Proposals of the Finance Act 2009 "An Analysis"

Tax Rates for AY 2010-2011.

Status	**Rate of Tax for AY 2010-2011**	
Individual (Male) and HUF	Upto 160,000	Nil
	160,001-300000	10%
	300001-500000	20%
	500001+	30%
Female	Upto 190,000	Nil
	190,001-300000	10%
	300001-500000	20%
	500001+	30%
Senior Citizen	Upto 240,000	Nil
	240,001-300000	10%
	300001-500000	20%
	500001+	30%
	Surcharge abolished	
Firm	30% Surcharge abolished	
Domestic Company	30% Surcharge of 10% if income exceeds Rs.1 Crore, no surcharge if income is below Rs.1 Crore	
Education Cess @ 3% shall be levied over and above the tax and surcharge		

Proposed amendments in respect of Direct Taxes in the Finance Act 2009

Section	Effect
Wealth Tax	The basic exemption of wealth tax is Rs.15,00,000 of taxable wealth above which wealth tax @ 1% is payable. The Finance Act proposes to increase the basic exemption to Rs.30,00,000. ***This amendment takes effect from AY 2010-2011***
Fringe Benefit Tax and Commodity Transaction Tax	The Finance Act proposes to abolish the fringe benefit tax and Commodity Transaction Tax. ***This amendment takes effect from AY 2010-2011***
Extension of time limit to Obtain exemption from EPFO	One of the conditions to obtain recognition of a Provident Fund under the Income Tax Act was to obtain an exemption u/s 17 of the EPF Act. The time limit to obtain the same was up till 31/03/2009. The Finance Act proposes to extend the time limit to **31/12/2010.**

Amendment to definition of Charitable purpose. (Section 2(15):	The Finance Act proposes to widen the definition of "Charitable Purpose" to include organizations engaged in the preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest. Thus such organizations shall be entitled to claim the benefits under the Income Tax Act for e.g. u/s 11, 12AA. ***This amendment is retrospective takes effect from AY 2009-2010.***
Amendment to definition of firm (Section 2(23) :	A new form of business organization has been created in our country known as "Limited Liability Partnerships" (LLP). At present the Income Tax Act does recognize such entity as a partnership firm. The Finance Act proposes to define a "Firm" for the purpose of Income Tax Act to include a LLP. ***This amendment takes effect from AY 2010-2011.***
Definition of Manufacture (Section 2(29BA):	The definition of the word "Manufacture" has been subject matter of several interpretation by Tribunals and Courts, in absence of definition on the Income Tax Act. The Finance Act proposes to define manufacture as *"a change in a non-living physical object or article or thing 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 bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure."* Hence forth to be entitled to various tax benefits in respect of manufacturing activity an assessee will have to satisfy the definition manufacture to be eligible for tax incentives. ***This amendment is retrospective takes effect from AY 2009-2010.***
Restriction of tax benefits in respect of VRS by amending Section 10(10C) and Section 89	Salaried individuals who opt for voluntary retirement are entitled to exemption upto Rs. 5 Lakh from payment of tax on the VRS compensation subject to some conditions. Tribunals have taken the view an assessee after claiming exemption u/s 10(10C) can claim relief u/s 89 of Income Tax Act. The Finance Act proposes that assessee claiming exemption u/s 10(10C) cannot claim relief u/s 89 and vice versa. ***This amendment takes effect from AY 2010-2011.***

Exemption u/s 10A & 10B extended	The exemption under provisions of Section 10A & 10B was available till AY 2010-2011. The Finance Act proposes to extend the same till AY 2011-2012.
New Pension System Trust	With effect from 1st January 2004 a new pension system has been started in India. Where private asset management companies shall manage pension funds. This is applicable to both the government and private sector. To facilitate the Bew Pension Scheme the Finance Act proposes to amend the Income Tax Act to the effect: *(i)* *insert a new clause (44) 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)* *amend section 115-O to provide that any dividend paid to the NPS Trust shall be exempt from Dividend Distribution tax;;* *(iii)* *amend Chapter VII of Finance (No.2) Act, 2004 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)* *amend section 197A to provide that the NPS Trust shall receive all income without any tax deducted at source.* *(v)* *The tax benefit under section 80CCD of the Income-tax Act, 1961 was hitherto available to "employees" only. However, the NPS now has been extended also to "self-employed". Therefore, it is proposed to amend sub-section (1) of section 80CCD so as to extend the tax benefit thereunder also to "self-employed" individuals.*
Tax incentive for cold chain and warehouse and petroleum oil pipeline (Section 35AD):	With a view to creating rural infrastructure and environment friendly alternate means of transportation for bulk goods, it is proposed to provide investment-linked tax incentive 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.

<table>
<tr><td></td><td>The salient features of the new regime of investment-linked tax incentives are the following:—
(i) 100 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 during the previous year in which such expenditure is incurred.
(ii) The expenditure of capital nature shall not include any expenditure incurred on acquisition of any land or goodwill or financial instrument.

This amendment takes effect from AY 2010-2011.</td></tr>
<tr><td>Enhanced limit of deductible partners remuneration (Section 40(b)):</td><td>A partnership firm is entitled to claim deduction in respect of partner’s remuneration as a percentage of the profits of the firm. The Finance Act proposes to increase the same as follows:

Existing in case of professional firms:
<table>
<tr><td>First 10000 of book profit or loss</td><td>90% of book profit or Rs.50000 which ever is higher</td></tr>
<tr><td>Next 100000 of book profit or loss</td><td>60% of book profit</td></tr>
<tr><td>Balance</td><td>40% of book profit</td></tr>
</table>

Existing in case of other firms:
<table>
<tr><td>First 75000 of book profit or loss</td><td>90% of book profit or Rs.50000 which ever is higher</td></tr>
<tr><td>Next 75000 of book profit or loss</td><td>60% of book profit</td></tr>
<tr><td>Balance</td><td>40% of book profit</td></tr>
</table>

Proposed:
<table>
<tr><td>First 300000 of book profit or loss</td><td>90% of book profit or Rs.150000 which ever is higher</td></tr>
<tr><td>Balance</td><td>60% of book profit</td></tr>
</table>

This amendment takes effect from AY 2010-2011.</td></tr>
<tr><td>40A(3)</td><td>Section 40A(3) disallows the entire expenditure if the same is in excess of Rs.20,000 and is made in cash. The Finance Act proposes to increase the limit to Rs.35000 in case of expenditure in respect of plying, hire of goods carriages.

This amendment takes effect from 1st October 2009.</td></tr>
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Definition of written down value (Section 43(6)):	The Supreme Court in the case of Doom Dooma Tea held that in case of a tea manufacturing company only 40% of its income is taxable hence the written down value of the asset shall be reduced only by 40% of the depreciation charged. The Finance Act proposes to overrule the said decision by providing that in 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. ***This amendment takes effect from AY 2010-2011.***
Change in presumptive taxation of income (Section 44AA/AD/AF/AE):	Under the current system the presumptive system of tax is as follows:

Nature	Taxable Income
Construction business having turnover below Rs.40 Lakh	Minimum 8% of turnover
Retail trade having turnover below Rs.40 Lakh	Minimum 5% of turnover
Owner of Light goods vehicles	Minimum Rs.3150 per month
Owner of Heavy goods vehicles	Minimum Rs.3500 per month

The Finance Act proposed to widen the scope of presumptive tax to all business subject to the following conditions:

(a) The scheme shall be applicable to individuals, HUFs and partnership firms excluding Limited liability partnership firms. It shall 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 shall be exempted from payment of advance tax related to such business under the current provisions of the Income-tax Act.

<table>
<tr><td></td><td>(e) An assessee opting for the above scheme shall be exempted from maintenance of books of accounts related to such business as required under section 44AA of the Income-tax Act.
(g) An assessee with turnover below Rs 40 lakhs, who shows an income below the presumptive rate prescribed under these provisions, will, in case his total income exceeds the taxable limit, be required to maintain books of accounts and also get them audited.
(h) The existing section 44AF is proposed to be made inoperative for the assessment year beginning on or after 1st day of April, 2011.

The Finance Act also proposes to increase the presumptive tax in case of goods vehicles as follows:
<table>
<tr><td>Owner of Light goods vehicles</td><td>Minimum Rs.4500 per month</td></tr>
<tr><td>Owner of Heavy goods vehicles</td><td>Minimum Rs.5000 per month</td></tr>
</table>

This amendment takes effect from AY 2011-2012.</td></tr>
<tr><td>Relaxation in Tax Audit requirement (Section 44AB):</td><td>Under the current law an assessee who declares lower percentage profit then prescribed u/s 44AD or 44AF and has income below taxable limit such assessee is obliged to maintain books of accounts and also obtain a tax audit report. The Finance Act proposes to do away with the obligation of obtaining tax audit report in such cases.

This amendment takes effect from AY 2011-2012.</td></tr>
<tr><td>Widening of scope of Section 50C:</td><td>Under the current law when a capital asset being land, building or both is transferred then the value adopted by the State stamp authority is deemed to be the sale value if the same is higher then the declared consideration. However Tribunals have held that where there is a transfer without registration of document the value adopted by the State stamp authority cannot be applied. The Finance Act proposes to amend the law and provide that where transfer is by means of unregistered documents also the value adopted by the State stamp authority shall be deemed to be the sale value if the same is higher then the declared consideration. Such amendment shall be difficult to implement specially it shall not be possible for the assessee to obtain value of a property under the Stamp Act especially when the document is unregistered.

This amendment takes effect from 1st October 2009 .</td></tr>
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Widening of taxability of gifts from non relatives (Section 56)	Currently money gifts from non relatives in excess of Rs.50,000 are liable to be assessed as income, however gifts in kind are still exempted . The Finance Act proposes to make gifts in kind having fair market value in excess of Rs.50,000 received from non relatives taxable. It further proposes that the fair market value of the gift made in kind shall be assessed to tax. The fair market value in case of immovable property shall be value of the property under the Stamp Act and in case of movable property shall be as per rules prescribed for determination of fair market value. ***This amendment takes effect from 1st October 2009 .***
Deduction for interest on loan for education (Section 80-E)	The current provisions of Section 80E permit deduction in respect on interest paid on loan for education in some select fields. The Finance Act proposes to widen the scope of the section by allowing the deduction in respect on interest paid on loan for education for any course from a recognized university and also vocation training course. ***This amendment takes effect from AY 2010-2011.***
Amendment to Section 80G	The current provisions of Section 80G require an eligible institution to obtain a renewal of the certificate u/s 80G. The Finance Act proposes to do away with the renewal of certificate u/s 80G. The amendment proposes that the certificate u/s 80G once issued shall be valid till the same is not cancelled. It is also proposed that certificates expiring on or after 01/10/2009 shall be deemed to be extended for perpetuity. ***This amendment takes effect from 1st October 2009.***
Creation of Electoral Trust	It is proposed that Electoral Trust approved by the Central Board of Direct Taxes shall not liable to tax if it distributes 95% of donations and surplus to Recognized Political Parties. It is further proposed that donations made to such trust shall be eligible for full deduction u/s 80GGB/C of the IT Act 1961. ***This amendment takes effect from AY 2010-2011.***
Scope of deduction to housing projects u/s Section 80IB (10) restricted:	The Finance Act proposes to amend the provisions of Section 80(IB)(10) **retrospectively w.e.f. 01/04/2001** to exclude the benefit of the deduction to contractors who execute housing projects.

	It further proposes to restrict the sale of units in a housing project claiming deduction u/s 80(IB) (10) as follows: *(i) In case of non individual not more than one unit* *(ii) In case of an individual, no other residential unit in such housing project is allotted to any of the following person:-* *(a) Spouse or minor children of such individual;* *(b) the Hindu undivided family in which such individual is the karta;* *(c) 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.* ***This amendment takes effect from AY 2010-2011.***
Taxation of interest on compensation and enhanced compensation (Section 56/57/145A(2):	Under the current provisions of the Act interest on compensation and enhanced compensation is taxable on accrual basis. As a result where such awards are made after 10-15 years of original payment the department is unable to recover tax on the income in respect of periods beyond six years. Thus leading to a substantial loss of revenue for the department. In order to prevent such losses the Finance Act proposes that such income shall be deemed to have been earned in the year it is actually received. It is also proposed that if such income is assessed as income from other sources then the assessee shall be liable to pay tax on half of such amount. ***This amendment takes effect from AY 2010-2011.***
Relaxation in taxability of anonymous donations (Section 115BBC):	Under the present law as per section 115BBC anonymous donations received by trust and other entities are taxed as follows: (i) Wholly religious entities not taxed (ii) Partly religious and partly charitable entities not taxed (iii) Entities running educational and medical institutes taxed @ 30% (iv) Wholly charitable entities taxed @ 30% The Finance Act proposes to modify the taxability of anonymous donations as follows: (i) Wholly religious entities not to be taxed

	(ii) Wholly Charitable, or Partly religious and partly charitable entities (including entities running educational and medical institutes) shall be only taxed to the extent such donations exceed 5 per cent of total income of such trust or institution or a sum of Rs.1 lakh, whichever is more. ***This amendment takes effect from AY 2010-2011.***
Provisions relating to MAT	The Finance Act proposes to increase the MAT rate from 10% to 15%. It also proposes that carry forward of MAT credit shall be permissible upto 10^{th} assessment year in place of the 7^{th} assessment year currently. ***This amendment takes effect from AY 2010-2011.*** The Act also proposes to charge MAT retrospectively from AY 2001-2002 (in case of Section 115JB and from AY 1998-1999 in case of Section 115 JA) on provision for diminution of value of assets, this amendment is to overrule decisions where the courts have held otherwise.
Amendment of Section 147	Some courts have taken a view while assessing an assessee u/s 147 of the IT Act the assessing officer cannot assessee items other than the items in respect of which reasons have been recorded. The Finance Act proposes to amend the provisions **retrospectively from 01/04/1989** to provide that the assessing officer may assess or reassess income in respect of any issue 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.
Modification of rates of TDS u/s 194C and 194I	The Finance Act proposes to do away with the classification of contractor and sub contract and proposes the following rates for deduction: (a) 1% where payment for a contract are to individuals/HUF (b) 2% where payment for a contract are to any other entity.

The chart explain the old and new rates:

Nature of Payment (194C)	*Existing rate*	*Proposed rate (w.e.f. 1-10-2009)*
Individual/HUF contractor	2%	1%
Other than individual/HUF contractor	2%	2%
Individual/HUF sub-contractor	1%	1%
Other than individual/HUF sub-contractor	1%	2%
. Individual/HUF contractor/sub-contractor for advertising	1%	1%
Other than individual/HUF contractor/ sub-contractor for advertising	1%	2%
Sub-contractor in transport business	1%	Nil*
. 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 upto 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.*

The Finance Act proposes to reduce the TDS on rent u/s 194I as follows:

Nature of Payment (194I)	*Existing rate*	*Proposed rate (w.e.f. 1-10-2009)*
rent of plant, machinery or equipment	10%	2%
rent of land, building or furniture to an individual and HUF	15%	10%
rent of land, building or furniture to a person other than an individual and HUF	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. 1.04.2010.*

The amendment takes effect from 1st October 2009.

Scope of TDS u/s 194C explained:	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 proposed to provide 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). It is also proposed to include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer, within the definition of 'work'. It is further proposed to provide 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. ***This amendment takes effect from 1st October 2009.***
Time limit for passing orders u/s 201(1)	At present the Act does not prescribe any time limit for passing orders u/s 201(1) of the IT Act. The Finance Act proposes to incorporate the following time limit for passing of orders u/ 201(1): (a) 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. (b) 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 ***This amendment takes effect from AY 2010-2011.***

TDS at higher rates in absence of PAN (Section 206AA):	The Finance Act proposes that where an assessee deducts tax of a person and does not obtain PAN from such person the rate of TDS shall be as follows: (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 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. ***This amendment takes effect from AY 2010-2011.***
Limit for Advance Tax increased	At present a tax payer whose annual tax liability after tax deducted at sources, tax collected at sources, exceeds Rs.5000 such tax payers are obliged to pay advance tax on the scheduled dates. The Finance Act proposes to increase the threshold limit from Rs.5,000 to Rs.10,000. ***This amendment is retrospective takes effect from AY 2009-2010.***
Mode of Service of notice (Section 282):	Under the current provisions a notice can be served by post or as summon issued by a court. It is proposed to amend the said provisions to provide that the service of notice or summon or requisition or order or any other communication may be made by delivering or transmitting a copy thereof by post or courier service or in such manner as provided in the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or by any other means of transmissions as may be provided by rules made by the Board in this behalf. ***This amendment takes effect from 1st October 2009.***
Document ID No. introduced (Section 282B):	The Finance Act to improve transparency in the functioning of the Income Tax Department proposes to declare all letters, notices, orders, or communication as invalid if the letters, notices, orders, or communication does not contain a computer generated Document ID Number. ***This amendment takes effect from 1st October 2010.***
Withdrawal of approvals (Section 293C):	In order to provide explicit provisions for power to withdraw of approval, it is proposed to insert a new section 293C to provide that an approval granting authority shall also have the powers to withdraw the apporval at any time. However, such withdrawal can be made only after giving a reasonable opportunity of showing cause against be proposed withdrawal to the concerned assessee. ***This amendment takes effect from 1st October 2009.***