

INDIA BUDGET, 2009

Analysis of important provisions

July 13, 2009 (Budget presented on 6th July'2009)

Doing common things, *Uncommonly well.*

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A Finance & Accounts outsourcing company

A. DIRECT TAX

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DIRECT TAX

1. Corporate tax



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Title	Section /Chapter	Changes proposed	Effective from
Carry forward of Minimum Alternative Tax (MAT) credit	115JAA (3A)	Limit for carry forward of MAT credit increased from 7 assessment years to 10 assessment years	Assessment Year 2010-11
MAT rate increased	115JB (1)	MAT's basic rate increased from 10% to 15%	Assessment Year 2010-11
Fringe Benefit Tax (FBT)	Chapter XII-H	FBT has been abolished. Advance FBT paid for the Quarter ending June'09 is expected to be set off against the Advance tax liability. A circular in this regard is expected to be issued by CBDT .	Assessment Year 2010-11
Limit of advance tax	208	Limit for payment of advance tax has been increased from Rs. 5,000 to Rs. 10,000	1st April'2009 Financial Year 2009-10 (with retrospective effect)
Wealth Tax exemption limit	Section 3 of the Wealth Tax Act, 1957	Exemption limit of Wealth Tax increased from Rs. 15 lacs to Rs. 30 lacs	Assessment Year 2010-11

2. Exemptions/Deductions



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Title	Section	Changes proposed	Effective from
Tax exemption to STPI & EOU Units	10A & 10B	Tax holiday period for STPI & EOU units has been raised by one more year. Now the 10 year holiday period shall be expiring on 31st March 2011 instead of 31 st March, 2010.	From the date of enactment of Finance (No.2) Bill'2009.
Weighted deduction in respect of Expenses on Scientific Research	35	The weighted deduction at the rate of 150% on expenditure on Scientific Research which was available to specific industries, now has been extended to all companies engaged in the business of manufacture or production of any article or thing falling outside the negative list (i.e. Schedule XI)	Assessment Year 2010-11
Deduction in respect voluntary contribution to Electoral Trust	80GGB	Any voluntary contribution made to an approved electoral trust shall be available as 100% deduction.	Assessment Year 2010-11

3. Tax deducted at source (TDS)



Title	Section	Changes proposed	Effective from
Payment to Contractors	194C	<ul style="list-style-type: none"> ▪ Old Section 194C has been substituted with a whole new Section 194C. ▪ Two rates of TDS shall be applicable: <ul style="list-style-type: none"> • if payee is an individual or HUF : 1% • other than individual or HUF : 2% ▪ No separate rate of tax for a sub contractor or on advertisement contracts ▪ No deduction of tax on payment to a Transport Contractor if it furnishes its PAN. ▪ Person making payment to a Transport Contractor and not deducting tax due to furnishing of PAN, shall be required to furnish such particulars and in with in such time to be prescribed by an Income Tax Authority. ▪ Definition of 'work' enlarged to include job work (manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer) ▪ However, if job work is done by using a material not purchased from the customer, then this transaction will not attract provisions of Section 194C. ▪ No Surcharge, Education Cess and Secondary and Higher Education Cess to be charged on the base rate of 1% & 2% 	1st October' 2009

Title	Section	Changes proposed	Effective from
Rent	194I	<ul style="list-style-type: none"> ▪ Old TDS rates under Section 194I have been completely revised and following rates shall be applicable: <ul style="list-style-type: none"> • payment for the use of any machinery, plant or equipment : 2% • payment for the use of any land, building, furniture or fittings : 10% ▪ Different rate of tax for payment of rent to an Individual or HUF and others has been removed. ▪ No Surcharge, Education Cess and Secondary and Higher Education Cess to be charged on the base rate of 2% & 10% 	1st October' 2009
No surcharge, Education Cess and Secondary and Higher Education Cess	All other Sections related to TDS	<ul style="list-style-type: none"> ▪ No Surcharge (SC), Education Cess (EC) and Secondary and Higher Education Cess (SHEC) to be charged on the base rate of TDS on payments made to any person resident in India (whether a company, firm or an individual) <i>except</i> TDS on salary where only EC and SHEC shall be charged. ▪ However, while making payments to a person other than resident in India, surcharge and cess need to be applied as below: <ul style="list-style-type: none"> • Payment to a Company outside India : SC @ 2.5% + EC + SHEC (<i>no change in any provisions related to this category</i>) • Payment to a person other than Company outside India : EC + SHEC (no surcharge to be applied here) 	From the date of enactment of Finance (No.2) Bill'2009.

Title	Section	Changes proposed	Effective from
Requirement of Permanent Account Number (PAN)	206AA	<ul style="list-style-type: none"> ▪ This is a new section and it supersedes all the provisions of Income Tax Act ▪ As per the provisions of this section, if any deductee fails to furnish his PAN to the deductor, then tax (TDS) shall be deducted at higher of the following rates: <ul style="list-style-type: none"> • at the rate specified in the Income Tax Act OR • at the rates in force i.e. the rate mentioned in the Finance Act OR • at the rate of 20% ▪ Further, sub section (5) of this Section also make it mandatory to quote the PAN of deductee in all the correspondence, bills and vouchers exchanged between deductor and deductee. ▪ This Section will also apply to payments being made to non-residents and where TDS is deductible. For example, TDS rate on a payment to be made to a non-resident is 10%. Now, if this non-resident is not having PAN in India, the person making payment to this non-resident shall be required to deduct TDS @ 20%. 	<p>1st April, 2010 Financial Year 2010-11</p>

Title	Section	Changes proposed
Applicability of Section 206AA on payments to Transport Contractor	194 C & 206AA	<ul style="list-style-type: none"> ▪ As per the provisions of Section 206AA, if any deductee fails to furnish his PAN to the deductor, then tax (TDS) shall be deducted at higher of the following rates: <ul style="list-style-type: none"> • at the rate specified in the Act OR • at the rates in force i.e. the rate mentioned in the Finance Act OR • at the rate of 20% ▪ In case of a Transport Contractor, if it furnishes his PAN, then TDS is not be deducted at all. However, if it does not furnish the PAN then it will be covered under Section 206AA and the TDS shall be deducted at 20%. ▪ However, up to 31st March,2010 if Transport Contractor does not furnish its PAN, then TDS shall be deducted @ 1% (if it is an individual or HUF) or 2% (if it is a firm or company) because Section 194C is applicable from 1st October,2009 and Section 206AA is applicable from 1st April'2010. In case of any default of PAN after 31st March'2010, the TDS shall be deducted @ 20%.

Title	Section	Changes proposed	Effective from
Periodicity of TDS & TCS return	200 (3) & 206(c)	<ul style="list-style-type: none"> ▪ At present, TDS & TCS return is required to be filed on Quarterly basis ▪ To provide the administrative flexibility in deciding the periodicity of TDS & TCS returns, it has been proposed to allow the government to prescribe the periodicity, forms and manner of filing of TDS & TCS return. ▪ It means the requirement of filing Quarterly return shall be only up to the Quarter ending 30th September and there after the returns need to be filed as per the newly prescribed periodicity, forms and manner of filing return. 	1st October' 2009
Processing of TDS returns	200A	<ul style="list-style-type: none"> ▪ This new Section has been proposed for computerized and centralized processing of TDS returns filed under Section 200. ▪ It is proposed to carry out following adjustments during computerized processing of TDS returns: <ol style="list-style-type: none"> i. any arithmetical error in the return ii. any incorrect claim, if it is apparent from the return (i.e. TDS rate charged wrongly) ▪ After carrying out above adjustments, an intimation will be sent to the deductor informing him of his tax liability or granting him the refund due. ▪ The intimation will be sent with in one year from the end of the Financial Year in which such TDS return was filed. 	1st April, 2010 Financial Year 2010-11

4. International Taxation



Title	Section	Changes proposed	Effective from
Adjustment in Arm Length Price	92 C (2)	<p>The existing 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.</p> <p>The above provision has been subject to conflicting interpretation by the assessee and the Income Tax Department.</p> <p>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.</p> <p>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.</p>	<p>1st October'2009</p> <p>It shall apply to all cases in which proceedings are pending before the Transfer Pricing Officer (TPO) on or after 1st October'2009.</p>

Title	Section	Changes proposed	Effective from
Alternate Dispute Resolution Mechanism	144C	<p>With a view to encourage the growth of foreign investment in India, a Alternate Dispute Resolution Mechanism (ADRM) is proposed to facilitates expeditious resolution of disputes on a fast track basis. The salient feature of the proposed ADRM are:</p> <ul style="list-style-type: none"> ▪ Dispute Resolution Panel (DRP) shall consist of three Chief Commissioner of Income tax (CIT) constituted by the CBDT. ▪ Foreign companies and cases involving Transfer Pricing disputes eligible for ADRM. ▪ Assessing officer (AO) is required to forward its draft assessment order to the assessee for acceptance or lodging an objection with in 30 days to the DRP. ▪ DRP has powers to confirm, reduce or enhance the adjustment but can not set aside any proposed variation. ▪ DRP directions to be binding on the AO. ▪ Time frame of 9 months prescribed for DRM to complete the proceedings. ▪ Order of the AO, consequent to the directions of DRP, can be appealed only before the ITAT and not before CIT(A). ▪ ADRM mandatory for the cases of eligible taxpayers. 	<p>1st October'2009</p>

Title	Section	Changes proposed	Effective from
Safe harbor rules	92CB	<p>To reduce the impact of judgmental errors in determining transfer price in the international transactions, it has been proposed to empower CBDT to formulate 'safe harbour' rules.</p> <p>'Safe harbour' has been defined by way of an <i>Explanation</i>. It means circumstances in which the income tax authorities shall accept the transfer price declared by the assessee.</p> <p>The rules may, for example, require taxpayers to establish transfer prices or results as per a specific information-reporting and record-maintenance provision with regard to controlled transactions.</p>	<p>1st April'2009</p> <p>Financial Year 2009-10</p> <p>(with retrospective effect)</p>

5. Procedural changes



Title	Section	Changes proposed	Effective from
Document Identification Number (DIN)	282B	<ul style="list-style-type: none"> To improve the standards of service and transparency in functioning of the Income Tax Department ('department') , a new Section 282B is proposed to be inserted to introduce a Computer based system of allotment and quoting of DIN on every document, notice, order, letter or any other correspondence issued or received by the department. If any document, notice, order, letter or any other correspondence issued or received by the department is not bearing a DIN, then the above documents shall be treated as invalid and deemed as never been issued or received by the department. Accordingly, w.e.f. 1st October'2010, please make sure to check DIN on all the documents received from the department and don't forget to ask for DIN on any document submitted to the department. 	1st October' 2010
Facility for electronic communication	282	<ul style="list-style-type: none"> Service of Notice by approved courier or electronic transmission to be considered valid. Further, CBDT to make rules regarding addresses (including electronic mail or electronic mail messages) to which such communication may be delivered or transmitted. 	1st October' 2009

6. Other Important changes



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Title	Section	Changes proposed	Effective from
Cash payment to a Transport Contractor	40A (3A)	Limit of cash payment of Rs. 20,000 has been increased to Rs. 35,000 only in case of payment to a Transport Contractor .	1st October' 2009
Scope of 'Perquisites' enlarged	17	On abolition of FBT, scope of 'perquisites' has been enlarged to include following: i. Value of any specified security or sweat equity shares as per related provisions. ii. Amount to an approved superannuation fund by the employer, exceeding Rs. 1 lac iii. Value of any other fringe benefit or amenity as may be prescribed CBDT is expected to come out with new rules shortly related to taxability of fringe benefits which were so far not taxable in the hands of employees.	Assessment Year 2010-11
'Manufacture' defined in the Income Tax Act	2 (29BA)	A number of tax concessions under the Income-tax Act are provided for encouraging manufacture of articles or things. However, the term "manufacture" has not been defined in the statute. Therefore, it has been the subject matter of dispute and resultant judicial review in a number of cases. (<i>....contd. in next page</i>)	Assessment Year 2009-10 (with retrospective effect)

Title	Section	Changes proposed	Effective from
		<p><i>(...contd. from previous page)</i></p> <p>In order to remove any kind of ambiguity which may still persist in this regard, it is proposed to insert a new clause (29BA) 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,—</p> <p>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</p> <p>b) bringing into existence of a new object or article or thing with a different chemical composition or integral structure.</p>	
Computation of profit of SEZ units	10AA	A 100 % deduction of profits in case of the units located in the SEZ is to be computed with reference to the total turnover of the undertaking instead of the total turnover of the assessee.	Assessment Year 2010-11

7. Personnel taxation



Title	Section /Chapter	Changes proposed	Effective from												
Base exemption limit raised	Part III of First Schedule	<p>Base exemption limit has been raised for each category of individual tax payers:</p> <table border="1"> <thead> <tr> <th>Limits for:</th> <th>To (Rs.)</th> <th>From (Rs.)</th> </tr> </thead> <tbody> <tr> <td>Resident Women (below 65 years)</td> <td>190,000</td> <td>180,000</td> </tr> <tr> <td>Resident Individuals (65 years and above)</td> <td>240,000</td> <td>225,000</td> </tr> <tr> <td>Other Individuals</td> <td>160,000</td> <td>150,000</td> </tr> </tbody> </table>	Limits for:	To (Rs.)	From (Rs.)	Resident Women (below 65 years)	190,000	180,000	Resident Individuals (65 years and above)	240,000	225,000	Other Individuals	160,000	150,000	Assessment Year 2010-11
Limits for:	To (Rs.)	From (Rs.)													
Resident Women (below 65 years)	190,000	180,000													
Resident Individuals (65 years and above)	240,000	225,000													
Other Individuals	160,000	150,000													
Surcharge removed	Part III of First Schedule	No surcharge shall be applied to any non-corporate tax payers	Assessment Year 2010-11												
Deduction in respect of Interest on loan taken for higher education	80E	With the objective of fostering human capital formation in India, it is proposed extend the scope of higher education to cover all fields of studies (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent.	Assessment Year 2010-11												

Title	Section /Chapter	Changes proposed	Effective from
Deduction in respect of Medical disability	80DD	The present limit of deduction under Section 80DD in respect of deduction for medical treatment of a dependent suffering from severe disability of Rs. 75,000 is proposed to be increased to Rs. 1,00,000.	Assessment Year 2010-11
Perquisites to be taxed in hands of employees	17	As a consequence of the abolishing of the FBT, it is proposed to restore the taxation of the fringe benefits as perquisites in the hands of the employees. The FBT withdrawal and consequent taxation of the individual employees will reduce the take home pay of most employees, unless the prescribed rules are liberal with this effect.	Assessment Year 2010-11



INDIRECT TAX

1. Service Tax



Title	Rule or Section	Changes proposed	Effective from
Authority for Advance Ruling		Authority for Advance Rulings notified for Income Tax Act, to act as the Authority for the purposes of customs, central excise and service tax.	To be notified
Service provider of both taxable and exempted services	Rule 6 (3) of CENVAT Credit Rules, 2004	Service provider of both taxable and exempted services opting not to maintain separate accounts of common inputs services, to pay an amount equal to 6 percent of the value of exempted services instead of 8 percent	7th July' 2009
CENVAT credit taken on input/capital goods fully written off	Rule 3 (5B) of CENVAT Credit Rules, 2004	<ul style="list-style-type: none"> The rules have been amended to provide that a service provider shall pay back the amount of credit taken on inputs or capital goods (before being put to use) which have been written off fully or where any provision to write off fully has been made in the books of account. Provided that if the said input or capital goods are subsequently used in the the provision of taxable services, the output service provider shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules. 	7th July' 2009

...contd. (Service Tax)



Title	Rule or Section	Changes proposed	Effective from
Work Contract Rules amended	Work Contract Rules, 2007	<p>The rules are modified to restrict benefit of optional composition scheme only to such works contracts where 'gross amount charged' for a works contract</p> <p>include:</p> <ul style="list-style-type: none">▪ Value of all goods used in or in relation to execution of works contract whether supplied under any other contract for consideration or otherwise;▪ Value of all services (including hire charges for machinery and tools) to be provided for the execution of a works contract. <p>The 'gross amount charged' excludes:</p> <ul style="list-style-type: none">▪ Value added tax (VAT) or Sales tax on transfer of property in goods involved;▪ Cost of machinery and tools used in execution of works contract <p>This amendment is not applicable to those works contracts which have commenced or for which any payment has been made (other than credit or debit to any account) on or before 7th July'2009.</p>	7th July' 2009

Title	Rule or Section	Changes proposed	Effective from
New scheme for refund of service tax to exporters of goods	Notification No. 17/2009 dated 7 th July'2009	<p>New scheme is in supersession of earlier scheme under Notification No. 41/2007 dated 6th October'2007.</p> <p>Key features of the new scheme include:</p> <ul style="list-style-type: none"> ▪ Exporters to file refund claim for each export shipment ▪ Self certification of documents by exporters where the total amount of refund claim does not exceeds 0.25 % of FOB value of exports. ▪ Certification of documents by auditor under the Companies Act or Income Tax Act where the total amount of refund claim exceeds 0.25% of FOB value of exports. ▪ Time period for filing the refund claim extended to one year from the export of goods. ▪ Exemption from service tax under reverse charge to exporters for 'transport of goods by road service' and 'commission paid to foreign agents (exemption restricted to service tax amount up to 1% of FOB value for commission) 	7th July' 2009

...contd. (Service Tax)



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Title	Rule or Section	Changes proposed	Effective from
New services /amendments in existing services	65 (105) (various sub clauses)	A. Legal consultancy services but excluding: <ul style="list-style-type: none">Services provided or received by an individual (i.e. If a Lawyer providing the legal consultancy service is an Individual or the service recipient is an Individual)Appearance before any court, tribunal or authority B. Service provided in relation to transport of coastal goods, goods through national waterway or inland water C. Service provided by government railways and transport of goods whether in containers or otherwise.	To be notified after enactment of Finance (No.2) Bill'2009.

2. Central Excise



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Title	Rule or Section	Changes proposed	Effective from
Definition of 'Input' changed	Rule 2 of Central Excise rules, 2002	CENVAT credit on cement, steel and other metal items etc. used for the construction of a factory shed, building or support structure of capital goods excluded from the definition of 'inputs' and hence CENVAT credit is not available	7 th July' 2009
Manufacturer of both dutiable and exempted goods	Rule 6 (3) of CENVAT Credit Rules, 2004	Manufacturer of both dutiable and exempted goods opting not to maintain separate accounts of common inputs, to pay an amount equal to 5 percent of the value of exempted goods instead of 10 percent	7 th July' 2009
Exemption from Excise duty on some part of packaged software	Notification No. 22/2009-Central Excise	Partial exemption from excise duty to such value of packaged or canned software attributable to transfer of right to use for commercial exploitation subject to certain conditions. Similarly with effect from July 07, 2009, packaged software or canned software has been exempted from CVD on the value representing the consideration for transfer of the right to use such software, subject to specified conditions	7 th July' 2009

About us

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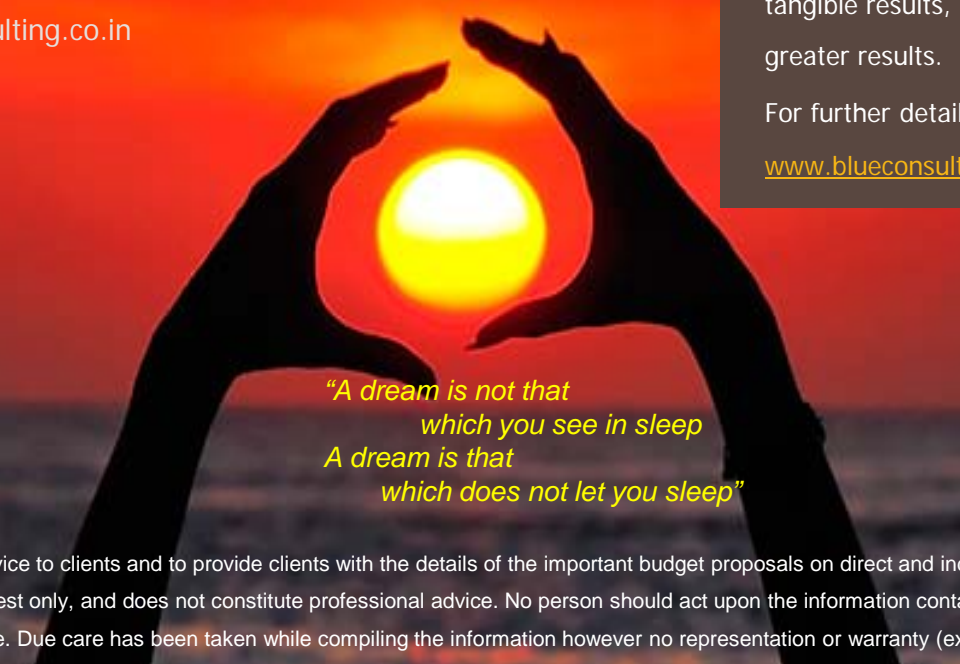
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*"A dream is not that
which you see in sleep
A dream is that
which does not let you sleep"*

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