0.30	10.30	10.00	0.00	0.30	10.30
2,50,001 to 3,00,000	10.00	0.00	0.30	10.30	10.00	0.00	0.30	10.30
3,00,001 to 5,00,000	20.00	0.00	0.60	20.60	10.00	0.00	0.30	10.30
5,00,001 to 8,00,000	30.00	0.00	0.90	30.90	20.00	0.00	0.60	20.60
8,00,001 and above	30.00	0.00	0.90	30.90	30.00	0.00	0.90	30.90

**For Female (below 65 years of age)**

Slab Rates	A.Y. 2009-10				A.Y. 2010-11			
	Tax	SC	EC	Total	Tax	SC	EC	Total
Upto 1,80,000	0	0	0	0	0	0	0	0
1,80,001 to 1,90,000	0	0	0	0	0	0	0	0
1,90,001 to 2,50,000	10.00	0.00	0.30	10.30	10.00	0.00	0.30	10.30
2,50,001 to 3,00,000	10.00	0.00	0.30	10.30	10.00	0.00	0.30	10.30
3,00,001 to 5,00,000	20.00	0.00	0.60	20.60	10.00	0.00	0.30	10.30
5,00,001 to 8,00,000	30.00	0.00	0.90	30.90	20.00	0.00	0.60	20.60
8,00,001 and above	30.00	0.00	0.90	30.90	30.00	0.00	0.90	33.90

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**For Senior Citizens**

Slab Rates	A.Y. 2009-10				A.Y. 2010-11			
	Tax	SC	EC	Total	Tax	SC	EC	Total
Upto 2,25,000	0	0	0	0	0	0	0	0
2,25,001 to 2,40,000	10.00	0.00	0.30	10.30	0	0	0	0
2,40,001 to 2,50,000	10.00	0.00	0.30	10.30	10.00	0.00	0.30	10.30
2,50,001 to 3,00,000	10.00	0.00	0.30	10.30	10.00	0.00	0.30	10.30
3,00,001 to 5,00,000	20.00	0.00	0.60	20.60	10.00	0.00	0.30	10.30
5,00,001 to 8,00,000	30.00	0.00	0.90	30.90	20.00	0.00	0.60	20.60
8,00,001 and above	30.00	0.00	0.90	30.90	30.00	0.00	0.90	30.90

- No Change in the tax rates of the Partnership firms and companies.

*snapshot of the judicial decisions considered*

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**service tax.....**

Sr. No.	Subject	
D1	New Services introduced	
	<b>Introduced</b>	
Sec.	+/-	w.e.f.
--	-	27.02.2010

**Highlights**

The Finance Bill, 2010, has proposed to bring in the following 8 new services, viz,

- Services relating to promotion of lottery, bingo and lotto, game of chance.
- Health services provided by hospitals to employees of a business entity where payment is made directly by the business entity to hospital and persons covered under health insurance schemes.
- Marketing or promotion of branded goods by any person under a contract.
- Any person granting right of commercial use of any event relating to art, entertainment, business, sports.
- Electricity exchanges.
- Transferring temporarily or permitting use of copy right.
- Services provided by a builder to a buyer in relation to preferential location or development of residential complex or commercial complex.

**Comments**

The insertion of new services within the tax net is made in line with the Government initiative to cover the maximum services before enactment of GST Act.

Sr. No.	Subject	
D2	Commercial or industrial construction and residential complex	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
65(105)(zzq) / (zzzh)	-	27.02.2010

**Highlights**

The scope of the services is expanded to cover sale of flats / units under construction.

**Comments**

- Builders and developers are now liable to service tax if any payment towards sale consideration is received before grant of completion certificate by the competent authorities for such flats/units.
- This amendment is introduced to counter the decision in the case of Magus Construction Pvt. Ltd. v. UOI [(2008) 11 STR 225 (Gau.)].
- Hence, if the builder received the entire sale consideration for flats/units after issue of completion certificate, the same is not liable to service tax.
- Such an amendment may create lot of litigation and dispute.

Sr. No.	Subject	
D3	Port services / Air port services / Other port services	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
65(105)(zn) / (zzl) / (zzm)	-	27.02.2010

**Highlights**

As per the amendment, any service rendered within a port / airport will be covered under port/ airport services.

**Comments**

- Services provided within port/ airport was either classified as port/airport services or as per their nature e.g. Cargo handling etc.
- Due to the said classification, disputes arose as to the correct nature of services. It is therefore proposed that the services provided within the air port premises are now classified within the 'port services', 'other port services' or 'airport services' only.

Sr. No.	Subject	
D4	Commercial training	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
65(105)(zzc)	-	27.02.2010

**Highlights**

- Exemption restricted by amending definition of vocational training institute- Available only for those affiliated to National Council for Vocational Training..



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2. "Commercial Training or coaching centre is now explained to include an institute where training is imparted for consideration. It is also proposed that such services are liable to tax even if the services are rendered by a trust, society or non-profit organisation with or without the profit motive.

3. Vocational training institutes which are exempt from ST are now defined to include the institutes which provide only industrial training institutes / centres affiliated to National Council of Vocational Training and offering courses in the designated trades.

#### Comments

The scope of these services is expanded.

Sr. No.	Subject	
D5	Air Transport Services	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
65(105)(zzzo)	-	27.02.2010

#### Highlights

1. The exemption of service tax on the travel by economy class of air craft is now withdrawn.
2. However, the statutory taxes will not be subjected to service tax if they are separately shown in the invoice/ticket.

#### Comments

The scope of these services is expanded by removing the exemption granted to the services provided by the air craft operators to the economy class passengers.

Sr. No.	Subject	
D6	Auction of property service	
	<b>Clarified</b>	
Sec.	+/-	w.e.f.
65(105)(zzzr)	-	27.02.2010

#### Highlights

The proposed amendment seeks to clarify that the service tax is not leviable on the auction of the Government property, movable or immovable. However, it continues to be applicable to private properties.

#### Comments

The auction of Government properties are exempted from tax.

Sr. No.	Subject	
D7	Renting of immovable property	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
65(105)(zzzz)	-	01.06.2007

#### Highlights

1. The services of renting of property are redefined to cover the renting of the property itself taxable.
2. Similarly, the renting of Vacant land is also proposed to be taxed provided it is to be used for construction of building/structure for furtherance of business or commerce

#### Comments

1. Presently, the issue of scope of the services covered under the above clause is under substantial dispute. It is opined that the said services cover only the services which are rendered in relation to renting and the renting per se are not covered under the Act. The said distinction is now removed and that the renting itself is also covered under the service tax net.
2. The scope of the services is also expanded to cover the renting of vacant land.

Sr. No.	Subject	
D8	Management of Investment under ULIP	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
65(105)(zzzzf)	-	27.02.2010

#### Highlights

1. Presently the service tax is applicable on the total value of premiums paid less the value of risk cover and amount segregated for investments.
2. It is now proposed to charge the tax on the amount charged by the insurer for management of funds under ULIP or the maximum amount of fund management charges as fixed by IRDA, whichever is higher.

#### Comments

With this amendment, the basis of charging the service tax is modified.

Sr. No.	Subject	
D9	IT Services	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
65(105)(zzzze)	-	27.02.2010

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**Highlights**

Presently, the service tax is restricted to IT software used for furtherance of business. The scope is expanded to cover the software used for personal use also.

**Comments**

This is a welcome amendment.

**Comments**

The use of IT Software is now taxable irrespective whether the same is used for personal use or for business purpose.

Sr. No.	Subject	
D10	Exemption from services	
	<b>Amended</b>	
Sec.	+/-	w.e.f.
--	-	27.02.2010

**Highlights**

Following exemptions are granted under the service tax in respect of various services:

Nature of service	Exemption
Packed or canned software	Packaged or canned software intended for single use is exempted subject to certain conditions.
Transportation of goods by road	Transport of foodgrains and pulses by road is now exempt alongwith fruits, vegetables, etc.
Technical testing and analysis and technical inspection/certification	Services exempt if provided by a central or state seed testing laboratory and central or central or state seed certification agency.
Transmission of electricity	Any services for transmission of electricity
Erection, commission or installation service	Erection, commissioning or installation of mechanized food grain handling systems, equipment for setting up or substantial expansion of cold storage and machinery / equipment for initial setting up, etc.
Indian news agency	Exemption granted in relation to online information and database access or retrieval services and business auxiliary services provided by any Indian news agency; subject to certain conditions.

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