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EXPLANATORY NOTES TO THE PROVISIONS OF THE FINANCE (NO.2) ACT, 2009

CIRCULAR
INCOME-TAX ACT
Finance (No.2) Act, 2009 – Explanatory Notes to the Provisions of Finance (No.2) Act, 2009

CIRCULAR NO. /2010, DATED 3rd JUNE, 2010

AMENDMENTS AT A GLANCE

Section / Schedule	*Particulars/Paragraph number*
	Finance Act
First Schedule	Rate structure, **3.1-3.3.12**
	Income-tax Act
2(15)	Amendment to include certain activities within the ambit of provisions relating to 'charitable purpose' in the Income Tax Act, **4.1-4.3**
2(23), 140, 167C	Taxation of Limited Liability Partnership (LLP), **5.1-5.7**
2(29BA)	Definition of the term "manufacture", **6.1-6.2**
2(48), 36, 194A	Power to issue Zero Coupon Bonds, **7.1-7.4**
10(10C), 89	Compensation received on voluntary retirement or termination of service under a scheme of voluntary separation, **8.1-8.5**
10(23C)	Extension of time limit for filing applications for tax exemption under section 10(23C), **9.1-9.3**
10(23D)	Amendment to section 10(23D) of the Income Tax Act, 1961- Incorporating "Other Public Sector Banks" under the expression "Public Sector Bank", **10.1-10.4**
10A, 10B	Extension of sunset clause for units in free trade zone under section 10A and for export oriented undertakings under section 10B, **11.1-11.3**
10AA	Clarification regarding computation of exempted profits in the case of units in Special Economic Zones (SEZs), **12.1-12.3**
13B, 2(22AAA), 2(24)	Special provisions relating to voluntary contributions received by electoral trust, **13.1-13.3**
32	Aligning the definition of "block of asset", **14.1-14.2**
35	Weighted deduction for in-house research and development, **15.1-15.3**
35AD, 28, 43, 50B, 73A	Investment-linked tax incentive for specified business, **16.1-16.6**
36(1)	Special deduction under section 36(1) (viii) to National Housing Bank (NHB), **17.1-17.4**
40	Remuneration to partners in a firm, **18.1-18.3**
40A	Enhancement of limit for disallowance of expenditure made in the case of transporters, **19.1-19.4**
43	Definition of written down value under section 43(6), **20.1-20.8**
44AD, 44AA, 44AB, 44AE,	Special provision for computing profits and gains of business on presumptive basis, **21.1-21.3**

44AF	
44AE	Presumptive income for truck owners under section 44AE, **22.1-22.5**
50C	Provisions for deemed valuation in certain cases of transfer, **23.1-23.4**
56, 57	Taxation of certain transactions without consideration or for an inadequate consideration as income from other sources, **24.1-24.6**
80A	Amendment in Chapter VI-A to prevent abuse of tax incentives, **25.1-25.8**
80CCD, 10(44), 197A, 115-O	Tax benefits for New Pension System, **26.1-26.5**
80DD	Deduction for medical treatment of a dependant suffering from disability, **27.1-27.4**
80E	Deduction in respect of Interest on loan taken for higher education, **28.1-28.4**
80G	Donations to Certain Funds, Charitable Institutions, etc., **29.1-29.7**
80GGB, 80GGC	Deduction in respect of contributions to political parties, **30.1-30.4**
80-IA	Extension of sunset clause for tax holiday under section 80-IA, **31.1-31.6**
80-IB(9)	Deduction in respect of profits and gains from undertakings engaged in commercial production of mineral oil and natural gas, **32.1-32.7**
80-IB(10)	Rationalising the provisions of deduction, **33.1-33.6**
80-IB(11A)	Deduction in case of an undertaking deriving profit from the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products, **34.1-34.4**
80U	Deduction in case of a person with disability, **35.1-35.3**
90	Empowering Central Government to enter into agreement with specified non-sovereign territories, **36.1-36.4**
92C	Determination of arm's length price in cases of international transactions, **37.1-37.5**
92CB	Power of Board to make Safe Harbour Rules, **38.1-38.3**
115BBC	Tax relief on anonymous donations in certain cases, **39.1-39.3**
115JA, 115JB	Clarification regarding add back of 'provision for diminution in the value of asset', while computing book profits, **40.1-40.4**
115JAA	Minimum Alternate Tax, **41.1-41.4**
115WE, 115WM, 17, 49	Fringe Benefit Tax, **42.1-42.5**
132, 132A	Clarificatory amendment in section 132, **43.1-43.9**
143	Centralized Processing of Returns, **44.1-44.3**
144C, 131, 143, 246A, 253	Provision for constitution of alternate dispute resolution mechanism, **45.1-45.4**
145A	Rationalizing the provisions for taxation of interest received on delayed compensation or on enhanced compensation, **46.1-46.4**

147	Clarificatory amendment in respect of reassessment proceeding under section 147, **47.1-47.4**
194A	Interest other than "interest on securities", **48.1-48.2**
194C, 194-I	Rationalisation of provisions relating to Tax Deduction at Source (TDS), **49.1-49.4**
200, 203A, 206A, 206C, 272A, 139A	Filing of TDS and TCS statements, **49.5**
200A	Processing of statements of tax deducted at source, **49.6**
201	Providing time limits for passing of orders u/s 201(1) holding a person to be an assessee in default, **50.1-50.4**
206AA	Improving compliance with provisions of quoting PAN through the TDS regime, **51.1-51.5**
208	Enhancement of the limit for payment of advance tax, **52.1.-52.2**
271	Rationalization of provisions relating to penalty for concealment of income, **53.1-53.3**
281B	Rationalization of provision relating to provisional attachment of asset, **54.1-54.3**
282	Service of notice, **55.1-55.4**
282B	Introduction of Document Identification Number, **56.1-56.3**
293C	Power to withdraw approvals, **57.1-57.3**
1st Schedule	Taxation of investment income/loss of Non life insurance business, **58.1-58.4**
4th Schedule	Recognition to Provident funds – Extension of time limit for obtaining exemption from EPFO, **59.1-59.4**
13th Schedule	Amendment in Part B of the Thirteenth Schedule to the Income Tax Act, 1961, **60.1-60.4**
	Wealth-tax Act
3	Enhancement of the limit for payment of wealth tax, **61.1-61.2**
44A	Empowering Central Government to enter into agreement with specified non-sovereign territories, **36.1-36.4**
	Finance Act, 2008
Chapter VII section 104	Abolition of Commodity Transaction Tax, **62.1-62.5**
	Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002
13(1)	Extension of income-tax exemption to Special Undertaking of Unit Trust of India (SUUTI), **63.1-63.3**

1. Introduction

1.1 The Finance (No.2) Act, 2009 (hereafter referred to as the Act) as passed by the Parliament, received the assent of the President on the 19th day of August, 2009 and has been enacted as Act No. 33 of 2009. This circular explains the substance of the provisions of the Act relating to direct taxes.

2. Changes made by the Act

2.1 The Act has,

(i) specified the rates of income-tax for the assessment year 2009-10 and the rates of income-ax on the basis of which tax has to be deducted at source and advance tax has to be paid during financial year 2009-10.

(ii) amended sections 2, 10, 10A, 10AA, 10B, 13B, 17, 28, 32, 35, 35AD, 36, 40, 40A, 43, 44AA, 44AB, 44AD, 44AE, 44AF, 49, 50B, 50C, 56, 57, 73A, 80A, 80CCD, 80DD, 80E, 80G, 80GGB, 80GGC, 80-IA, 80-IB, 80U, 89, 90, 92C, 92CB, 115BBC, 115JA, 115JAA, 115JB, 115-O, 115WE, 115WM, 131, 132, 132A, 139A, 140, 143, 144C, 145A, 147, 167C, 194A, 194C, 194-I, 197A, 200, 200A, 201, 203A, 206A, 206AA, 206C, 208, 246A, 253, 271, 272A, 281B, 282, 282B and 293C of the Income-tax Act, 1961;

(iii) inserted new sections 13B, 35AD, 73A, 92CB, 115WM, 144C, 167C, 200A, 206AA, 282B and 293C of the Income-tax Act, 1961;

(iv) amended rules 5 of Part B of the First Schedule, rule 3 of Part A of the Fourth Schedule and Part B of Thirteenth Schedule of the Income-tax Act, 1961;

(v) amended sections 3 and 44A of Wealth-tax Act, 1957;

(vi) inserted new section 121A in Chapter VII of Finance Act, 2008;

(vii) amended section 13(1) of Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002.

3. Rate structure

3.1 Rates of income-tax in respect of incomes liable to tax for the assessment year 2009-10

3.1-1 In respect of income of all categories of taxpayers liable to tax for the assessment year 2009-10, the rates of income-tax have been specified in Part I of the First Schedule to the Act. These rates are the same as those laid down in Part III of the First Schedule to the Finance Act, 2008 for the purposes of computation of advance tax, deduction of tax at source from Salaries and charging of tax payable in certain cases during the financial year 2008-09.
The major features of the rates specified in the said Part I are as follows:

3.1-2 INDIVIDUAL, HINDU UNDIVIDED FAMILY, ASSOCIATION OF PERSONS, BODY OF INDIVIDUALS OR ARTIFICIAL JURIDICAL PERSON. - Paragraph A of Part I of the First Schedule specifies the rates of income-tax in the case of every individual, Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company) as under :-

<table>
<tr><td rowspan="2">Income chargeable to tax</td><td colspan="3">Rate of income-tax</td></tr>
<tr><td>Individual (other than individual woman resident in India and senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person</td><td>Individual woman, resident in India and below the age of sixty-five years</td><td>Individual senior citizen, resident in India, who is of the age of sixty- five years or more</td></tr>
<tr><td>Up to Rs. 1,50,000</td><td>Nil</td><td rowspan="2">Nil</td><td rowspan="3">Nil</td></tr>
<tr><td>Rs. 1,50,001 - Rs. 1,80,000</td><td rowspan="2">10%</td></tr>
<tr><td>Rs. 1,80,001 - Rs. 2,25,000</td><td>10%</td></tr>
<tr><td>Rs. 2,25,001 - Rs. 3,00,000</td><td>10%</td><td>10%</td><td>10%</td></tr>
<tr><td>Rs. 3,00,000- Rs.5,00,000</td><td>20%</td><td>20%</td><td>20%</td></tr>
<tr><td>Rs.5,00,000 and above</td><td>30%</td><td>30%</td><td>30%</td></tr>
</table>

In the case of every individual, Hindu undivided family, association of persons or body of individuals, surcharge shall be levied only where the total income exceeds ten lakh rupees. The income-tax shall be enhanced by a surcharge for the purposes of the Union at the rate of ten per cent of income-tax. Marginal relief shall be provided to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over Rs. 10,00,000 is limited to the amount by which the income is more than Rs. 10,00,000. For instance, the amount of income-tax and surcharge on a total income of Rs. 10,20,000 calculated at the rates specified would have been Rs. 2,32,100 i.e., income-tax of Rs. 2,11,000 and surcharge of Rs. 21,100. The additional tax liability incurred thereon as compared to a person having a total income of Rs. 10, 00,000 is Rs. 27,100. However, additional income as compared to a person having a total income of Rs. 10,00,000 is only Rs. 20,000. Therefore, marginal relief to the extent of Rs. 7,100 will be available in this case as the additional tax liability cannot be more than the additional income. The total tax liability will, therefore, be Rs. 2, 25,000 instead of Rs. 2, 32,100. In the case of artificial juridical person, surcharge shall be levied at the rate of ten per cent of the income-tax payable on all levels of income.

An additional surcharge called the Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge, if any, in all cases. For instance, if the income-tax computed is Rs. 1,00,000 and the surcharge is Rs. 10,000, then the education cess of two per cent is to be computed on Rs. 1,10,000 which works out to Rs. 2,200. In addition, the amount of tax computed and surcharge shall also be increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax and surcharge. No marginal relief shall be available in respect of Education Cess.

3.1-3 CO-OPERATIVE SOCIETIES - In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part I of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	**Rate**
Up to Rs. 10,000	10%
Rs. 10,001 - Rs. 20,000	20%
Exceeding Rs. 20,000	30%

No surcharge shall be levied. Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.1-4 FIRMS - In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part I of the First Schedule to the Act. Surcharge at the rate of ten per cent shall be levied only in cases where the firm has total income exceeding one crore rupees. However, marginal relief shall be allowed to ensure that the additional

amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. In respect of fringe benefits chargeable to tax under section 115WA of the Income-tax Act, surcharge shall be levied at the rate of ten per cent of the amount of tax irrespective of the amount of fringe benefits.
Additional surcharge called the Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge, in all cases. In addition, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax computed at the rate of one per cent on the amount of tax, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of Education Cess.

3.1-5 LOCAL AUTHORITIES - In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part I of the First Schedule to the Act. No surcharge shall be levied. However, Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.1-6 COMPANIES - In the case of a company, the rate of income-tax has been specified in Paragraph E of Part I of the First Schedule to the Act.
In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of ten per cent only where such domestic company has total income exceeding one crore rupees.
In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, in the case of fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two and one-half per cent only where such company has total income exceeding one crore rupees.
However, marginal relief shall be allowed in the case of every company to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees. Also, in the case of every company having total income chargeable to tax under section 115JB of the Income-tax Act and where such income exceeds one crore rupees, marginal relief shall be provided.
In respect of fringe benefits, in the case of a domestic company, surcharge shall be levied at the rate of ten per cent of the amount of tax, irrespective of the amount of fringe benefits. In the case of a company other than a domestic company, in respect of fringe

benefits, surcharge shall be levied at the rate of two and one-half per cent of the amount of tax, irrespective of the amount of fringe benefits.
Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge.

3.2 Rates for deduction of income-tax at source from certain incomes during the financial year 2008-09

3.2-1 In every case in which tax is to be deducted at the rates in force under the provisions of sections 193, 194, 194A, 194B, 194BB, 194D and 195 of the Income-tax Act, the rates for deduction of income-tax at source during the financial year 2009-10 have been specified in Part II of the First Schedule to the Act. The rates for deduction of income-tax at source during the financial year 2009-10 will continue to be the same as those specified in Part II of the First Schedule to the Finance Act, 2008 except for the following changes:-

- In the case of a person resident in India, other than company, on any other income the rates have been changed to 10% from 20%.
- In the case of a domestic company on the income by way of interest other than interest on security, and on any other income the rates have been changed to 10% from 20%.

3.2-2 SURCHARGE - The tax deducted at source in each case shall be increased by a surcharge for purposes of the Union as follows:-
(i) In the case of every individual, Hindu undivided family, association of persons and body of individuals, no surcharge shall be levied.
(ii) In the case of every artificial juridical person, no surcharge shall be levied.
(iii) No surcharge shall be levied on the amount of income-tax deducted in the case of a co-operative society and local authority
(iv) In the case of every firm and domestic company, no surcharge shall be levied.
(v) The surcharge on TDS shall be levied only on payments made to foreign companies. The rate of surcharge in such cases is 2.5 per cent.

3.2-3 EDUCATION CESS - The additional surcharge, called the Education Cess on income-tax shall continue to be levied for the purposes of the Union at the rate of two per cent of income-tax and surcharge, if any, in the case of salary payments to residents and in the case of all payments to non-residents. For instance, if such tax is Rs. 1,00,000 and the surcharge is Rs. 10,000, then the education cess of two per cent is to be computed on Rs. 1,10,000 which works out to be Rs. 2,200.
In addition, the amount of tax deducted and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the

rate of one per cent in all such cases. Thus in the earlier illustration, where the amount of tax deducted is Rs. 1,00,000, the surcharge is Rs. 10,000, the Education Cess of two per cent is Rs. 2,200, the said Secondary and Higher Education Cess will be computed on Rs. 1,10,000 which works out to be Rs. 1,100. The total cess in this case will amount to Rs. 3,300 (i.e., Rs. 2,200 + Rs. 1,100).

3.3 Rates for computation of advance tax, deduction of income-tax at source from Salaries and charging of income-tax in certain cases during the financial year 2009-10.

3.3-1 The rates for deducting income-tax at source from Salaries and computing advance tax during the financial year 2009-10 have been specified in Part III of the First Schedule to the Act. These rates are also applicable for charging income-tax during the financial year 2009-10 on current incomes in cases where accelerated assessments have to be made, e.g., provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during that financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for short duration, etc. The rates are as follows:-

3.3-2 INDIVIDUAL, HINDU UNDIVIDED FAMILY, ASSOCIATION OF PERSONS, BODY OF INDIVIDUALS OR ARTIFICIAL JURIDICAL PERSON - Paragraph A of Part III of the First Schedule specifies the rates of income-tax in the case of every individual. Hindu undivided family, association of persons, body of individuals or artificial juridical person (other than a co-operative society, firm, local authority and company). In the case of individuals, the basic exemption limit has been enhanced from Rs. 1,50,000 to Rs. 1,60,000. The exemption limit for every woman resident in India and below the age of 65 years of age has been enhanced from Rs. 1,80,000 to Rs. 1,90,000. Further, the exemption limit for every individual resident in India and of the age of 65 years or more at any time during the previous year has been raised from Rs. 2,25,000 to Rs. 2,40,000.

The rates of tax during the financial year 2009-10 in the case of persons mentioned above are as follows:-

Income chargeable to tax	**Rate of income-tax**		
	Individual (other than individual woman resident in India and senior citizen resident in India), HUF, association of persons, body of individuals and artificial juridical person	Individual woman, resident in India and below the age of sixty-five years	Individual senior citizen, resident in India, who is of the age of sixty- five years or more
Up to Rs. 1,60,000	Nil	Nil	Nil

Rs. 1,60,001 - Rs. 1,90,000	10%		
Rs. 1,90,001 - Rs. 2,40,000		10%	
Rs. 2,40,001 - Rs. 3,00,000			10%
Rs. 3,00,001 - Rs. 5,00,000	20%	20%	20%
Exceeding Rs. 5,00,000	30%	30%	30%

No surcharge shall be levied in such cases.

The Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed. In addition, the amount of tax computed shall also be increased by an additional cess called Secondary and Higher Education Cess on income-tax at the rate of one per cent of such income-tax. No marginal relief shall be available in respect of Education Cess.

3.3-3 CO-OPERATIVE SOCIETIES - In the case of every co-operative society, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Act. The rates are as follows-

Income chargeable to tax	**Rate**
Up to Rs. 10,000	10%
Rs. 10,001 - Rs. 20,000	20%
Exceeding Rs. 20,000	30%

No surcharge shall be levied. Education Cess on income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.3-4 FIRMS - In the case of every firm, the rate of income-tax of thirty per cent has been specified in Paragraph C of Part III of the First Schedule to the Act. No Surcharge shall be levied. The Education Cess on Income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed. In addition, such amount of tax shall be further increased by an additional cess called Secondary and Higher Education Cess on income-tax computed at the rate of one per cent on the amount of tax, in all cases. No marginal relief shall be available in respect of Education Cess.

3.3-5 LOCAL AUTHORITIES - In the case of every local authority, the rate of income-tax has been specified at thirty per cent in Paragraph D of Part III of the First Schedule to the Act. No surcharge shall be levied. However, Education Cess on Income-tax and Secondary and Higher Education Cess on income-tax shall be levied at the rate of two per

cent and one per cent respectively of the amount of tax computed. No marginal relief shall be available in respect of Education Cess.

3.3-6 COMPANIES - In the case of a company, the rate of income-tax has been specified in Paragraph E of Part III of the First Schedule to the Act.
In case of a domestic company, the rate of income-tax is thirty per cent of the total income. The tax computed shall be enhanced by a surcharge of ten per cent only where such domestic company has total income exceeding one crore rupees.
In the case of a company other than a domestic company, royalties received from Government or Indian concern under an approved agreement made after 31-3-1961, but before 1-4-1976 shall be taxed at fifty per cent. Similarly, in the case of fees for technical services received by such company from Government or Indian concern under an approved agreement made after 29-2-1964, but before 1-4-1976, shall be taxed at fifty per cent. On the balance of the total income of such company, the tax rate shall be forty per cent. The tax computed shall be enhanced by a surcharge of two and one-half per cent only where such company has total income exceeding one crore rupees. However, marginal relief shall be allowed in the case of every company to ensure that the additional amount of income-tax payable, including surcharge, on the excess of income over one crore rupees is limited to the amount by which the income is more than one crore rupees.
Education Cess on income-tax shall continue to be levied at the rate of two per cent on the amount of tax computed, inclusive of surcharge in the case of every company. Also, such amount of tax and surcharge shall be further increased by an additional surcharge called Secondary and Higher Education Cess on income-tax at the rate of one per cent of the amount of tax computed, inclusive of surcharge.

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

4.1 For the purposes of the Income-tax Act, "charitable purpose" has been defined in section 2(15) of the Income–tax Act and it includes -

(a) relief of the poor,
(b) education,
(c) medical relief and,
(d) the advancement of any other object of general public utility.

However, as per proviso to the section, the "advancement of any other object of general public utility" shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

4.2 Clause 15 of section 2 has been amended so as to provide that the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest would be excluded from the applicability of the aforesaid proviso which is applicable to the "advancement of any other object of general public utility".

4.3 ***Applicability*** - These amendments have been made applicable with effect from 1st April, 2009 and will accordingly apply for assessment year 2009-10 and subsequent assessment years.

5. Taxation of Limited Liability Partnership (LLP)

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

5.2 The Income tax Act has been amended to incorporate the taxation scheme of LLPs in the Income Tax Act 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. A "limited liability partnership" and a general partnership will be accorded the same tax treatment.

5.3 It is provided that the word 'partner' shall include within its meaning a partner of a limited liability partnership, the word 'firm' shall include within its meaning a limited liability partnership and the word 'partnership' shall include within its meaning a limited liability partnership as these terms have been defined in the Limited Liability Partnership Act, 2008.

5.4 The LLP Act provides for nomination of "designated partners" who have been given greater responsibility. It is provided 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 the return or where there is no designated partner as such, any partner shall sign the return.

5.5 It is also provided that in case of liquidation of an LLP, every partner will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part.

5.6 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.

5.7 ***Applicability*** - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-2011 and subsequent assessment years.

6. Definition of the term "manufacture"

6.1 A number of tax concessions under the Income-tax Act are provided for encouraging manufacture of articles or things. However, the term "manufacture" was earlier not been defined in the statute. Therefore, it has been the 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, a new clause (29BA) has been inserted in section 2 so as to provide that 'manufacture', with all its grammatical variations, shall mean 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 object or article or thing with a different chemical composition or integral structure.

6.2 ***Applicability*** - This amendment has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent years.

7. Power to issue Zero Coupon Bonds

7.1 Under the existing provision of clause (48) of section 2, only infrastructure capital company or infrastructure capital fund or public sector company are empowered to issue zero coupon bonds when they are authorized to do so.

7.2 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 been amended so as to include the scheduled banks as an eligible person to issue zero coupon bonds.

7.3 Further, consequential amendments also were made in Explanation to clause (iiia) of sub-section (1) of section 36 and in clause (x) of sub-section (3) of section 194A of the Income-tax Act.

7.4 ***Applicability*** - These amendments has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

8. Compensation received on voluntary retirement or termination of service under a scheme of voluntary separation

8.1 Very often, a person receives arrears or advance of salary due to him. Since arrears and advance salary is liable to tax, the total income (including such arrears and advance) is assessed at a rate higher than that at which it would otherwise have been assessed if the total income did not include arrears and advance of salary. In other words, arrears and advance salary result in bracket creeping and higher tax burden. With the view to mitigating this excess burden, the provisions of section 89 of the Income-tax Act provide for backward spread of the arrears and forward spread of the advance. Under the voluntary retirement scheme, the retiree employee receives lump-sum amount in respect of his balance period of service. Such amount is in the nature of advance salary.

8.2 Clause (10C) of section 10 provides for an exemption of Rs. 5 lakhs in respect of such amount. This exemption is provided to mitigate the hardship on account of bracket creeping as a result of the receipt of the amount in lump-sum upon voluntary retirement. However, some tax payers have claimed both the benefit under clause (10C) of section 10 and section 89. The courts have also upheld their claims.

8.3 With the view to preventing the claim of double benefit, a proviso to section 89 has been inserted 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 case of a public sector company referred to in sub-clause (i) of clause (10C) of section 10, a scheme of voluntary separation, if an exemption in respect of such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under clause (10C) of section 10 in respect of such, or any other, assessment year.

8.4 Correspondingly, a third proviso has also been inserted to clause (10C) of section 10 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 clause (10C) of section 10 shall be allowed to him in relation to such, or any other, assessment year.

8.5 Applicability - These amendments have been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years.

9. Extension of time limit for filing applications for tax exemption u/s 10(23C)

9.1 Clause (23C) of section 10 provides that income of institutions specified under the various sub-clauses of the section shall be exempt from income-tax. In certain cases, approvals are required to be taken from prescribed authorities, in the prescribed manner, to become eligible for claiming exemption. Under the previous provisions, any institution (having receipts of more than rupees one crore) had to make an application for seeking exemption at any time during the financial year for which the exemption is sought to be taken.

9.2 In practice, under the previous regime, 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 above clause has been amended and the time limit for filing such application has been fixed as the 30th September in the succeeding financial year. It may also be noted that this is the time limit to complete the audit of such institution as well. For example , 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 till 30th September, 2009 in respect of income of financial year 2008-09.

9.3 Applicability - These amendments have been made applicable with effect from 1st April, 2009 and will accordingly apply for assessment year 2009-10 and subsequent assessment years.

10. Amendment to section 10(23D) of the Income Tax Act, 1961- Incorporating "Other Public Sector Banks" under the expression "Public Sector Bank"

10.1 Section 10(23D) of the Income –tax Act, 1961 provides exemption from taxation to income arising to certain categories of mutual funds registered under SEBI Act, 1992 or set up by a public sector bank/public finance institution .

10.2 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.

10.3 Since "other public sector banks", has not been included in the expression "public sector banks" as defined in the Explanation to section 10(23D) they were not eligible for the exemption available under section. In view of the above, section 10(23D) has been amended to include "other public sector banks" as categorized by Reserve Bank of India in the expression "public sector banks".

10.4 ***Applicability*** - These amendments have been made applicable with effect from 1st April, 2010 and will accordingly apply for assessment year 2010-11 and subsequent assessment years.

11. Extension of sunset clause for units in free trade zone under section 10A and for export oriented undertakings under section 10B

11.1 Under the existing provisions, the deductions under section 10A and section 10B of the Income Tax Act were available only upto the assessment year 2010-11.

11.2 Sections 10A and 10B have been amended to extend the tax benefit under both these sections by one year i.e., the deduction will be available upto assessment year 2011-12.

11.3 ***Applicability*** - These amendments have been made applicable with effect from 1st April, 2009 and will accordingly apply for assessment year 2009-10 and subsequent assessment years.

12. Clarification regarding computation of exempted profits in the case of units in Special Economic Zones (SEZs)

12.1 Under sub-section (7) of section 10AA 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:

> "the profit derived from the export of articles or things or services (including computer software) shall be 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 assessee."

Simply stated, it means that the exempted profit of the SEZ unit is equal to:

$$\frac{\text{Profits of the business of the unit } \mathbf{X} \text{ Export turnover of the unit}}{\text{Total turnover of the business carried on by the assessee}}$$

12.2 This method of computation of the profits of business with reference to the total turnover of the assessee is perceived to be discriminatory in so far as those assesses are concerned who were having multiple units in both the SEZ and the domestic tariff area (DTA) vis-à-vis those assesses who were having units in only the SEZ. With a view to removing the anomaly, the provisions of sub-section (7) of section 10AA of the Income

Tax Act were amended so as to provide that the deduction under section 10AA shall be computed with reference to the total turnover of the undertaking.

*12.3 **Applicability*** - This amendment will take effect from 1st April, 2010 and will accordingly apply to assessment year 2010-11 and subsequent assessment years.

13. Special provisions relating to voluntary contributions received by an electoral trust

13.1 With a view to reforming the system of funding of political parties, sections 80GGB and 80GGC of the Income-tax Act have been amended to provide that voluntary contributions to an electoral trust shall be allowed as a hundred percent deduction in the computation of the income of the donor. Further, "electoral trust" has been defined in the new clause (22AAA) of section 2 as a trust so approved by the Board in accordance with the scheme made in this regard by the Central Government. Also, sub-clause (iia) of clause (24) of section 2 of the Income-tax Act has been amended to provide that voluntary contributions received by an electoral trust shall be treated as income of the trusts. However, a new section 13B has been inserted to provide that voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of such electoral trust, if:-

(a) the electoral trust distributes to any political party, registered under section 29A of the Representation of the People Act, 1951, during previous year 95 percent of the aggregate donations received by it during the said previous year along with the surplus, if any, brought forward from any earlier previous years; and

b) the electoral trust functions in accordance with the rules made in this regard by the Central Government.

*13.2 **Applicability*** - These amendments have taken effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years

14. Aligning the definition of "block of asset"

14.1 The term "block of assets" has been defined in clause (11) of section 2 and in Explanation 3 to sub-section (1) of section 32 of the Income-tax Act. However, these definitions are not identical and therefore they are subject to misuse. Hence the word "block of assets" has been deleted from the Explanation 3 of sub-section (1) of Section 32 of the Income-tax Act so that the word "block of assets" will derive its meaning only from clause (11) of section 2.

14.2 ***Applicability*** - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to the assessment year 2010-11 and subsequent assessment years.

15. Weighted deduction for in-house research and development

15.1 Under the existing provisions of the Income-tax Act, under sub-section (2AB) of section 35, weighted deduction of 150 per cent 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.

15.2 With a view to promoting research and development in all sectors of the economy, the Act has been amended to extend the benefit of weighted deduction 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.

15.3 Applicability - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to the assessment year 2010-11 and subsequent assessment years.

16. Investment-linked tax incentive for specified business

16.1 The Income-tax Act provides for a number of profit-linked exemptions/deductions. Such benefits are inefficient, inequitable, impose higher compliance and administrative burden, 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.

16.2 With a view to creating rural infrastructure and environment friendly alternate means of transportation for bulk goods, provide investment-linked tax incentive has been provided by inserting a new section 35AD in the Income-tax Act for the following businesses:—

(a) setting up and operating cold chain facilities for specified products;
(b) setting up and operating warehousing facilities for storage of agricultural produce;

(c) 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.

16.3 The salient features of the new regime of investment-linked tax incentives are the following:—

(i) Hundred per cent deduction would be allowed in respect of the whole of any expenditure of capital nature incurred, wholly and exclusively, for the purposes of the specified business carried on during the previous year in which such expenditure is incurred.

(ii) Capital expenditure incurred prior to the commencement of operations of the specified business and capitalised in the books of account of the assessee on the date of commencement of operations is also eligible for the deduction.

(iii) The expenditure of capital nature shall not include any expenditure incurred on acquisition of any land or goodwill or financial instrument.

(iv) The benefit is available—

(a) in a case where the business relates to laying and operating a cross country natural gas pipeline network for distribution, if such business commences its operations on or after 1st April, 2007; and

(b) in any other case, if such business commences its operation on or after the 1st April, 2009.

(v) The assessee shall not be allowed any deduction in respect of the specified business under the provisions of Chapter VIA;

(vi) 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.

(vii) Any sum received or receivable on account of any capital asset, in respect of which deduction has been allowed under section 35AD, being demolished, destroyed, discarded or transferred shall be treated as income of the assessee and chargeable to income tax under the head "Profits and gains of business or profession".

(viii) 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.

16.4 Further, profit-linked deduction provided under section 80-IA to the business of laying and operating a cross country natural gas distribution network will be discontinued. As a result, any person availing of this incentive can avail of the benefit under the proposed section 35AD. All capital expenditure (other than on land, goodwill and financial instrument), to the extent capitalized in the books as on 1st April, 2009 will be fully allowed as a deduction in the computation of total income of the said business for

the previous year 2009-10. This is available in addition to any other capital expenditure (excluding land, goodwill and financial instrument) incurred during such previous year.

16.5 The provisions of section 28, section 43 and section 50B of the Income-tax Act have also been amended to make consequential changes. Thus, 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, shall be treated as taxable under section 28. Further, 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' under section 43 in the case of such assessee and 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 clauses (i), (iv), (v), (vi), (vib), (xiii) and (xiv) of section 47. Also, while computing capital gains in case of slump sale under section 50B, the aggregate value of total assets for computing the net worth 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 shall be treated as nil.

16.6 A new section 73A has also been inserted to give effect to the consequential provisions introduced in section 35AD. Thus, 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. Further, where for any assessment year any loss computed in respect of the specified business has not been wholly set off against profits and gains of another specified business, 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 be carried forward to the following assessment year, subject to the other provisions of Chapter VI 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.

16.7 ***Applicability*** - These amendments will be effective from 1st April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent assessment years.

17. Special deduction under section 36(1) (viii) to National Housing Bank (NHB)

17.1 Clause (viii) of sub-section (1) of Section 36 [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.

17.2 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.

17.3 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. Hence the Act has been amended 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).

17.4 Applicability - These amendments will be effective from the 1st April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent assessment years.

18. Remuneration to partners in a firm

18.1 Under the existing provisions of the Income-tax Act, the payment of salary, bonus, commission or remuneration (hereinafter referred to as "remuneration") to a working partner of a partnership firm is allowed as deduction if it is authorised by the partnership deed and subject to the overall ceiling of monetary limits prescribed under sub-clause (v) of clause (b) of section 40. The existing limits are as under:

(1) in case of a firm carrying on a profession—

(a) on the first Rs. 1,00,000 of the book-profit or in case of a loss	Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;
(b) on the next Rs. 1,00,000 of the book-profit	at the rate of 60 per cent;
(c) on the balance of the book-profit	at the rate of 40 per cent;

(2) in the case of any other firm—

(a) on the first Rs. 75,000 of the book-profit, or in case of a loss	Rs. 50,000 or at the rate of 90 per cent of the book-profit, whichever is more;
(b) on the next Rs. 75,000 of the book-profit	at the rate of 60 per cent;
(c) on the balance of the book-profit	at the rate of 40 per cent:

18.2 The Act has been amended to make upward revision of the existing limits of the remuneration and also to prescribe uniform limits for both professional and non professional firms for simplicity and administrative ease.

The revised limits as under:

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

18.3 Applicability - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to the assessment year 2010-2011 and subsequent assessment years.

19. Enhancement of limit for disallowance of expenditure made in the case of transporters

19.1 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.

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

19.3 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.

19.4 Applicability - This amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to the assessment year 2010-11 and subsequent assessment years.

20. Definition of written down value under section 43(6)

20.1 Clause (ii) of sub-section (1) of section 32 provides that depreciation is to be allowed and computed at the prescribed percentage on the written down value (WDV) of any block of assets. Sub-clause (b) of clause (6) of section 43 provides that WDV in the case of assets acquired before the previous year shall be computed by taking the actual cost to the assessee less all depreciation "actually allowed" to him under the Income-tax Act.

20.2 Rules 7A, 7B and 8 of the Income tax Rules, 1962, deal with the computation of composite income where income is derived in part from agricultural operations and in

part from business chargeable to tax under the Income tax Act, 1961 under the head "Profits & Gains of Business". These rules prescribe the method of computation in the case of manufacture of rubber, coffee and tea. In such cases, the income which is brought to tax as "business income" is a prescribed fixed percentage of the composite income.

20.3 The Hon'ble Supreme Court in the case of CIT Vs. Doom Dooma India Ltd (222 CTR 105) has held that in view of the language employed in sub-clause (b) of clause (6) of section 43 regarding depreciation "actually allowed", where any income is partially agricultural and partially chargeable to tax under the Income tax Act, 1961 under the head "Profits & Gains of Business", the depreciation deducted in arriving at the taxable income alone can be taken into account for computing the WDV in the subsequent year.

20.4 For instance, Rule 8 prescribes the taxability of income from the manufacture of tea. Under the said rule, income derived from the sale of tea grown and manufactured by seller shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax. As a result of the Court decision on depreciation to be "actually allowed" for computing WDV, the resultant computation of depreciation is as per the following illustration:

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

20.5 According to the interpretation of the Court, the W.D.V. of the fixed asset for the immediately succeeding year is to be taken at Rs.960/- (Rs.1,000 minus 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). Thus the depreciation for which deduction is allowed to the assessee while computing its agricultural income is to be ignored for computing the W.D.V. of the asset according to the Court ruling.

20.6 The above interpretation is not in accordance with the legislative intent. WDV is required to be computed by deducting the full depreciation attributable to composite income. Hence 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/- as held by the Supreme

Court. The ambiguity in this case has arisen on account of the interpretation of the meaning of the phrase "actually allowed" in sub-clause (b) of clause (6) of section 43.

20.7 Hence an explanation has been inserted in clause (6) of section 43 to provide that in the cases of 'composite income', notwithstanding that the assessee was not required to compute a part of his income for the purposes of Income-tax Act for any previous year, depreciation shall be computed as if the total composite income of the assessee is chargeable under the Income-tax Act and such depreciation shall be deemed to have been "actually allowed" to the assessee.

20.8 Applicability - These amendments has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years.

21. Special provision for computing profits and gains of business on presumptive basis

21.1 The existing provisions of the Income-tax Act provide for taxation of income on presumptive basis in the case of construction business, income from goods carriages and business of retail trade. Section 44AD prescribes a method of presumptive taxation for assessee engaged in the business of civil construction or supply of labour for civil construction in which a sum equal to eight percent of the gross receipts is deemed to be the profits and gains from business. Section 44AE provides presumptive provisions for the assessee engaged in the business of plying, hiring or leasing up to ten goods carriages in which a prescribed sum per vehicle is deemed to be the presumptive income of the assessee. Section 44AF prescribes a method of presumptive taxation for retail trade, under which the presumptive income is computed at the rate of a sum equal to five per cent of the total turnover. There has been a substantial increase in small businesses with the growth of transport and communication and general growth of the economy. A large number of businesses and service providers in rural and urban areas who earn substantial income are outside the tax-net. Introduction of presumptive tax provisions in respect of small businesses would help a number of small businesses to comply with the taxation provisions without consuming their time and resources. A presumptive income scheme for small taxpayers lowers the compliance cost for such taxpayers and also reduces the administrative burden on the tax machinery. In view of the above, to expand the scope of presumptive taxation to all businesses, the existing section 44AD has been substituted by a new section 44AD.

21.2 The salient features of the new presumptive taxation scheme are as under:

(a) The scheme is applicable to individuals, HUFs and partnership firms excluding Limited liability partnership firms. It is also not be applicable to an assessee who is

availing deductions under sections 10A, 10AA, 10B, 10BA or deduction under any provisions of Chapter VIA under the heading "*C.—Deductions in respect of certain incomes*" in the relevant assessment year.

(b) The scheme is applicable for any business (excluding a business already covered under Sec. 44AE) which has a maximum gross turnover /gross receipts of 40 lakhs.

(c) The presumptive rate of income is prescribed at 8% of gross turnover /gross receipts.

(d) An assessee opting for the above scheme is exempted from payment of advance tax related to such business under the current provisions of the Income-tax Act.

(e) An assessee opting for the above scheme is exempted from maintenance of books of accounts related to such business as required under section 44AA of the Income-tax Act.

(f) An assessee with turnover below Rs. 40 lakhs, who shows an income below the presumptive rate prescribed under these provisions, in case his total income exceeds the taxable limit, required to maintain books of accounts and also get them audited.

(g) The existing section 44AF is to be made inoperative for the assessment year beginning on or after 1st April, 2011.

*21.3 **Applicability*** – These amendments have been made applicable with effect from 1st April, 2011 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years.

22. Presumptive income for truck owners under section 44AE

22.1 Under the existing provisions of section 44AE, a presumptive scheme is available to assessees engaged in business of plying, hiring or leasing goods carriages. The scheme applies to an assessee, who owns not more than 10 goods carriages at any time during the previous year.

22.2 Under this scheme, which is optional to the assessee, a fixed amount of income per vehicle is taken at the rate of Rs.3,500/- per month per vehicle for owners of heavy goods vehicle, and Rs.3,150/- per month per vehicle for the owners of light goods vehicles. An assessee opting for this scheme is exempted from maintaining books of account to substantiate the income.

22.3 The Act has been amended to take care of inflationary trend, hence the limit has been enhanced to presume income per vehicle for the owners of–
(i) heavy goods vehicle to Rs.5,000/- per month; and

(ii) other than heavy goods vehicles to Rs.4,500/- per month.

22.4 Further an anti-avoidance clause is provided to state 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 profits and gains of such business.

22.5 Applicability – These amendments have been made applicable with effect from 1st April, 2011 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years.

23. Provisions for deemed valuation in certain cases of transfer

23.1 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 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.

23.2 With a view to preventing the leakage of revenue, section 50C is amended , 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 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.

23.3 Further, Explanation 2 has been inserted in the subsection (2) of the section 50C, so as to clarify the meaning of the term "assessable".

23.4 Applicability- These amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to transactions undertaken on or after such date.

24. Taxation of certain transactions without consideration or for an inadequate consideration as income from other sources

24.1 The previous provisions of sub clause (vi) of section 56 provided that any 'sum of money' (in excess of the prescribed limit of rupees fifty thousand) received without

consideration by an individual or HUF would be chargeable to income tax in the hands of the recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will were outside the scope of the provisions of clause (vi) of sub-section (2) of section 56 of the Income-tax Act. Similarly, anything which is received in kind having 'money's worth' i.e. property were also remained outside the purview of these provisions.

24.2 The above section being an anti-abuse measure, in view of the above, section 56 of the Income-tax Act, 1961 has been amended by inserting a new clause (vii) in sub-section (2) to provide that the value of any property received without consideration or for an inadequate consideration will also be included in the computation of total income of the recipient as income from other source. Such properties will include immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.

24.3 It has been provided that in a case where an immovable property is received without consideration and the stamp duty value of such property exceeds fifty thousand rupees, the whole of the stamp duty value of such property shall be taxed as the income of the recipient. If an immovable property is received for a consideration which is less than the stamp duty value of the property and the difference between the two exceeds fifty thousand rupees (inadequate consideration), the difference between the stamp duty value of such property and such consideration shall be taxed as the income of the recipient. If the stamp duty value of immovable property is disputed by the assessee, the Assessing Officer may refer the valuation of such property to a Valuation Officer. In such cases, the provisions of existing section 50C and sub-section (15) of section 155 of the Income Tax Act shall, as far as may be, apply for determining the value of such property.

24.4 It has been provided that in a case where movable property is received without consideration and the aggregate fair market value of such property exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property shall be taxed as the income of the recipient. If a movable property is received for a consideration which is less than the aggregate fair market value of the property and the difference between the two exceeds fifty thousand rupees, the difference between the fair market value of such property and such consideration shall be taxed as the income of the recipient.

24.5 The method for the determination of fair market value of property other than immovable property has been provided in rules 11U and 11UA vide Notification No. 23/2010/F.No. 142/21/2009-SO(TPL) dated 8th April, 2010.

24.6 Consequential amendment has been made in section 2 by inserting sub-clause (xv) in clause (24) thus expanding the definition of income to include any sum of money or value of property referred to in clause (vii) of sub-section (2) of section 56. Further,

section 49 has also been amended by way of inserting a new sub-section (4) providing that for the purposes of computing capital gains, if the transaction of receipt of the asset is subject to tax under clause (vii) of sub-section (2) of section 56, then the cost of acquisition of the asset shall be the stamp duty value (for immovable property) or fair market value (for asset being a movable property) as the case may be.

24.7 ***Applicability*** - These amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply for transactions undertaken on or after such date.

25. Amendment in Chapter VIA to prevent abuse of tax incentives

25.1 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.

25.2 With a view to preventing such misuse, the provisions of section 80A of the Income-tax Act have been amended to provide the following, namely:-

(i) deduction in respect of profits and gains shall not be allowed under any provisions of section 10A or section 10AA or Section 10B or section 10BA or under any provisions of Chapter VIA under the heading "*C.-Deductions in respect of certain incomes*" 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;

(ii) the aggregate of the deductions under the various provisions referred to in (i) above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be;

(iii) no deductions under the various provisions referred to in (i) above, shall be allowed if the deduction has not been claimed in the return of income;

25.3 ***Applicability*** - This amendment has taken effect retrospectively from 1st April, 2003, and will accordingly apply in relation to assessment year 2003-04 and subsequent years.

25.4 Further, section 80A has been amended to also to provide 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.

25.5 Furthermore, the expression "market value" has been defined to mean,-

(a) 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;

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

25.6 ***Applicability*** - This amendment has been made applicable with effect from 1st April, 2009 and will accordingly apply to all cases where the proceedings are pending before any authority on or after such date.

25.7 Further, with a view to preventing the misuse of the tax holiday under section 80-IA of the Income-tax Act, the Explanation to the said section has been amended to clarify that nothing contained in the said section shall apply in relation to a business referred to in sub-section (4) of the said section which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by an undertaking or enterprise referred to in sub-section (1) thereof.

25.8 ***Applicability*** -This amendment has been made applicable with retrospective effect from 1st April, 2000 and will accordingly apply in relation to assessment year 2000-01 and subsequent years.

26. Tax benefits for New Pension System

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

26.2 With a view to ensure that tax treatment of savings under this system is in synchronised with the "exempt-exempt-taxed" (EET) method and that there is no incidence of taxation at the accumulation stage, it is proposed to make the NPS Trust a complete pass-through in so far as taxation is concerned. Therefore, the following modifications have been made in the Income-tax Act —

(i) A new clause (44) has been inserted in section 10 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 27th day of February, 2008 under the provisions of the Indian Trust Act of 1882 shall be exempt from income tax;

(ii) Section 115-O has been amended to provide that any dividend paid to the NPS Trust shall be exempt from Dividend Distribution Tax;

(iii) Chapter VII of Finance (No.2) Act, 2004 has been amended to provide that all purchases and sales of equity and derivatives by the NPS Trust will also be exempt from the Securities Transaction Tax; and

(iv) Section 197A has been amended to provide that the NPS Trust shall receive all income without any tax deducted at source.

26.3 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 to "self-employed" also. Therefore, sub-section (1) of section 80CCD has been amended so as to extend the tax benefit thereunder also to "self-employed" individuals. The deduction to be allowed in the case of an employee should not exceed 10% of his salary in the previous year, and in any other case, the same should not exceed 10% of his gross total income in the previous year.

26.4 The Explanation to the said section has also been amended 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.

26.5 Applicability - These amendments has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent years.

27. Deduction for medical treatment of a dependant suffering from disability

27.1 Section 80-DD of the Income Tax Act provides for a deduction to an individual or HUF, who is a resident in India, in respect of the following:—

(a) Expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; and
(b) Amount paid to LIC or other insurance in respect of a scheme for the maintenance of a disabled dependant.

27.2 The existing limit for deduction was Rs.50,000 if the dependant is suffering from disability and Rs.75,000 if the dependant is suffering from severe disability.

27.3 The limit for severe disability has been amended to Rs.1 lakh. However, the limit for ordinary disability has been retained at the existing level of Rs.50,000.

27.4 ***Applicability-*** The above amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent years.

28. Deduction in respect of interest on loan taken for higher education

28.1 Section 80E of the Income-tax Act provides for a deduction to an assessee, being an individual, on account of any amount paid by him in the previous year by way of interest on loan taken from any financial institution or any approved charitable institution for the purpose of pursuing higher education in specified fields of study.

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

28.3 With the objective of fostering human capital formation in the country, the provisions of section 80E of the Income Tax Act have been amended by substituting clause (c) of sub-section (3) so as to extend its scope to cover all fields of studies (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority to do so. Further, clause (e) has also been substituted to widen the scope of the term "relative" so as to include a student for whom an individual assessee is the legal guardian.

28.4 ***Applicability-*** This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years.

29. Donations to Certain Funds, Charitable Institutions, etc.

29.1 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 establish for 'charitable purpose'. Consequent to the amendment of sub-section (15) of section 2 by the Finance Act 2008 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 2008-2009 for funding relief work for floods in Bihar and other public purposes. The donors made these donations under a bonafide belief that they would be entitled to benefit under section 80G.

29.2 With a view to mitigate hardship to the donors, a one-time relaxation has been given and sub-section (5) of section 80G of the Income-tax Act has been amended so as to provide that where an institution or fund has been approved under clause (vi) of sub-section 5 of section 80G for the previous year beginning on 1st April, 2007 and ending on 31st March, 2008, such institution or fund shall, notwithstanding anything contained in the proviso to clause (15) of section 2, be deemed to have been,-

(a) established for charitable purposes for the previous year beginning on 1st April, 2008 and ending on 31st March, 2009;

(b) approved under the said clause (vi) for the previous year beginning on 1st April, 2008 and ending on 31st March, 2009.

29.3 Applicability - This amendment has been made applicable with effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 only.

29.4 Further, as per clause (vi) of sub-section (5) of section 80G 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 bonafide institutions or funds and also leads to wastage of time and resources of the tax administration in renewing such approvals in a routine manner.

29.5 Therefore, the proviso to clause (vi) of sub-section (5) of section 80G has been omitted to provide that the approval once granted shall continue to be valid in perpetuity.

29.6 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.

29.7 Applicability - This amendment has been made applicable with effect from 1st October, 2009. Accordingly, existing approvals expiring on or after 1st October, 2009 will be deemed to have been extended in perpetuity unless specifically withdrawn. However, in case of approvals expiring before 1st October, 2009, these will have to be renewed and once renewed these shall continue to be valid in perpetuity, unless specifically withdrawn.

30. Deduction in respect of contributions to political parties

30.1 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.

30.2 With a view to reforming the system of funding of political parties section 80GGB and section 80GGC of the Income-tax Act, 1961 has been amended to provide that donations to electoral trusts shall be allowed as a 100 percent deduction in the computation of the income of the donor.

30.3 Further, sub-clause (iia) of clause (24) of section 2 of the Income-tax Act has also been amended to provide that donations to such electoral trusts shall be treated as income of the trusts which will be specifically exempt as per the newly inserted section 13B and not included in the total income of the previous year if:-

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

30.4 Further, "electoral trust" has been defined in the new clause (22AAA) of section 2 as a trust so approved by the Board in accordance with the scheme made in this regard by the Central Government.

30.5 Applicability - These amendments have been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years.

31. Extension of sunset clause for tax holiday under section 80-IA

31.1 Under the provisions of clause (iii) of section (4) of section 80-IA, an undertaking which develops, develops and operates or maintains and operates an industrial park notified by the Central Government in accordance with the scheme framed and notified by that Government for the period beginning on 1st April, 1997 and ending on 31st March, 2006, was eligible for hundred per cent deduction from profits and gains for 10 assessment years. This terminal date was extended upto 31st March, 2009 by the Finance Act, 2007.

31.2 Clause (iii) of sub-section (4) of section 80-IA has now been amended to extend the terminal date for a further period of two years upto 31st March, 2011.

31.3 Applicability - This amendment has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

31.4 Further, the existing provisions of clause (iv) of sub-section (4) of section 80-IA provide for a deduction of profits and gains of an undertaking,—

(a) which is set up for the generation and distribution of power if it begins to generate power at any time during the period beginning on 1.04.1993 and ending on 31.03.2010;

(b) which starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period beginning on 1.04.1999 and ending on 31.03.2010;

(c) which undertakes substantial renovation and modernization of existing network of transmission or distribution lines at any time during the period beginning on 1.04.2004 and ending on 31.03.2010.

31.5 Clause (iv) of sub-section (4) of section 80-IA has been amended to extend the terminal date for a further period of one year upto 31.03.2011.

31.6 Applicability - This amendment has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

31.7 Furthermore, clause (v) of sub-section (4) of section 80-IA provides that an undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant is eligible for 10 year tax benefit if it fulfils the following conditions:-

(i) such company is formed before 30.11.2005 with majority equity participation by public sector companies for enforcing the security interest of the lenders to the company owning the power generating plant;

(ii) such Indian company is notified by the Central Government before 31.12.2005; and

(iii) the undertaking begins to generate or transmit or distribute power before 31.03.2008.

31.8 Sub-clause (b) of clause (v) of sub-section (4) of section 80-IA has been amended to extend the terminal date for commencing the activity of generation, transmission or distribution of power in case of such undertaking from 31.03.2008 to 31.03.2011.

31.9 ***Applicability*** - This amendment has been made applicable with retrospective effect from 1st April, 2008 and will accordingly apply in relation to assessment year 2008-09 and subsequent years.

32. Deduction in respect of profits and gains from undertakings engaged in commercial production of mineral oil and natural gas

32.1 Sub-section (9) of section 80-IB of the Income Tax Act, 1961 provides for deduction in respect of profits and gains derived from commercial production or refining of mineral oil. The deduction under this sub-section is available to an undertaking for a period of seven consecutive assessment years including the initial assessment year-

(i) in which the commercial production under production sharing contract has first started; or

(ii) in which the refining of mineral oil has begun.

32.2 However, no deduction under this sub-section is available to an undertaking which begins refining of mineral oil on or after 1st April, 2009 unless such undertaking fulfils all the following conditions as provided in the third proviso to this subsection, namely:-

(i) It is wholly owned by a public sector company or any other company in which a public sector company or companies hold at least forty-nine percent of the voting rights;

(ii) It is notified by the Central Government in this behalf on or before 31st May, 2008; and

(iii) It begins refining not later than 31st March, 2012.

32.3 Under the existing provisions, it was incumbent on refineries in the private sector to commence refining of mineral oil on or before 31st March, 2009. The notice given to private sector entrepreneurs to complete the execution of their refinery project was extremely short. As a result, entrepreneurs who had undertaken substantial investment in anticipation of the tax holiday suffered serious financial setback.

32.4 Therefore, the provisions of sub-section (9) have been amended so as to allow them a further period of three years i.e. upto 31st March, 2012 to begin refining of mineral oil and avail of the tax benefit. The new terminal date will be the same for both the public and the private sector.

32.5 Further, the Income Tax Act has also been amended through the insertion of clause (iv) in the said provisions so as to extend the tax holiday under sub-section (9) of section 80-IB of the Income Tax Act, which was hitherto available in respect of profits arising from the commercial production or refining of mineral oil, also to natural gas from blocks which are licensed under the VIII Round of bidding for award of exploration contracts under the New Exploration Licencing Policy (NELP-VIII) announced by the

Government of India vide Resolution No.O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 and begin commercial production of natural gas on or after 1st April, 2009.

32.6 Furthermore, a new clause (v) has been inserted to also include within the scope of the aforesaid tax holiday the undertakings 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 which begin commercial production of natural gas on or after 1st April, 2009.

32.7 The term "undertaking" in sub-section (9) was not defined earlier. Therefore, in the context of mineral oil, the meaning of the term "undertaking" has been the subject matter of considerable dispute. The tax payers have been holding the view that every well in a block licensed constitutes a single "undertaking" and accordingly the tax holiday is available separately for each such well. However, this view is against the legislative intent. Accordingly, sub-section (9) has been amended by inserting an Explanation so as to clarify that for the purposes of claiming deduction under sub-section (9), all blocks licensed under a single contract, which has been awarded under the New Exploration Licencing Policy announced by the Government of India vide Resolution No. O-19018/22/95-ONG.DO.VL, dated 10th February, 1999 or has been awarded in pursuance of any law for the time being in force or has been awarded by Central or a State Government in any other manner, shall be treated as a single "undertaking". This definition of "undertaking" is applicable both in relation to mineral oil and natural gas.

32.8 ***Applicability*** - This amendment has been made applicable with retrospective effect from 1st April, 2000 and will accordingly apply in relation to assessment year 2000-01 and subsequent years.

33. Rationalising the provisions of deduction u/s 80-IB(10)

33.1 Sub-section (10) of section 80-IB of the Income-tax Act, 1961 provides for hundred per cent deduction of the profits derived by an undertaking from developing and building housing projects. This benefit is available subject to the following conditions:—

(a) The project is approved by a local authority before 31st March, 2007.
(b) The project is constructed on a plot of land having a minimum area of one acre.
(c) The built-up area of each residential unit should not exceed 1,000 sq.ft. in the cities of Delhi and Mumbai (including areas falling within 25 kms. of municipal limits of these cities) and 1,500 sq.ft. in other places.

(d) The built-up area of the shops and other commercial establishments included in the housing project should not exceed 5 per cent of the total built-up area of the housing project or 2,000 sq.ft., whichever is less.
(e) The project has to be completed within 4 years from the end of the financial year in which the project is approved by the local authority.

33.2 The terminal date of approval of the project by a local authority has been extended by one year from 31st March, 2007 to 31st March, 2008.

33.3 ***Applicability*** - This amendment has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

33.4 The objective of the aforesaid tax concession is to provide tax benefit to the person undertaking the investment risk i.e., the actual developer. However, any person undertaking pure contract risk is not entitled to the tax benefits.

33.5 With a view to clarify accordingly, an Explanation after sub-section (10) of section 80-IB has been inserted so as to provide that nothing contained in this sub-section shall apply to any undertaking which executes the housing project as a works contract awarded by any other person (including Central or State Government).

33.6 ***Applicability*** - This amendment has been made applicable with retrospective effect from 1st April, 2001 and will accordingly apply in relation to assessment year 2001-02 and subsequent assessment years.

33.7 Further, the objective of the tax benefit for housing projects is to build housing stock for low and middle income households. This has been ensured by limiting the size of the residential unit. However, this is being circumvented by some developers by entering into agreement to sell multiple adjacent units to a single buyer. Accordingly, new clauses have been inserted in the said sub-section to provide that the undertaking which develops and builds the housing project shall not be allowed to allot more than one residential unit in the housing project to the same person, not being an individual, and where the person is an individual, no other residential unit in such housing project is allotted to any of the following persons:-

(i) the individual or spouse or minor children of such individual;
(ii) the Hindu undivided family in which such individual is the karta;
(iii) any person representing such individual, the spouse or minor children of such individual or the Hindu undivided family in which such individual is the karta.

33.8 ***Applicability*** - These amendments have been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years. The amendments relate to restrictions on specific transactions (i.e., allotment of residential units). Therefore, they would apply to transactions after a specified date during the year. Since the Finance (No.2) Act, 2009 became law on 19th August, 2009, the restrictions regarding allotment of residential units shall not apply in respect of allotments made before 19.08.2009.

34. Deduction in case of an undertaking deriving profit from the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products

34.1 The existing provisions of sub-section (11A) of section 80-IB of the Act provide for hundred per cent tax holiday for five assessment years in respect of profits derived from the business of processing, preservation and packaging of fruits or vegetables and thereafter, a deduction of twenty-five per cent (or thirty per cent where the assessee is a company) of the profits and gains derived from the operation of such business in a manner that the total period of deduction does not exceed ten consecutive assessment years and subject to fulfilment of the condition that it begins to operate such business on or after 1st April, 2001.

34.2 With a view to promote the preservation of perishable food items like milk, poultry and meat, sub-section (11A) has been amended to provide tax holiday in respect of the business of processing, preservation and packaging of meat and meat products or poultry or marine or dairy products on the above lines.

34.3 Further, in order to make the inclusion of the aforesaid business applicable for new units only, an explanation has been inserted specifying that the provisions of the aforesaid section shall not apply to an undertaking engaged in the business of processing, preservation and packaging of meat or meat products or poultry or marine or dairy products if it begins to operate such business before 1st April, 2009.

34.4 ***Applicability***- These amendments have been made applicable with effect from 1st April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent years.

35. Deduction in case of a person with disability

35.1 Section 80U of the Income Tax Act provides for a deduction to an individual, being a resident, who, at any time during the previous year, is certified by the medical authority to be a person with disability. The existing limit for deduction was Rs. 50,000 if

the person is suffering from disability and Rs. 75,000 if the dependant is suffering from severe disability.

35.2 The limit for severe disability has been amended to Rs.1 lakh. The limit for ordinary disability has been retained at the existing level of Rs. 50,000.

35.3 ***Applicability-*** The above amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in respect of assessment year 2010-11 and subsequent years.

36. Empowering Central Government to enter into agreement with specified non-sovereign territories

36.1 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.

36.2 The scope of section 90 was restricted to 'any other country outside India'. Need was felt to expand the scope of this cooperation by entering into a DTAA or TIEA (Tax Information Exchange Agreement) with non-sovereign jurisdictions as well.

36.3 In order to enable the government to enter into agreements with non-sovereign territories as well, section 90 of the Income tax act, 1961 has been amended. The corresponding provisions under section 44A of the Wealth Tax Act have also been amended so as to enable the government to notify such specified territories outside India.

36.4 ***Applicability-*** These amendments have been made applicable with effect from 1st October, 2009 and will accordingly apply for transactions undertaken on or after such date.

37. Determination of arm's length price in cases of international transactions

37.1 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.

37.2 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 five per cent of such arithmetical mean.

37.3 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 per cent 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 per cent of the arithmetical mean, no allowance in the arithmetical mean is required to be made.

37.4 With a view to resolving this controversy, it is proposed to amend the proviso to section 92C to provide 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 price. However, if the arithmetical mean, so determined, is within five per cent 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.

37.5 ***Applicability***- The above amendment has been made applicable with effect from 1st April, 2009 and will accordingly apply in respect of assessment year 2009-10 and subsequent years.

38. Power of Board to make Safe Harbour Rules

38.1 In India, Transfer pricing rules were introduced in 2001, since then the number of cases identified for audit and the transfer pricing adjustments locked up in disputes have increased.

38.2 In order to reduce the number of transfer pricing audits and prolonged disputes a new section 92CB has been inserted to provide that the determination of arm's length price under section 92C or section 92CA shall be subject to safe harbor rules.

38.3 ***Applicability*** - The above amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in respect of assessment year 2010-11 and subsequent years.

39. Tax relief on anonymous donations in certain cases

39.1 Under the provisions of section 115BBC, wholly religious entities are outside the purview of taxation of anonymous donations. Partly religious and partly charitable entities had 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 were taxed at the rate of 30 per cent. In the case of wholly charitable entities, all anonymous donations are taxed at the rate of 30 per cent.

39.2 It was observed that in the case of some such institutions, there are practical difficulties to maintain complete records of donation received. In order to mitigate the compliance burden, the above section was amended and some relief was provided to such organizations by exempting a part of the anonymous donations from being taxed. The amendment has resulted in the following scheme:—

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 only to the extent such donations exceed 5 per cent of total donations received by such trust or institution or a sum of Rs. 1 lakh, whichever is more. Other donations to partly religious and partly charitable institutions shall remain exempt from taxation.
3. In the case of wholly charitable institutions, anonymous donations shall be taxable only to the extent such donations exceed 5 per cent of total donations received by such trust or institution or a sum of Rs. 1 lakh, whichever is more.

39.3 Applicability- These amendments have been made applicable with effect from 1st April, 2010 and will accordingly apply for assessment year 2010-11 and subsequent assessment years.

40. Clarification regarding add back of 'provision for diminution in the value of asset', while computing book profits

40.1 Section 115JB of the Income-tax Act provides for levy of minimum alternate tax (MAT) on the basis of 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.

40.2 A new clause (i) in Explanation 1 after sub-section (2) of the said section has been inserted 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.

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

40.4 Applicability- The amendment to section 115JA has been made applicable with retrospective effect from 1st April, 1998 and will accordingly apply in relation to assessment year 1998-99 and subsequent years. The amendment to section 115JB has been made applicable with retrospective effect from 1st April, 2001 and will accordingly apply in relation to assessment year 2001-02 and subsequent years.

41. Minimum Alternate Tax

41.1 The Income-tax Act is riddled with a plethora of tax incentives which has the effect of considerable eroding the tax base. Since tax incentives are generally sticky in nature, their distortionary impact can be reduced / eliminated only by imposing a cap thereon. The Minimum Alternate Tax (MAT) is designed to achieve this objective.

41.2 Under the existing provisions of section 115JB of the Income Tax Act, a company was 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 commencing on or after 1st April, 2007, was less than such minimum. The rate of the minimum tax was ten per cent of the book profit. Sub-section (1) of section 115JB was amended to increase the MAT rate to fifteen per cent. from the existing level of ten per cent.

41.3 However, with a view to provide relief to the assessees, being companies, who pay Minimum Alternate Tax under section 115JB for any assessment year beginning on or after 1st April, 2006, the provisions of sub-section (3A) of section 115JAA were also amended so as to provide that the amount of tax credit determined under sub-section (2A) of section 115JAA 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.

41.4 Applicability - These amendments has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years.

42. Fringe Benefit Tax

42.1 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.

42.2 A new section 115WM has been inserted in the Income-tax Act, 1961 to abolish the fringe benefit tax. Consequently, the taxation of the fringe benefits as perquisites in the hands of the employees has also been restored. Therefore, clause (2) of section 17 has also been amended,—

(a) by substituting sub-clause (vi) so as to provide that perquisite shall include the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee. For this purpose, the value of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such security or shares. The "fair market value" will mean the value determined in accordance with the method as may be prescribed by the Board.

(b) by inserting sub-clause (vii) to provide that perquisite shall also include the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds one lakh rupees.

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

42.3 Applicability - These amendments have been made applicable with effect from 1st April, 2010 and will accordingly apply to the assessment year 2010-11 and subsequent assessment years.

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

42.5 Applicability - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply to assessment year 2010-11 and subsequent assessment years.

43. Clarificatory amendment in section 132

43.1 Under clause (B) of the subsection (1) of section 132 such Joint Director or Joint Commissioner may authorize any Assistant Director or Deputy Director, Assistant

Commissioner or Deputy Commissioner or Income-tax Officer to conduct search and seizure operation.

43.2 As per clauses (28C) and (28D) of section 2 the Joint Director or Joint Commissioner are understood to include Additional Director and Additional Commissioner. Based on this understanding in the Department, Additional Directors and Additional Commissioners have issued warrant of authorization .However, the courts have held that the Joint Directors and Joint Commissioners referred to in section 132 of the Income Tax Act do not include "Additional Director or Additional Commissioner".

43.3 Therefore, to provide explicitly that Additional Director or Additional Commissioner always had the power to issue warrant of authorization, a clarificatory amendment has been made in clause (B) of subsection (1) of section 132, by inserting the words Additional Director or Additional Commissioner. The amendment clarifies that the Additional Commissioner or Additional Director always had the power to issue authorization.

43.4 Applicability - This amendment has been made applicable with retrospective effect from 1st June, 1994.

43.5 Sub-section (1) of section 132 provides that the Director General or Director or the Chief Commissioner or Commissioner, Additional Director or Additional Commissioner had the power to issue authorization.

43.6 A clarificatory amendment has been made in the subsection (1) of the section 132 to provide that Joint Director or Joint Commissioner always had the power to issue authorisation.

43.7 Applicability - This amendment has been made applicable with retrospective effect from 1st October, 1998, and will accordingly apply in relation to the assessment year 1999-2000 and subsequent assessment years.

43.8 Similarly, consequential amendment has been made in sub-section (1) of section 132A to include Additional Director or Additional Commissioner as an authorized officer.

43.9 Applicability - This amendment has been made applicable with retrospective effect from 1st June, 1994, and will accordingly apply in relation to the assessment year 1995-96 and subsequent assessment years.

44. Centralized Processing of Returns

44.1 In order to enable the Board to issue notification for implementing the centralized processing of return, section 143 was amended and sub-sections (1A), (1B) and (1C) were inserted vide Finance Act, 2008. Sub-section (1A) provides that for the purposes of processing of returns, the Board may make a scheme for centralized processing of returns with a view to expeditiously determining the tax payable or refund due to the assessee. Sub-section (1B) provides that for the purpose of giving effect to the scheme made under sub-section (1A), the Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification; so, however, that no notification shall be issued after 31st March, 2009.

44.2 The work of establishing the facility for centralized processing of returns was underway; therefore, sub-section (1B) has been amended to empower the Board to issue notification up to 31st March, 2010.

44.3 Applicability - This amendment has been made applicable with effect from 1st April, 2009, and will accordingly apply in relation to assessment year 2009-10 and subsequent assessment years.

45. Provision for constitution of alternate dispute resolution mechanism

45.1 The dispute resolution mechanism presently in place is time consuming and finality in high demand cases is attained after long drawn litigation till Supreme Court. In order to address the concern of the multi-national companies and to provide mechanism for speedy disposal of their cases so as to attain finality, a new section 144C is inserted in the Income-tax Act to facilitate expeditious resolution of disputes.

45.2 The salient features of the alternate dispute resolution mechanism are as under:-

(1) The Assessing Officer shall, forward a draft of the proposed order of assessment (hereinafter 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

(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, -

(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 their interest.

(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 the assessment without giving any further opportunity of being heard, within one month from the end of the month in which the direction is received notwithstanding anything to the contrary contained in section 153.

(14) The Board may make rules for the efficient functioning of the Dispute Resolution Panel with a view to expeditiously dispose 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;

(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.

45.3 Further, consequential amendments have been made –

(i) in sub-section (1) of section 131 so as to provide that the "Dispute Resolution Panel" shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908);

(ii) in clause (a) of sub-section (1) of section 246A so as to exclude the order of assessment passed under sub-section (3) of section 143 or under section 147 in pursuance of the directions of the "Dispute Resolution Panel" as an appealable order and in clause (c) of sub-section (1) of section 246 so as to exclude an order passed under section 154 of such order as an appealable order;

(iii) in sub-section (1) of section 253 so as to include an order of assessment passed under sub-section (3) of section 143 or under section 147 in pursuance of the directions of the "Dispute Resolution Panel" as an appealable order.

45.4 It would be the choice of the assessee whether to file an objection against the draft assessment order before the Dispute Resolution Panel (DRP) or to pursue the normal channel of filing an appeal against the assessment order before the Commissioner of Income Tax (Appeals). In order to approach the DRP, the assessee must file an objection against the draft assessment order within the prescribed time limit. In case the assessee does not file an objection, the assessing officer shall pass the assessment order. The

assessee can file an appeal against such assessment order before the CIT (Appeals). Once the option of filing an objection against the draft assessment order before the DRP has been exercised, the assessee cannot withdraw the objection and opt for the normal channel of filing appeal before CIT(Appeals).

*45.5 **Applicability*** - These amendments have been made applicable with effect from 1st October, 2009, and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years. The Dispute Resolution Panel Rules have been notified by S.O. No. 2958(E) dated 20th November, 2009.

46. Rationalizing the provisions for taxation of interest received on delayed compensation or on enhanced compensation

46.1 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 vs. CIT* (181 ITR 400) has held that arrears of interest computed on delayed or enhanced compensation shall be taxable on accrual basis. This has caused undue hardship to the taxpayers.

46.2 With a view to mitigate the hardship, section 145A is amended 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 was received, irrespective of the method of accounting followed by the assessee.

46.3 Further, clause (viii) is inserted in the sub-section (2) of the section 56 so as to provide that income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A shall be assessed as "income from other sources" in the year in which it is received.

*46.4 **Applicability*** - This amendment has been made applicable with effect from 1st April, 2010, and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years.

47. Clarificatory amendment in respect of reassessment proceeding u/s 147

47.1 The existing provisions of section 147 provides that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of section 148 to 153, assess or reassess such income and also any other income chargeable to tax, which has escaped assessment. Further Assessing Officer may also assess or reassess such other income

which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. Assessing Officer is required to record the reasons for reopening the assessment before issuing notice under section 148 with a view to reassess the income of assessee.

47.2 Some Courts have held that the Assessing Officer has to restrict the reassessment proceedings only to the reasons recorded for reopening of the assessment and 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.

47.3 Therefore, to articulate the legislative intention clearly Explanation 3- has been inserted in section 147 to provide that the assessing officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under sub-section (2) of section 148.

47.4 Applicability - This amendment has been made applicable with retrospective effect from 1st April, 1989 and will apply accordingly in relation to assessment year 1989-90 and subsequent years.

48. Interest other than "interest on securities"

48.1 It is a consequential amendment of section 36(1), to empower the scheduled banks including nationalized banks to issue zero coupon bonds to source their long term funds, the section 194A of the Income-tax Act has been amended. This will enable the scheduled banks as an eligible person to enjoy the benefit under TDS provisions.

48.2 Applicability - This amendment has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to the assessment year 2009-10 and subsequent assessment years.

49. Rationalization of provisions relating to Tax Deduction at Source (TDS)

49.1 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 sub-clause (ia) of clause (a) of section 40, 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, the provisions of TDS are rationalized as under:

49.2 Rationalization of TDS rates:

A) Under the existing provisions of section 194-I of the Income-tax Act, TDS on rental payments is prescribed at the rate of–

(a) 10% for the use of any machinery or plant or equipment,
(b) 15% for the use of any land or building or furniture or fittings, if the payee is an individual or HUF and
(c) 20% if the payee is other than an individual or HUF.

The current rates needed downward revision as they were leading to blocking of working capital funds in many cases. The rates prescribed by section 194-I is, therefore, rationalized and reduced as under:

(a) 2% for the use of any machinery or plant or equipment,
(b) 10% for the use of any land or building or furniture or fittings for all persons.

Nature of Payment (194-I)	*Existing rate*	*New rate* (w.e.f.1-10-2009)*
Rent —		
a. rent of plant, machinery or equipment	10%	2%
b. rent of land, building or furniture to an individual and Hindu undivided family	15%	10%
c. rent of land, building or furniture to a person other than an individual or Hindu undivided family	20%	10%

** The rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee w.e.f. 01.04.2010.*

B) Under the existing provisions of section 194C of the Income-tax Act, TDS at the rate of 2% is deducted on payment for a contract. However, in the case of a sub-contract, TDS is deducted at the rate of 1%. Further, in the case of payment for an advertising contract, TDS is required to be deducted at the rate of 1%. In order to reduce the scope for disputes regarding classification of contract as sub contract, The Act has been amended to specify the same rate of TDS for payments to both contractors as well as sub-

contractors. To rationalise the TDS rates and to remove multiple classifications, the Act has been amended to provide the same rate of TDS in the case of payment for advertising contracts. To avoid hardship to small contractors/sub-contractors most of whom are organized as individuals/HUFs, the following rates of TDS are prescribed:

(a) 1% where payment for a contract are to individuals/HUF

(b) 2% where payment for a contract are to any other entity.

Nature of Payment (194C)	*Existing rate*	*New rate** (w.e.f.1-10-2009)*
Payment to —		
a. Individual/HUF contractor	2%	1%
b. Other than individual/HUF contractor	2%	2%
c. Individual/HUF sub-contractor	1%	1%
d. Other than individual/HUF sub-contractor	1%	2%
e. Individual/HUF contractor/sub-contractor for advertising	1%	1%
f. Other than individual/HUF contractor/ sub-contractor for advertising	1%	2%
g. Sub-contractor in transport business	1%	nil*
h. Contractor in transport business	2%	nil*

** The nil rate will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 1% for an individual/ HUF transporter and 2% for other transporters up to 31.3.2010.*

*** The rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee w.e.f. 1.04.2010.*

C) Further, some of the rates of TDS specified for resident taxpayers have been reduced and converged to 10 per cent.

D) In order to ease the computation of TDS, surcharge and cess on tax deducted on non-salary payments made to resident taxpayers has been removed.

49.3 Provisions for payments and tax deducted at source to transporters

A) Under Section 194C, tax is required to be deducted on payments to transport contractors engaged in the business of plying, hiring or leasing goods carriages. However if they furnish a statement that they do not own more than two goods carriages, tax is not

to be deducted at source. Transport operators are reporting, problem in obtaining TDS certificates as these are not issued immediately by clients and they are not able to approach the client again as they may have to move across the country for their business.

B) It is, therefore, the Act has been amended to exempt payments to transport operators (as defined in section 44AE) from the purview of TDS. However, this would only apply in cases where the operator furnishes his Permanent Account Number (PAN) to the deductor. Deductors who make payments to transporters without deducting TDS (as they have quoted PAN) will be required to intimate these PAN details to the Income Tax Department in the prescribed format.

C) ***Applicability*** - This amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to the assessment year 2010-2011 and subsequent assessment years.

49.4 Clarification regarding "work" under section 194C

A) There is ongoing litigation as to whether TDS is deductible under section 194C on outsourcing contracts and whether outsourcing constitutes work or not. To bring clarity on this issue, it is provided that "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person other than such customer as such a contract is a contract for 'sale'. This will however not apply to a contract which does not entail manufacture or supply of an article or thing (e.g. a construction contract). Manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer is also included, within the definition of 'work'. It is further provided that in such a case TDS shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, TDS shall be deducted on the whole of the invoice value.

B) ***Applicability*** - This amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to assessment year 2010-2011 and subsequent assessment years.

49.5 Filing of TDS and TCS statements

A) Sub-section (3) of section 200 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, filing of quarterly returns for tax collection at source (TCS) have been provided in sub-section (3)

of section 206C of the Act. Further section 206A provides furnishing of quarterly return in respect of payment of interest to residents without deduction of tax.

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

C) Applicability - This amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years.

49.6 Processing of statements of tax deducted at source

A) Currently almost all statements of tax deducted at source are filed in an electronic mode. The processing of these statements should, therefore, be done only in a computerized environment. The Income tax Act has been amended to provide for electronic processing of statement of TDS on the same lines as processing of Income-tax returns. This will ensure prompt calculation and intimation of liabilities on account of interest and other defaults in TDS payments.

B) The following adjustments 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, if such incorrect claim is apparent from any information in the statement, for example, in respect of rate of deduction of tax at source where such rate is not in accordance with the provisions of the Act.

C) It is provided that 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. An intimation will be sent to the deductor informing him of his tax liability or granting him the refund due within one year from the end of the financial year in which the statement is filed. It is also provided that these statements can be processed in centralized processing centre.

D) Applicability - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years.

50. Providing time limits for passing of orders u/s 201(1) holding a person to be an assessee in default

50.1 Currently, the Income Tax Act does not provide for any limitation of time for passing an order u/s 201(1) holding a person to be an assessee in default. In the absence of such a time limit, disputes arise when these proceedings are taken up or completed after substantial time has elapsed. In order to bring certainty on this issue, specific time limits is provided in the Act within which order u/s 201(1) will be passed.

50.2 It has been provided that an order u/s 201(1) for failure to deduct the whole or any part of the tax as required under this Act, if the deductee is a resident taxpayer, shall be passed within two years from the end of the financial year in which the statement of tax deduction at source is filed by the deductor. Where no such statement is filed, such order can be passed up till four years from the end of the financial year in which the payment is made or credit is given. To provide sufficient time for pending cases, it is provided that such proceedings for a financial year beginning from 1st April, 2007 and earlier years can be completed by the 31st March, 2011.

50.3 However, no time-limits have been prescribed for order under sub-section (1) of section 201 where:-

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

(b) the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites,

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

50.4 Applicability - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years.

51. Improving compliance with provisions of quoting PAN through the TDS regime

51.1 Statutory provisions mandating quoting of Permanent Account Number (PAN) of deductees in Tax Deduction at Source (TDS) statements exist since 2001 duly backed by penal provisions. The process of allotment of PAN has been streamlined so that over 75 lakh PANs are being allotted every year. Publicity campaigns for quoting of PAN are being run since the last three years.

51.2 The average time of allotment of PAN has come down to 10 calendar days. Therefore, non-availability of PAN has ceased to be an impediment. In a number of

cases, the non-quoting of PANs by deductees is creating problems in the processing of returns of income and in granting credit for tax at deducted at source, leading to delays in issue of refunds. In order to strengthen the PAN mechanism, a new section 206AA has been inserted in the Income Tax Act to provide that any person whose receipts are subject to deduction of tax at source i.e. the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates:
(i) the rate prescribed in the Act;
(ii) at the rate in force i.e., the rate mentioned in the Finance Act; or
(iii) at the rate of 20 per cent.

51.3 TDS would be deductible at the above-mentioned rates will also apply in cases where the taxpayer files a declaration in form 15G or 15H (under section 197A) but does not provide his PAN. Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.

51.4 These provisions will also apply to non-residents where TDS is deductible on payments or credits made to them. To ensure that the deductor knows about the correct PAN of the deductee, it is provided that both the deductor and deductee will mandatorily quote PAN of the deductee in all correspondence, bills and vouchers exchanged between them.

515 ***Applicability*** - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years.

52. Enhancement of the limit for payment of advance tax

52.1 Under the existing provisions of section 208 the Income-tax Act, liability for payment of advance tax during a financial year arises when the amount of such tax payable during that year is five thousand rupees or more. This limit was fixed in 1996. With a view to providing for inflation adjustment, the Income-tax Act has been amended to raise the threshold limit for payment of advance tax from the present five thousand rupees to ten thousand rupees.

52.2 ***Applicability*** - This amendment has been made applicable with effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years.

53. Rationalization of provisions relating to penalty for concealment of income

53.1 Under the existing provisions of section 271, Explanation 5A to sub-section (1) provides that where in the course of search initiated under section 132 on or after 1st June, 2007, the assessee is found to be 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 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 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 such year has 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 be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

53.2 By substituting the Explanation 5A it has been clarified that the scope extends to the 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 had not been disclosed in the said return, then such income shall represent deemed concealment of income and assessee shall be liable to pay penalty under section 271.

*53.3 **Applicability*** - This amendment has been made applicable with retrospective effect from 1st June, 2007 and will apply in cases where search under section 132 is initiated on or after 1st June, 2007.

54. Rationalization of provision relating to provisional attachment of asset

54.1 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 the assessment or reassessment of any income. 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 order under sub-section (1) of section 245D is made shall be excluded from the period specified in this sub-section.

54.2 In many cases, the assessees have filed writ petition in High Court or 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.

In order to rationalize the provisions, a third proviso has be inserted in sub-section (2) of section 281B to provide that the period during which the proceeding for assessment or reassessment are stayed by an order or injunction of any Court shall be excluded from the period specified in first proviso.

54.3 Applicability - This amendment has been made applicable with retrospective effect from 1st April, 1988 and will accordingly apply in relation to assessment year 1988-89 and subsequent assessment years.

55. Service of notice

55.1 The existing provisions of Income –tax Act provide for service of notice either by post or as if it were a summon issued under the Code of Civil Procedure, 1908. The addressee of the notice is specified, in the case of different persons, in the Act.

55.2 With the work in the department exceeding exponentially, it is imperative that the mechanism of service of notice is modernized to enhance the efficiency of tax administration.

55.3 In order to enable the department to enter into an era of paperless communication with the taxpayers section 282 has been substituted which provides 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 Code of Civil Procedure ,1908 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 transmission as may be provided by rules made by Board in this behalf.

55.4 Applicability - The above amendment has been made applicable with effect from 1st October, 2009 and will accordingly apply in respect of assessment year 2010-11 and subsequent years.

56. Introduction of Document Identification Number

56.1 A tax administration designed to foster voluntarily compliance yields higher revenue then a sound tax policy administered by an inefficient tax administration. It has always been the endeavor of the Income-tax Department to improve the standards of its service and transparency in the functioning of the tax administration. A further step in this direction is to introduce a computer based system of allotment and quoting of Document Identification Number (DIN). Therefore, a new section 282B has been inserted in Chapter XXIII of the Income Tax Act so as to provide that 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. 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.

56.2 It is also provided that 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 .Where the document, letter or any correspondence received by any income-tax authority or on behalf of such authority does not bear Document Identification Number, such document, letter or any correspondence shall be treated as invalid and shall be deemed never to have been received.

56.3 ***Applicability*** - This amendment has been made applicable with effect from 1st October, 2010, and will accordingly apply in relation to the assessment year 2011-12 and subsequent years.

57. Power to withdraw approvals

57.1 Under the existing provisions of Income-tax Act, an approval is required to be granted by income-tax authority for availing of various incentives by the assesses. 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.

57.2 In order to provide such explicit provisions for power to withdraw approval, a new section 293C has been inserted to provide that the Central Government or the Board or an income-tax authority, who has authority to grant approval, shall also have the power 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.

57.3 ***Applicability*** - This amendment has been made applicable with effect from 1st October, 2009, and will accordingly apply in relation to assessment year 2010-11 and subsequent assessment years.

58. Taxation of investment income/loss of Non life insurance business

58.1 The profits and gains of non-life insurance business is 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 (4 of 1938), to be furnished to the Controller

of Insurance, subject to adjustments for unexpired risk and disallowances under section 30 to Section 43B.

58.2 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.

58.3 In view of the above, the Act has been amended to provide 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.

58.4 Applicability - This amendment has been made applicable with effect from 1st April, 2011, and will accordingly apply in relation to assessment year 2011-12 and subsequent assessment years.

59. Recognition to Provident funds – Extension of time limit for obtaining exemption from EPFO

59.1 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.

59.2 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 31st March, 2006, and such provident fund does not satisfy the conditions set out in clause (ea) of rule 4 on or before 31st March, 2009, the recognition to such fund shall be withdrawn. One of the requirements of this 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).

59.3 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, it is proposed to amend the said proviso so as to extend the time limit from 31st March, 2009 to 31st December, 2010.

59.4 Applicability - This amendment has been made applicable with retrospective effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent years.

60. Amendment in Part B of the Thirteenth Schedule to the Income Tax Act, 1961

60.1 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.

60.2 The Department of Industrial Policy and Promotion (DIPP), Ministry of Commerce and Industry has 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.

60.3 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, Part B of the Thirteenth Schedule to the Income-tax Act has been amended and Sl.No.19 of Part B of the Thirteenth Schedule has been substituted pertaining to the paper industry with the list as per the notification dated 27.6.2008 of the DIPP.

60.4 Applicability – This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years.

61. Enhancement of the limit for payment of wealth tax

61.1 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 at the rate of one per cent. of the amount by which the net wealth exceeds fifteen lakh rupees. This limit was fixed in 1992. With a view to providing for inflation-adjustment, the Wealth tax Act has been amended to raise the threshold limit for the payment of wealth tax from fifteen lakh rupees to thirty lakh rupees.

61.2 ***Applicability*** - This amendment has been made applicable with effect from 1st April, 2010 and will accordingly apply in relation to assessment year 2010-11 and subsequent years.

62. Abolition of Commodity Transaction Tax

62.1 The provisions for levy of Commodity Transaction Tax were introduced by Chapter VII of Finance Act, 2008. The commodity transaction tax to be levied on 'taxable commodities transactions' entered in a recognized association. The 'taxable commodities transactions' has been defined to mean a transaction of purchase or sale of option of goods or option in commodity derivative or any other commodity derivative. Section 104 of Finance Act, 2008 provides the rate at which commodity transaction tax shall be levied on taxable commodities transaction undertaken by seller or purchaser as the case may be.

62.2 It has been decided to do away with the power to levy Commodity Transaction Tax. Therefore, a new section 121A is inserted in Chapter VII of Finance Act, 2008 to provide that nothing contained in that Chapter shall apply to, or in relation to, the taxable commodities transactions entered on or after 1st April, 2009.

62.3 The clause (xvi) of sub-section (1) of section 36 provided that an amount equal to commodity transaction tax paid by the assessee in respect of taxable commodities transactions entered into in the course of business during the previous year, shall be allowed as deduction in computing the income under the head "Profits and gains of business or profession".

62.4 Therefore a consequential amendment has been made in the sub-section (1) of section 36 so as to provide that the clause (xvi) shall not be applicable from 1st April 2009.

62.5 ***Applicability*** - This amendment has been made applicable with effect from 1st April, 2009 and will accordingly apply in relation to assessment year 2009-10 and subsequent years.

63. Extension of income-tax exemption to Special Undertaking of Unit Trust of India (SUUTI)

63.1 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., 1st February, 2003. This exemption was to come to an end on 31st January, 2008 and then exemption was further extended up to 31st March, 2009.

63.2 Since some of the schemes of SUUTI are still pending closure, section 13(1) of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 has been amended so as to extend the exemption for a further period of five years that is up to 31st March, 2014.

63.3 Applicability - These amendments have been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years.

03/06/10

(M. Rajan)
Under Secretary to the Government of India
Dated 03.06.2010
[F.No.142/13/2010-SO(TPL)]

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03/06/10

(M. Rajan)
Under Secretary to the Government of India

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