FINANCE BILL, 2010

PROVISIONS RELATING TO DIRECT TAXES

Introduction

The provisions of the Finance Bill, 2010 relating to direct taxes seek to amend the Income-tax Act, *inter alia*, in order to,-

(i) lower the tax burden on individual taxpayers by widening the tax slabs;

(ii) allow small companies to convert into Limited Liability Partnerships without attracting capital gains tax liability;

(iii) reduce the compliance burden on small business enterprises by raising the turnover limits beyond which audit is compulsory;

(iv) promote investment in Research and Development (R&D) to enhance the competitive ability of the economy.

(v) encourage savings for funding infrastructure by providing a tax deduction on investment in long-term infrastructure bonds; and

(vi) simplify and rationalize the provisions relating to Tax Deduction at Source (TDS).

2. The Finance Bill, 2010 seeks to prescribe the rates of income-tax on incomes liable to tax for the assessment year 2010-11; the rates at which tax will be deductible at source during the financial year 2010-11 from interest (including interest on securities), winnings from lotteries or crossword puzzles, winnings from horse races, card games and other categories of income liable to deduction or collection of tax at source under the Income-tax Act; rates for computation of "advance tax", deduction of income-tax from, or payment of tax on, 'Salaries' and charging of income-tax on current incomes in certain cases for the financial year 2010-11.

3. Subject to certain exceptions, which have been indicated while dealing with the relevant provisions, changes in the provisions of the tax laws are ordinarily proposed to be prospective in their operation.

4. The substance of the main provisions of the Bill relating to direct taxes is explained in the following paragraphs.

INCOME-TAX

Rates of Income-tax

I. Rates of income-tax in respect of income liable to tax for the assessment year 2010-11

In respect of income of all categories of assessees liable to tax for the assessment year 2010-11, the rates of income-tax have been specified in Part I of the First Schedule to the Bill. These are the same as those laid down in Part III of the First Schedule to the Finance (No.2) Act, 2009, for the purposes of computation of "advance tax", deduction of tax at source from "Salaries" and charging of tax payable in certain cases.

(1) Surcharge on income-tax—

Surcharge shall be levied in respect of income liable to tax for the assessment year 2010-11, in the following cases:—

(a) in the case of a domestic company having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for purposes of the Union calculated at the rate of ten per cent. of such income tax.

(b) in the case of a company, other than a domestic company, having total income exceeding one crore rupees, the amount of income-tax computed shall be increased by a surcharge for purposes of the Union calculated at the rate of two and one-half per cent. of such income tax.

However, marginal relief shall be allowed in all these cases 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, 1961 (hereinafter referred to as 'Income-tax Act') and where such income exceeds one crore rupees, marginal relief shall be provided.

(2) Education Cess—

For assessment year 2010-11, additional surcharge called the "Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall continue to be levied at the rate of two per cent. and one per cent., respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such Cess.

II. Rates for deduction of income-tax at source during the financial year 2010-11 from certain incomes other than "Salaries"

The rates for deduction of income-tax at source during the financial year 2010-11 from certain incomes other than "Salaries" have been specified in Part II of the First Schedule to the Bill. The rates for all the categories of persons will remain the same as those specified in Part II of the First Schedule to the Finance (No.2) Act, 2009, for the purposes of deduction of income-tax at source during the financial year 2009-10.

(1) Surcharge—

The amount of tax so deducted, in the case of a company other than a domestic company, shall be increased by a surcharge at the rate of two and one-half per cent. of such tax, where the income or the aggregate of such incomes paid or likely to be paid and subject to the deduction exceeds one crore rupees.

No surcharge will be levied on deductions in other cases.

(2) Education Cess—

"Education Cess on income-tax" and "Secondary and Higher Education Cess on income-tax" shall continue to be levied at the rate of two per cent. and one per cent. respectively, of income tax including surcharge wherever applicable, in the cases of persons not resident in India including companies other than domestic company.

III. Rates for deduction of income-tax at source from "Salaries", computation of "advance tax" and charging of income-tax in special cases during the financial year 2010-11

The rates for deduction of income-tax at source from "Salaries" during the financial year 2010-11 and also for computation of "advance tax" payable during the said year in the case of all categories of assessees have been specified in Part III of the First Schedule to the Bill.

These rates are also applicable for charging income-tax during the financial year 2010-11 on current incomes in cases where accelerated assessments have to be made, for instance, provisional assessment of shipping profits arising in India to non-residents, assessment of persons leaving India for good during the financial year, assessment of persons who are likely to transfer property to avoid tax, assessment of bodies formed for a short duration, etc.

The salient features of the rates specified in the said Part III are indicated in the following paragraphs—

A. Individual, Hindu undivided family, association of persons, body of individuals, artificial juridical person

The rates of income-tax in the case of every individual or Hindu undivided family or every association of persons or body of individuals, whether incorporated or not, or every artificial juridical person referred to in sub-clause (vii) of clause (31) of section 2 of the Income-tax Act (not being a case to which any other Paragraph of Part III applies) have been specified in Paragraph A of Part III. The basic exemption limits and the rates of income-tax will continue to be the same as those specified for assessment year 2010-11. However, the tax slabs are revised as under:—

Upto Rs. 1,60,000	Nil.
Rs. 1,60,001 to Rs. 5,00,000	10 per cent.
Rs. 5,00,001 to Rs. 8,00,000	20 per cent.
Above Rs. 8,00,000	30 per cent.

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

Upto Rs. 1,90,000	Nil.
Rs. 1,90,001 to Rs. 5,00,000	10 per cent.
Rs.5,00,001 to Rs. 8,00,000	20 per cent.
Above Rs. 8,00,000	30 per cent.

In the case of every individual, being a resident in India, who is of the age of sixty-five years or more at any time during the previous year,—

Upto Rs. 2,40,000	Nil.
Rs. 2,40,001 to Rs. 5,00,000	10 per cent.
Rs. 5,00,001 to Rs.8,00,000	20 per cent.
Above Rs. 8,00,000	30 per cent.

No surcharge shall be levied in the cases of persons covered under paragraph-A of part-III of the First Schedule.

B. Co-operative Societies

In the case of co-operative societies, the rates of income-tax have been specified in Paragraph B of Part III of the First Schedule to the Bill. These rates will continue to be the same as those specified for assessment year 2010-11. No surcharge will be levied.

C. Firms

In the case of firms, the rate of income-tax has been specified in Paragraph C of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for assessment year 2010-11. No surcharge shall be levied.

D. Local authorities

The rate of income-tax in the case of every local authority is specified in Paragraph D of Part III of the First Schedule to the Bill. This rate will continue to be the same as that specified for the assessment year 2010-11. No surcharge will be levied.

E. Companies

The rates of income-tax in the case of companies are specified in Paragraph E of Part III of the First Schedule to the Bill. These rates are the same as those specified for the assessment year 2010-11.

The existing surcharge of ten per cent. on a domestic company is proposed to be reduced to seven and one-half per cent. In case of companies other than domestic companies, the surcharge shall be levied at the same rate and subject to the same conditions as were applicable for the assessment year 2010-11.

However, the total amount payable as income-tax and surcharge on total income exceeding one crore rupees shall not exceed the total amount payable as income-tax on a total income of one crore rupees by more than the amount of income that exceeds one crore rupees.

The existing surcharge of ten per cent. in all other cases (including sections 115JB, 115-O, 115R, etc.) is proposed to be reduced to seven and one-half per cent.

For financial year 2010-11, additional surcharge called the “Education Cess on income-tax” and “Secondary and Higher Education Cess on income-tax” shall continue to be levied at the rate of two per cent. and one per cent. respectively, on the amount of tax computed, inclusive of surcharge, in all cases. No marginal relief shall be available in respect of such Cess.

[*Clause 2*]

Definition of “charitable purpose”

For the purposes of the Income-tax Act, “charitable purpose” has been defined in section 2(15) which, among others, includes “the advancement of any other object of general public utility”. However, “the advancement of any other object of general public utility” is not 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.

The absolute restriction on any receipt of commercial nature may create hardship to the organizations which receive sundry considerations from such activities. It is, therefore, proposed to amend section 2(15) to provide that “the advancement of any other object of general public utility” shall continue to be a “charitable purpose” if the total receipts from 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 do not exceed Rs.10 lakhs in the previous year.

This amendment is proposed to take effect retrospectively from 1st April, 2009 and will, accordingly, apply in relation to the assessment year 2009-10 and subsequent years. [*Clause 3*]

Income deemed to accrue or arise in India to a non-resident

Section 9 provides for situations where income is deemed to accrue or arise in India.

Vide Finance Act, 1976, a source rule was provided in section 9 through insertion of clauses (v), (vi) and (vii) in sub-section (1) for income by way of interest, royalty or fees for technical services respectively. It was provided, *inter alia*, that in case of payments as mentioned under these clauses, income would be deemed to accrue or arise in India to the non-resident under the circumstances specified therein.

The intention of introducing the source rule was to bring to tax interest, royalty and fees for technical services, by creating a legal fiction in section 9, even in cases where services are provided outside India as long as they are utilized in India. The source rule, therefore, means that the *situs* of the rendering of services is not relevant. It is the *situs* of the payer and the *situs* of the utilization of services which will determine the taxability of such services in India.

This was the settled position of law till 2007. However, the Hon’ble Supreme Court, in the case of *Ishikawajima-Harima Heavy Industries Ltd., Vs DIT (2007)[288 ITR 408],* held that despite the deeming fiction in section 9, for any such income to be taxable in India, there must be sufficient territorial nexus between such income and the territory of India. It further held that for establishing such territorial nexus, the services have to be rendered in India as well as utilized in India.

This interpretation was not in accordance with the legislative intent that the *situs* of rendering service in India is not relevant as long as the services are utilized in India. Therefore, to remove doubts regarding the source rule, an *Explanation* was inserted below sub-section (2) of section 9 with retrospective effect from 1st June, 1976 vide Finance Act, 2007. The *Explanation* sought to clarify that where income is deemed to accrue or arise in India under clauses (v), (vi) and (vii) of sub-section (1) of section 9, such income shall be included in the total income of the non-resident, regardless of whether the non-resident has a residence or place of business or business connection in India.

However, the Karnataka High Court, in a recent judgement in the case of *Jindal Thermal Power Company Ltd. vs DCIT (TDS)*, has held that the *Explanation,* in its present form, does not do away with the requirement of rendering of services in India for any income to be deemed to accrue or arise to a non-resident under section 9. It has been held that on a plain reading of the *Explanation*, the criteria of rendering services in India and the utilization of the service in India laid down by the Supreme Court in its judgement in the case of *Ishikawajima-Harima Heavy Industries Ltd.(supra)* remains untouched and unaffected by the *Explanation.*

In order to remove any doubt about the legislative intent of the aforesaid source rule, it is proposed to substitute the existing Explanation with a new Explanation to specifically state that the income of a non-resident shall be deemed to accrue or arise in India under clause (v) or clause (vi) or clause (vii) of sub-section (1) of section 9 and shall be included in his total income, whether or not,

(a) the non-resident has a residence or place of business or business connection in India; or

(b) the non-resident has rendered services in India.

This amendment is proposed to take effect retrospectively from 1st June, 1976 and will, accordingly, apply in relation to the assessment year 1977-78 and subsequent years. [*Clause 4*]

Computation of exempted profits in the case of units in Special Economic Zones (SEZs)

Section 10AA was inserted in the Income-tax Act by the Special Economic Zone Act, 2005 with effect from 10.2.2006. Through the Finance (No.2) Act, 2009, section 10AA(7) of the Income-tax Act, 1961 was amended and the words “by the undertaking” were substituted for “by the assessee” with effect from assessment year 2010-11 and subsequent assessment years. This was done as the existing formula was perceived to be discriminatory in so far as those assessees are concerned who have multiple units in both the SEZ and the domestic tariff area (DTA) vis-à-vis those assessees 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.

In order to make the amendment effective for earlier years, it is proposed, by inserting a proviso to sub-section (7), to provide that the provision of sub-section (7), as amended by Finance (No. 2) Act 2009, will apply to the assessment year 2006-07 and subsequent assessment years. [*Clause 6*]

Cancellation of registration obtained under section 12A

Section 12AA provides the procedure relating to registration of a trust or institution engaged in charitable activities. Section 12AA(3) currently provides that if the activities of the trust or institution are found to be non-genuine or its activities are not in accordance with the objects for which such trust or institution was established, the registration granted under section 12AA can be cancelled by the Commissioner after providing the trust or institution an opportunity of being heard.

The power of cancellation of registration is inherent and flows from the authority of granting registration. However, judicial rulings in some cases have held that the Commissioner does not have the power to cancel the registration which was obtained earlier by any trust or institution under provisions of section 12A as it is not specifically mentioned in section 12AA.

It is, therefore, proposed to amend section 12AA so as to provide that the Commissioner can also cancel the registration obtained under section 12A as it stood before amendment by Finance (No.2) Act, 1996.

This amendment is proposed to take effect from 1st June 2010. [*Clause 7*]

Weighted deduction for scientific research and development

Under the existing provisions of section 35(2AB) of the Income-tax Act, a company is allowed weighted deduction of 150 per cent of the expenditure (not being expenditure in the nature of cost of any land or building) incurred on scientific research on an approved in-house research and development facility.

In order to further incentivise the corporate sector to invest in in-house research, it is proposed to increase this weighted deduction from 150 per cent to 200 per cent.

The existing provisions of section 35(1)(ii) of the Income-tax Act provide for a weighted deduction from the business income to the extent of 125 per cent of any sum paid to an approved scientific research association that has the object of undertaking scientific research or to an approved university, college or other institution to be used for scientific research. Further, under section 35(2AA) of the Act, weighted deduction to the extent of 125 per cent is also allowed for any sum paid to a National Laboratory or a university or an Indian Institute of Technology (IIT) or a specified person for the purpose of an approved scientific research programme.

In order to encourage more contributions to such approved entities for the purposes of scientific research, it is proposed to increase this weighted deduction from 125 per cent to 175 per cent.

These amendments are proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clause 9*]

Weighted deduction on payments made to associations engaged in research in social science or statistical research and exemption in respect of the income of such associations

Section 35 of the Income-tax Act provides for deduction in respect of expenditure on research and development. The existing provisions of section 35(1)(ii) provide for a weighted deduction from business income to the extent of 125 per cent of any sum paid to an approved and notified scientific research association or to a university, college or other institution to be utilized for scientific research. Section 35(1)(iii) provides similar deduction if the sum is paid to an approved and notified university, college or other institution to be used to carry on research in social science or statistical research. Section 80GGA allows deductions for donations made to such association, universities, etc.

Under section 10(21), exemption is granted in respect of the income of a scientific research association which is approved and notified under section 35(1)(ii). The university, college or other institutions which are approved either under section 35(1)(ii) or under section 35(1)(iii) also qualify for exemption of their income under section 10(23C) of the Act subject to specified conditions.

The associations which are engaged in undertaking research in social science or statistical research are not currently covered by the provisions of section 35(1)(iii). Such research associations are also not entitled to exemption in respect of their income.

It is now proposed to amend section 35(1)(iii) so as to include an approved research association which has as its object undertaking research in social science or statistical research. It is also proposed to amend section 10(21) so as to also provide exemption to such associations in respect of their income. This exemption will be subject to the same conditions under which an approved research association undertaking scientific research is entitled to exemption in respect of its income. An amendment to include allowability of deductions for donations made to such associations is also proposed.

These amendments are proposed to take effect from 1st April 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clauses 5, 9, 26, 32, 34*]

Investment linked deduction for specified business

Benefits of profit linked deduction under Chapter VI-A of the Income-tax Act are currently available to specified categories of hotels in Uttarakhand and Himachal Pradesh; National Capital Territory and adjacent districts; 22 districts having World Heritage Sites and North-Eastern States, which start functioning before specified dates mentioned in the Act.

In view of the high employment potential of this sector, it is proposed to provide investment linked incentive to the hotel sector, irrespective of location, under section 35AD of the Income-tax Act. The investment-linked tax incentive allows 100 per cent deduction in respect of the whole of any expenditure of capital nature (other than on land, goodwill and financial instrument) incurred wholly and exclusively, for the purposes of the "specified business" during the previous year in which such expenditure is incurred.

Currently, such "specified business" means the business of setting up and operating cold chain facilities, warehousing facilities for storage of agricultural produce and laying and operating a cross-country natural gas or crude or petroleum oil pipeline network. It is now proposed to include the business of building and operating a new hotel of two-star or above category, anywhere in India, which starts functioning after 1.4.2010 within the purview of "specified business".

It is also proposed to substitute sub-section (3) of section 35AD so as to provide that where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction shall be allowed under the provisions of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" in relation to such specified business for the same or any other assessment year. A similar amendment is proposed in section 80A.

These amendments are proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

One of the conditions for availing the benefit under section 35AD in the case of 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, is that the specified business 'has made not less than one-third of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person'. The Petroleum & Natural Gas Regulatory Board has, by regulations, specified a common carrier capacity condition of 'one-third' for a natural gas pipeline network and 'one-fourth' for petroleum product pipeline network. In order to rationalise the existing condition regarding common carrier capacity, it is proposed to amend sub-section (2) of section 35AD to provide that the proportion of the total pipeline capacity to be made available for use on common carrier basis should be as specified by the said regulations.

This amendment is proposed to take effect retrospectively from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years. [*Clauses 10, 23*]

Disallowance of expenditure on account of non-compliance with TDS provisions

A. The existing provisions of section 40(a)(ia) of Income-tax Act provide for the disallowance of expenditure like interest, commission, brokerage, professional fees, etc. if tax on such expenditure was not deducted, or after deduction was not paid during the previous year. However, in case the deduction of tax is made during the last month of the previous year, no disallowance is made if the tax is deposited on or before the due date of filing of return.

It is proposed to amend the said section to provide that no disallowance will be made if after deduction of tax during the previous year, the same has been paid on or before the due date of filing of return of income specified in sub-section (1) of section 139.

This amendment is proposed to take effect retrospectively from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

B. Under the existing provisions of section 201(1A) of the Act, a person is liable to pay simple interest at one per cent for every month or part of month in case of failure to deduct tax or payment of tax after deduction.

With a view to discourage the practice of delaying the deposit of tax after deduction, it is proposed to increase the rate of interest for non-payment of tax after deduction from the present one per cent to one and one-half per cent for every month or part of month.

This amendment is proposed to take effect from 1st July, 2010. [*Clauses 12, 42*]

Limit of turnover or gross receipts for the purpose of audit of accounts and for presumptive taxation

A. Under the existing provisions of section 44AB, every person carrying on business is required to get his accounts audited if the total sales, turnover or gross receipts in business exceed forty lakh rupees in the previous year. Similarly, a person carrying on a profession is required to get his accounts audited if the gross receipts in profession exceed ten lakh rupees in the previous year.

In order to reduce compliance burden of small businesses and professionals, it is proposed to increase the aforesaid threshold limit from forty lakh rupees to sixty lakh rupees in the case of persons carrying on business and from ten lakh rupees to fifteen lakh rupees in the case of persons carrying on profession.

B. In view of the amendment proposed above, it is also proposed to increase the maximum penalty, leviable under section 271B for failure to get accounts audited under section 44AB or to furnish a report of such audit, from one lakh rupees to one lakh fifty thousand rupees.

C. It is also proposed that for the purpose of presumptive taxation under section 44AD, the threshold limit of total turnover or gross receipts would be increased from forty lakh rupees to sixty lakh rupees.

These amendments are proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clauses 14, 15, 50*]

Income of a non-resident providing services or facilities in connection with prospecting for, or extraction or production of, mineral oil

Under the existing provisions contained in section 44BB(1) of the Income-tax Act, income of a non-resident taxpayer who is engaged in the business of providing services or facilities in connection with, or supplying plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils is computed at ten per cent. of the aggregate of the amounts paid.

Section 44DA provides the procedure for computing income of a non-resident, including a foreign company, by way of royalty or fee for technical services, in case the right, property or contract giving rise to such income are effectively connected with the permanent establishment of the said non-resident. This income is computed as per the books of account maintained by the assessee.

Section 115A provides the rate of taxation in respect of income of a non-resident, including a foreign company, in the nature of royalty or fee for technical services, other than the income referred to in section 44DA i.e., income in the nature of royalty and fee for technical services which is not connected with the permanent establishment of the non-resident.

Combined effect of the provisions of sections 44BB, 44DA and 115A is that if the income of a non-resident is in the nature of fee for technical services, it shall be taxable under the provisions of either section 44DA or section 115A irrespective of the business to which it relates. Section 44BB applies only in a case where consideration is for services and other facilities relating to exploration activity which are not in the nature of technical services. However, owing to judicial pronouncements, doubts have been raised regarding the scope of section 44BB vis-à-vis section 44DA as to whether fee for technical services relating to the exploration sector would also be covered under the presumptive taxation provisions of section 44BB.

In order to remove doubts and clarify the distinct scheme of taxation of income by way of fee for technical services, it is proposed to amend the proviso to section 44BB so as to exclude the applicability of section 44BB to the income which is covered under section 44DA. Similarly, section 44DA is also proposed to be amended to provide that provisions of section 44BB shall not apply to the income covered under section 44DA.

These amendments are proposed to take effect from 1st April 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clauses 16, 17*]

Conversion of a private company or an unlisted public company into a limited liability partnership (LLP)

The Finance (No. 2) Act, 2009 provided for the taxation of LLPs in the Income-tax Act on the same lines as applicable to partnership firms. Section 56 and section 57 of the Limited Liability Partnership Act, 2008 allow conversion of a private company or an unlisted public company (hereafter referred as company) into an LLP. Under the existing provisions of Income-tax Act, conversion of a company into an LLP has definite tax implications. Transfer of assets on conversion attracts levy of capital gains tax. Similarly, carry forward of losses and of unabsorbed depreciation is not available to the successor LLP.

It is proposed that the transfer of assets on conversion of a company into an LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008 shall not be regarded as a transfer for the purposes of capital gains tax under section 45, subject to certain conditions. These conditions are as follows:

(i) the total sales, turnover or gross receipts in business of the company do not exceed sixty lakh rupees in any of the three preceding previous years;

(ii) the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company;

(iii) no consideration other than share in profit and capital contribution in the LLP arises to partners;

(iv) the erstwhile shareholders of the company continue to be entitled to receive at least 50 per cent of the profits of the LLP for a period of 5 years from the date of conversion;

(v) all assets and liabilities of the company become the assets and liabilities of the LLP; and

(vi) no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

It is also proposed to allow carry forward and set-off of business loss and unabsorbed depreciation to the successor LLP which fulfills the above mentioned conditions.

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

It is also proposed that the aggregate depreciation allowable to the predecessor company and successor LLP shall not exceed, in any previous year, the depreciation calculated at the prescribed rates as if the conversion had not taken place.

It is further proposed that the actual cost of the block of assets in the case of the successor LLP shall be the written down value of the block of assets as in the case of the predecessor company on the date of conversion.

It is also provided that the cost of acquisition of the capital asset for the successor LLP shall be deemed to be the cost for which the predecessor company acquired it.

Credit in respect of tax paid by a company under section 115JB is allowed only to such company under section 115JAA. It is proposed to clarify that the tax credit under section 115JAA shall not be allowed to the successor LLP.

These amendments are proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clauses 8, 11, 13, 18, 19, 20, 22, 29*]

Taxation of certain transactions without consideration or for inadequate consideration

Under the existing provisions of section 56(2)(vii), any sum of money or any property in kind which is received without consideration or for inadequate consideration (in excess of the prescribed limit of Rs. 50,000/-) by an individual or an HUF is chargeable to income tax in the hands of recipient under the head 'income from other sources'. However, receipts from relatives or on the occasion of marriage or under a will are outside the scope of this provision.

The existing definition of property for the purposes of section 56(2)(vii) includes immovable property being land or building or both, shares and securities, jewellery, archeological collection, drawings, paintings, sculpture or any work of art.

A. These are anti-abuse provisions which are currently applicable only if an individual or an HUF is the recipient. Therefore, transfer of shares of a company to a firm or a company, instead of an individual or an HUF, without consideration or at a price lower than the fair market value does not attract the anti-abuse provision

In order to prevent the practice of transferring unlisted shares at prices much below their fair market value, it is proposed to amend section 56 to also include within its ambit transactions undertaken in shares of a company (not being a company in which public are substantially interested) either for inadequate consideration or without consideration where the recipient is a firm or a company (not being a company in which public are substantially interested). Section 2(18) provides the definition of a company in which the public are substantially interested.

It is also proposed to exclude the transactions undertaken for business reorganization, amalgamation and demerger which are not regarded as transfer under clauses (via), (vic), (vicb), (vid) and (vii) of section 47 of the Act.

Consequential amendments are proposed in—

(i) section 2(24), to include the value of such shares in the definition of income;

(ii) section 49, to provide that the cost of acquisition of such shares will be the value which has been taken into account and has been subjected to tax under the provisions of section 56 (2).

These amendments are proposed to take effect from 1st June 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

B. The provisions of section 56(2)(vii) were introduced as a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts, particularly after abolition of the Gift Tax Act. The provisions were intended to extend the tax net to such transactions in kind. The intent is not to tax the transactions entered into in the normal course of business or trade, the profits of which are taxable under specific head of income. It is, therefore, proposed to amend the definition of property so as to provide that section 56(2)(vii) will have application to the 'property' which is in the nature of a capital asset of the recipient and therefore would not apply to stock-in-trade, raw material and consumable stores of any business of such recipient.

C. In several cases of immovable property transactions, there is a time gap between the booking of a property and the receipt of such property on registration, which results in a taxable differential. It is, therefore, proposed to amend clause (vii) of section 56(2) so as to provide that it would apply only if the immovable property is received without any consideration and to remove the stipulation regarding transactions involving cases of inadequate consideration in respect of immovable property.

These amendments are proposed to take effect retrospectively from 1st October, 2009 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years.

D. It is proposed to amend the definition of 'property' as provided under section 56 so as to include transactions in respect of 'bullion'.

This amendment is proposed to take effect from 1st June, 2010 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years.

E. It is proposed to amend section 142A(1) to allow the Assessing Officer to make a reference to the Valuation Officer for an estimate of the value of property for the purposes of section 56(2).

This amendment is proposed to take effect from 1st July, 2010. [*Clauses 3, 20, 21, 33*]

Deduction in respect of long-term infrastructure bonds

In tune with the policy thrust of promoting investment in the infrastructure sector, it is proposed to insert a new section 80CCF in the Income-tax Act to provide that subscription during the financial year 2010-11 made to long-term infrastructure bonds (as may be notified by the Central Government), to the extent of Rs. 20,000, shall be allowed as deduction in computing the income of an individual or a Hindu undivided family. This deduction will be over and above the existing overall limit of tax deduction on savings of upto Rs.1 lakh under section 80C, 80CCC and 80CCD of the Act.

This amendment is proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12. [*Clause* 24]

Deduction in respect of contribution to the Central Government Health Scheme

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

The Central Government Health Scheme (CGHS) is a medical facility available to serving and retired Government servants. This facility is similar to the facilities available through health insurance policies.

It is, therefore, proposed to also allow deduction in respect of any contribution made to CGHS by including such contribution under the provisions of section 80D. The deduction will be limited to the current aggregate as mentioned in the section.

This amendment is proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clause 25*]

Deduction for developing and building housing projects

Under the existing provisions of section 80-IB(10), 100 per cent deduction is available in respect of profits derived by an undertaking from developing and building housing projects approved by a local authority before 31.3.2008. This benefit is available subject to, *inter alia*, the following conditions:

(a) 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.

(b) 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.

To allow for extraordinary conditions due to the global recession and the resultant slowdown in the housing sector, it is proposed to increase the period allowed for completion of a housing project in order to qualify for availing the tax benefit under the section, from the existing 4 years to 5 years from the end of the financial year in which the housing project is approved by the local authority. This extension will be available for housing projects approved on or after 1.4. 2005.

Further, it is also proposed to enhance the current norms for built-up area of shops and other commercial establishments in housing projects in order to enable basic facilities for the residents. The built-up area of the shops and other commercial establishments included in the housing project is proposed to be three per cent of the aggregate built-up area of the housing project or 5000 sq. ft., whichever is higher. This benefit will be available to projects approved on or after the 1.4.2005, which are pending for completion, in respect of their income relating to assessment year 2010-11 and subsequent years.

These amendments are proposed to take effect retrospectively from 1st April, 2010 and will, accordingly, apply in relation to the assessment year 2010-11 and subsequent years. [*Clause 27*]

Deduction of profits of a hotel or a convention centre in the National Capital Territory

Section 80-ID of the Income-tax Act provides for 100 per cent deduction for five years, of profits derived by an undertaking from the business of a two-star, three-star or four-star category hotel or from the business of building, owning and operating a convention centre located in the National Capital Territory of Delhi and the districts of Faridabad, Gurgaon, Gautam Budh Nagar and Ghaziabad, provided such hotel has started functioning or such convention centre is constructed during the period 1.4.2007 to 31.3.2010.

To provide some more time for these facilities to be set up in light of the Commonwealth Games in October, 2010, it is proposed to amend clauses (i) and (ii) of section 80-ID to extend the date by which the hotel has to start functioning or the convention centre has to be constructed, from the present 31st March, 2010 to 31st July, 2010.

This amendment is proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clause 28*]

Minimum Alternate Tax under Section 115JB

Under the existing provisions of section 115JB of the Income Tax Act, a company is required to pay a Minimum Alternate Tax (MAT) on its book profit, 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 the 1st day of April, 2010, is less than such minimum. The amount of tax paid under section 115JB is allowed to be carried forward and set off against tax payable upto the tenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under the provisions of section 115JAA.

It is proposed to amend sub-section (1) of section 115JB to increase the MAT rate to eighteen per cent from the existing fifteen per cent.

This amendment is proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clause 30*]

Centralised Processing of Returns

Under the existing provisions of section 143(1B), the Central Government may, for the purposes of giving effect to the scheme of centralised processing of returns under section 143(1A), issue a notification relating to such processing of returns. Such a notification can be issued up to 31st March, 2010.

A Centralised Processing Centre has been set up where returns are being processed in batches. However, some more functionalities in the processing of returns may need to be added to make it a complete end-to-end process.

Therefore, it is proposed to extend the time limit for issue of such notification under section 143 (1B) from 31st March, 2010 to 31st March 2011.

Consequential amendments on similar lines are proposed to be made in section 115WE of the Income-tax Act.

These amendments are proposed to take effect retrospectively from 1st April, 2010.

[*Clauses 31, 34*]

Rationalisation of provisions relating to Tax Deduction at Source (TDS)

Under the scheme of deduction of tax at source as provided in the Income-tax Act, every person responsible for payment of any specified sum to any person is required to deduct tax at source at the prescribed rate and deposit it with the Central Government within the specified time. However, no deduction is required to be made if the payments do not exceed prescribed threshold limits.

In order to adjust for inflation and also to reduce the compliance burden of deductors and taxpayers, it is proposed to raise the threshold limit for payments mentioned in sections 194B, 194BB, 194C, 194D, 194H, 194-I and 194J as under:

Sl. No.	*Section*	*Nature of payment*	*Existing threshold limit of payment (Rupees)*	*Proposed threshold limit of payment (Rupees)*
1.	194B	Winnings from lottery or crossword puzzle	5,000	10,000
2.	194BB	Winnings from horse race	2,500	5,000
3.	194C	Payment to contractors	20,000 (for a single transaction)	30,000 (for a single transaction)
			50,000 (for aggregate of transactions during financial year)	75,000 (for aggregate of transactions during financial year)
4.	194D	Insurance commission	5,000	20,000
5.	194H	Commission or Brokerage	2,500	5,000
6.	194-I	Rent	1,20,000	1,80,000
7.	194J	Fees for professional or technical services	20,000	30,000

These amendments are proposed to take effect from 1st July, 2010. [*Clauses 35, 36, 37, 38, 39, 40, 41*]

Certificate of Tax Deduction at Source (TDS) and Tax Collection at Source(TCS)

The existing provisions of section 203(3) of the Income-tax Act dispense with the requirement of furnishing of TDS certificates by the deductor to the deductee on or after 1st April, 2010. Similarly, under section 206C(5) of the Act, a collector of tax at source will also not be required to issue tax collection certificate to the person from whom tax has been collected on or after 1st April, 2010.

Considering the fact that the TDS/TCS certificate constitutes an important document for the deductee/collectee, it is proposed that the deductor/collector will continue to furnish TDS/TCS certificates to the deductee/collectee even after 1st April, 2010 .

These amendments are proposed to take effect retrospectively from 1st April, 2010. [*Clauses 43, 44*]

Settlement Commission

The conditions for filing of an application before the Settlement Commission and the time for disposal of an application by the Settlement Commission are proposed to be modified. The changes proposed are as under:-

A. Under the existing provisions of section 245A(b), the term "case", in relation to which an application can be made is defined as any proceeding for assessment, of any person in respect of any assessment year or assessment years which may be pending before an Assessing Officer on the date on which an application is made to the Settlement Commission. However, it excludes, among others, proceedings for assessment or reassessment resulting from a search or as a result of requisition of books of account or other documents or any assets, initiated under the Act.

It is now proposed to include proceedings for assessment or reassessment resulting from search or as a result of requisition of books of account or other documents or any assets, within the definition of a "case" which can be admitted by the Settlement Commission.

It is also proposed to amend the *Explanation* to section 245A(b) to specify the date on which the proceedings for assessment or reassessment shall be deemed to have commenced and concluded in the case of a person whose income is being assessed or reassessed as a result of search or as a result of requisition of books of account or other documents or any assets.

Similarly, consequential amendments are also proposed to be made in section 22A of the Wealth-tax Act.

These amendments are proposed to take effect from 1st June, 2010.

B. Under the existing provisions of section 245C of the Income-tax Act, an application can be filed before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds three lakh rupees.

It is proposed to substitute the proviso to section 245C, so as to provide that an application can be filed before the Settlement Commission, in cases where proceedings for assessment or reassessment have been initiated as a result of search or as a result of requisition of books of account or other documents or any assets, if the additional amount of income-tax payable on the income disclosed in the application exceeds fifty lakh rupees. It is further proposed that, in other cases, an application can be made before the Settlement Commission, if the additional amount of income-tax payable on the income disclosed in the application exceeds ten lakh rupees.

These amendments are proposed to take effect from 1st June, 2010.

C. Under the existing provisions of section 245D(4A) of the Income-tax Act, the Settlement Commission shall pass an order within twelve months from the end of the month in which the application was made.

It is proposed to amend clause (ii) of sub-section (4A) so as to provide that the Settlement Commission, shall, in respect of an application filed on or after 1st June, 2007 but before 1st June, 2010, pass an order within the said period of twelve months.

It is further proposed to insert a new clause (iii) in sub-section (4A) so as to provide that the Settlement Commission shall, in respect of an application made on or after 1st June, 2010, pass an order within eighteen months from the end of the month in which the application is made.

Consequential amendments on similar lines are proposed to be made in section 22D of the Wealth-tax Act.

These amendments are proposed to take effect from 1st June, 2010.

[*Clauses 45, 46, 47, 53, 54*]

Power of the High Court to condone delay in filing of appeals

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

The Delhi High Court, while interpreting provisions of section 260A, has held that the High Court has the power to condone delay in filing of an appeal. However, Allahabad, Bombay, Kolkata, Guwahati and Chattisgarh High Courts have held otherwise.

It is, therefore, proposed to retrospectively insert sub-section (2A) in section 260A of the Income-tax Act to specifically provide that the High Court may admit an appeal after the expiry of the period of one hundred and twenty days, if it is satisfied that there was sufficient cause for not filing the appeal within such period.

Consequential amendments on similar lines are proposed to be made in section 27A of the Wealth-tax Act.

These amendments are proposed to take effect retrospectively from 1st October, 1998.

B. Under section 256 of the Income-tax Act, the Income-tax Appellate Tribunal could to refer a case to the High Court. In case where the Income-tax Appellate Tribunal refused to refer a case to the High Court, the assessee or the Commissioner were allowed to file an appeal before the High Court against such refusal of the Tribunal within a period of six months from the date on which he was served with an order of refusal.

It is proposed to retrospectively insert sub-section (2A) in section 256 so as to empower the High Court to admit an application after the expiry of the period of six months, if it is satisfied that there was sufficient cause for not filing the same within such period.

Consequential amendments on similar lines are also proposed to be made in section 27 of the Wealth-tax Act.

These amendments are proposed to take effect retrospectively from 1st June, 1981.

[*Clauses 48, 49, 55, 56*]

Document Identification Number

Section 282B (Allotment of Document Identification Number) is a new section inserted by the Finance (No. 2) Act, 2009 in the Income-tax Act with effect from 1st October, 2010.

Under the provisions of this section, an income-tax authority is required to allot a computer generated Document Identification Number before issue of every notice, order, letter or any correspondence to any other income-tax authority or assessee or any other person and such number shall be quoted thereon. It also provides that every document, letter, 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.

In order to cover the entire gamut of services mentioned in section 282B on a pan-India basis, it would be essential to have the requisite infrastructure and facilities in place.

It is proposed to amend the provisions of section 282B so as to provide that Document Identification Number will be required to be issued on or after 1st July, 2011.

This amendment is proposed to take effect from 1st October, 2010. [*Clause 51*]

Taxation of income of non-life insurance business

Section 44 read with the First Schedule to the Income-tax Act provides the scheme of computation of income of insurance companies. According to Rule 5 of the said Schedule, the income of non-life insurance business is taken as ‘profit before tax and appropriations’ as per the profit and loss account of the company, prepared in accordance with the regulations made by the Insurance Regulatory Development Authority (IRDA), subject to certain adjustments.

The Finance (No. 2) Act, 2009 amended the First Schedule to provide that in case of non-life insurance business, appreciation of or gains on realisation of investments taken credit for in the accounts shall be treated as income and be included in the computation of the total income.

The appreciation in the value of investments, being in the nature of unrealized gain is not taken into account for determining profit or loss of non-life insurance business as per the IRDA regulations. It is, therefore, proposed that the unrealized gains due to appreciation in the value of investments will not be included in the total income. Similarly, deduction will not be allowed for provision for losses due to diminution in the value of investments as this is not a realized loss.

It has also been provided that any gain or loss on realisation of investments shall be added or deducted for the purpose of computation of the total income, if the same is not already credited or debited in the profit and loss account.

This amendment is proposed to take effect from 1st April, 2011 and will, accordingly, apply in relation to the assessment year 2011-12 and subsequent years. [*Clause 52*]