

# Challenging Agenda\*

India Budget

# About PricewaterhouseCoopers

PricewaterhouseCoopers Pvt. Ltd. ([www.pwc.com/india](http://www.pwc.com/india)) provides industry - focused tax and advisory services to build public trust and enhance value for its clients and their stakeholders. PwC professionals work collaboratively using connected thinking to develop fresh perspectives and practical advice.

Complementing our depth of industry expertise and breadth of skills is our sound knowledge of the local business environment in India.

PricewaterhouseCoopers is committed to working with our clients to deliver the solutions that help them take on the challenges of the ever-changing business environment.

PwC has offices in Ahmedabad, Bangalore, Bhubaneswar, Chennai, Delhi NCR, Hyderabad, Kolkata, Mumbai and Pune.

PricewaterhouseCoopers has taken all reasonable steps to ensure that the information contained herein has been obtained from reliable sources and that this publication is accurate and authoritative in all respects. However, this publication is not intended to give legal, tax, accounting or other professional advice. No reader should act on the basis of any information contained in this publication without considering and, if necessary, taking appropriate advice upon their own particular circumstances. If such advice or other expert assistance is required, the services of a competent professional person should be sought.

This publication (and any extract from it) may not be copied, paraphrased, reproduced, or distributed in any manner or form, whether by photocopying, electronically, by internet, within another document or otherwise, without the prior written permission of PricewaterhouseCoopers. Further, any quotation, citation, or attribution of this publication, or any extract from it, is strictly prohibited without PricewaterhouseCoopers' prior written permission.

# Contents

Introduction -----	2
Chapter 1	
Overview -----	4
Chapter 2	
Economic Performance 2008-09 ----	7
Chapter 3	
Recent Policy Measures -----	10
Chapter 4	
Key Legislative Amendments -----	20
Chapter 5	
Budget Financials-----	30
Chapter 6	
Direct Taxes -----	33
Chapter 7	
Indirect Taxes -----	40
Chapter 8	
In the Pipeline -----	48
Abbreviations -----	52

# Introduction



The UPA's victory in the general elections generated immense optimism for the country's economic outlook. It is widely expected that sans its dependence on Leftist support, the Government would advance faster and decisively on the course of economic reforms. Living upto these expectations, the Ministry of Finance released the Economic Survey on July 2nd setting out a very ambitious reforms agenda for the Government. Subsequently, the Union Budget 2009 was announced by the Finance Minister ("FM") on July 6th, treading a relatively cautious though solid path for social upliftment, infrastructure development and tax administration reforms.

This Budget has been prepared in the backdrop of global recession and the uncertainties of its recoveries, especially when the country's GDP growth has decelerated to 6.7% from the average 8.8% seen over the previous four years. The FM has set a target of achieving a sustained annual growth rate of 9% with a medium term strategy, clearly setting out that this challenging task cannot be achieved in a single Budget. A few notable steps taken in this direction in this Budget are:

- Increased spending of upto 144% on the National Rural Employment Guarantee Scheme that guarantees 100 days of work every year to each poor family;
- Enactment of the promised Food Security Act for providing an assured quantity of food at reduced rates to the poor;
- Additional outlay for the accelerated irrigation benefit program and extension of the debt waiver scheme towards maintaining agricultural growth at 4%;
- Increased infrastructure spending to 9% of GDP by 2014 supported by a 'takeout financing' scheme for facilitating incremental lending by India Infrastructure Finance Company;
- Setting up of an expert group to advise on a viable and sustainable pricing system for petroleum products, to bring it in line with the global markets;

Though the FM recognized the importance of foreign capital for sustainable growth as well as the creation of fiscal space through fresh focus on disinvestments, he stopped short of spelling out definite plans / measures.

The introduction of the GST will end a series of distortionary taxes both at the Central and State level. The Finance Minister's reiteration of the Government's intent to introduce GST by April 1, 2010 is ambitious but welcome.

As a big ticket tax reform measure, the FM announced that the draft of the new Direct Taxes Code would be released for public comments within 45 days. While keeping the corporate tax rate unchanged, the FM introduced measures to make the direct tax regime more efficient and hassle free, such as introduction of alternative dispute resolution mechanism & safe harbour rules for transfer pricing, presumptive taxation for small businesses and abolition of fringe benefit tax.

FM's repeated assertion for a simple and transparent tax collection mechanism is music to the ears. To quote from his speech, *"tax collectors are like honey bees collecting nectar from the flowers without disturbing them but spreading their pollen so that all flowers can thrive and bear fruit"*. The FM has laid out his vision; we hope that the Tax Administration walks his talk!



# 1

## Overview



## Direct Tax

The proposals in the Finance Bill 2009 have major elements relating to lowering the burden on individual tax, enhancing research and development, providing alternate dispute resolution mechanism, streamlining the tax withholding provisions and introducing investment linked tax incentive schemes.

### Tax Rates

- New Direct Tax code to be introduced in 45 days for public debate.
- Basic exemption limit for individuals, including resident woman, is proposed to be increased by Rs. 10,000. For senior citizens resident of India, the exemption limit is proposed to be raised by Rs. 15,000.
- Maximum tax rate for individual and firm reduced from 33.99% to 30.90% on account of removal of surcharge.
- No change in the corporate tax rates.
- The Fringe Benefit Tax Scheme introduced in 2005 is proposed to be abolished. It is also proposed to restore the taxation of fringe benefits including employee stock options as perquisites in the hands of the employees.
- The rate of minimum alternate tax is proposed to be increased from 10% to 15%.
- The threshold limit for payment of Wealth Tax proposed to be increased from Rs. 15,00,000 to Rs.30,00,000.
- Commodities Transaction Tax is proposed to be abolished.

### Business Income

- The current weighted deduction available for in house research and development activities is proposed to be extended to all manufacturers except for items specified in Eleventh Schedule of the Act.
- A new section is proposed to allow 100% deduction of capital expenditure incurred (other than on land, goodwill and financial instrument) for the purposes of following specified businesses:
  - setting up and operating a cold chain facility or a warehouse facility for storage of agriculture produce
  - laying and operating a cross country natural gas or crude or petroleum oil pipeline network for distribution.

### Exemption and Deductions

- It is proposed to extend the tax benefit available under Section 10A and 10B of the Income Tax Act to AY 2011-12.
- It is proposed to extend sunset clause for tax benefit available in respect of activity of generation, transmission or distribution of power to 31.3.2011.
- In respect of deduction available for business of commercial production of mineral oil and gas, private sector entrepreneurs are being allowed further period of 3 years i.e. upto 31st March 2012 to begin refining of mineral oil and avail tax benefit.
- Tax benefit available in respect of profits arising from commercial production and refining of mineral oil are proposed to be extended to natural gas for blocks licensed

under NELP VIII and which begin commercial production on or after 1st April 2009.

### Transfer Pricing/International Tax

- With a view to reduce disputes in transfer pricing, CBDT is proposed to be empowered to formulate safe harbour rules.
- Section 92C is proposed to be amended to provide that the benefit of 5% range would be available only where the variation between arm's length price and transfer price of assessee does not exceed five percent of the transfer price.
- An alternative dispute resolution mechanism is proposed to be introduced where in Foreign Companies and Transfer Pricing related disputes can be referred to the Dispute Resolution Panel which after considering all evidence/objections will issue binding directions to the Assessing Officer within 9 months. Orders passed by the Assessing officer on the basis of directions of the Dispute Resolution Panel can be directly appealed before the Tribunal.

### Other Income

- In respect of individuals and HUF, it is proposed to extend the scope of Other Income to include value of moveable/immovable property received without consideration or for inadequate consideration.

### Tax Assessments

- A retrospective amendment is proposed to be inserted to clarify that in case of reassessment proceedings, the tax officers will have power to assess or reassess income in respect of all the issues whether or not such issues have been included in the reasons given at the time of reopening of any assessment.

### Firms

- Taxation scheme for LLP prescribed on the same lines as currently applicable for Partnership Firms, i.e. tax will be levied on LLP and Partners will be exempt from tax.

### Tax Deduction at Source

- Tax deduction rates are proposed to be simplified in relation to payment to contractors. In case of composite contracts, no tax deduction on the value of material, if such value is separately mentioned in the invoice.
- Reduction in tax withholding rate proposed on payments towards rent.
- Failure to furnish PAN to the deductor to attract tax withholding at higher rates i.e. higher of the rate specified in the relevant provision, rates in force or 20%.

### Others

- In a major change on tax administration, it is proposed that every notice, order, letter or any correspondence issued by an income tax authority to any other person shall have a computer generated document identification number, in absence of which such document shall be treated as invalid and shall be deemed never to have been issued. Similar requirement is proposed in respect of document received by an income tax authority.
- It is also proposed that the amount received by an assessee from NPS shall not be taxed, if such amount is used for purchasing an annuity plan in the same year.



## Indirect Tax

### GST

The Finance Minister has reaffirmed the commitment of the Central Government in accelerating the introduction of the GST by April 01, 2010 and has commended the work done by the Empowered Committee of State Finance Ministers in preparing the design of the dual GST. The dual GST will comprise the Central GST and the State GST and that the Centre and State will each legislate, levy and administer the Central GST and the State GST respectively.

The implementation of GST by April 1, 2010 is a welcome move which will simplify the indirect tax regime prevalent in India and will help to mitigate, if not eliminate the issues on double taxation of various transactions as both supply of goods and provision of services. However, as yet there is no clear roadmap as to how the tax is proposed to be implemented within such a short span of time given that there are several challenges to its successful implementation.

### Customs

The peak rate of Basic Customs Duty (BCD) for all non-agricultural products has been maintained at 10%.

The anomaly in the taxation of the licensing of packaged software or canned software under customs and service tax has been removed by way of an exemption to such software from countervailing duty (CVD) on the value representing the consideration for transfer of right to use software, subject to specified conditions.

### CENVAT

The general CENVAT rate of 8% has been retained. The duty rate on items currently attracting 4% has been increased to 8% with some major exceptions. These changes reflect a step towards the convergence of the CENVAT rate to 8%.

### Service Tax

The rate of service tax continues at 10%. The Government has broadened the service tax base by introducing several new categories of services and by expanding the scope of certain existing services.

The Government has announced some service specific exemptions and rationalized the refund procedure as regards service tax pertaining to input services for exporter of goods.



# 2

## Economic Performance 2008-09





### Key indicators

Particulars	2005-06	2006-07	2007-08	2008-09
Growth in %				
- GDP (factor cost, constant prices)	9.5	9.7	9.0	6.7 RE
- Agricultural & allied sectors (at current market prices)	5.8	4.0	4.9	1.6
- Index of industrial production	8.2	11.6	8.5	*2.6
Imports (at current prices, in USD billion)	149.2	185.7	251	287.14
Exports (at current prices, in USD billion)	103.1	126.3	162.84	168.7
Inflation in % (in terms of WPI)	4.4	5.4	4.7	8.4
Forex reserves (in USD billion)@	151.6	199.2	309.7	252
Exchange rate (USD1 = INR) (annual average)	44.27	45.28	40.26	45.99

RE Revised Estimates, \* for 2008-09, the figures are the third advance estimates, @ as of March, 31, 2009

- The Economic Survey 2008-09 (Survey) released by the Ministry of Finance, Government of India, on July, 2, 2009 reports that as a fallout of the global financial crisis on the Indian economy, the economic growth decelerated in 2008-09 to 6.7% from the average growth rate of 8.8% during 2003-04 and 2007-08.
- The slowdown in growth of GDP is more clearly visible from the growth rate over successive quarters during 2008-09. In the first two quarters, the GDP growth was 7.8% and 7.7% respectively. The growth fell to 5.8% during Q3 and Q4 – a sharp decline compared to 9.3% and 8.6% in the corresponding quarter of previous FY.
- The deceleration of growth during 2008-09 was spread across all sectors except mining and quarrying, community, social and personal services. Agriculture and allied sector growth decelerated from 4.9% in 2007-08 to 1.6% in 2008-09 mainly on account of the high base effect of 2007-08 and due to a fall in the production of non-food crops including oilseeds, cotton, sugarcane and jute.
- Though the growth of the industrial sector started slowing down in H1 of 2007-08, the overall growth during that year remained as high as 8.5%. In contrast, the index of industrial production for 2008-09 points towards a sharp slowdown with growth being placed at 2.4%
- The growth in production sectors, especially manufacturing, was adversely affected by the impact of the global recession and associated factors. The electricity sector continued to be hampered by capacity constraints and the availability of coal, particularly during the first half of the year. The manufacturing, electricity and construction sectors decelerated to 2.4%, 3.4% and 7.2% respectively as against 8.2%, 5.3% and 10.1% during the previous FY.
- The per capita income in 2008-09, measured in terms of GDP at constant 1999-2000 market prices, at INR 31,278, increased 4.61% from INR 29,901 during 2007-08.
- Before the onset of the financial crisis, the main concern of the policymakers was excessive capital inflows, which increased from 3.1% of the GDP in 2005-06 to 9.3% in 2007-08. The surge in the supply of foreign currency in the

domestic market led to a rise in the price of the rupee. From 46.54 per US dollar in August 2006, the Rupee appreciated to 39.37 per US dollar in January 2008. The global financial crisis however reversed the rupee appreciation. During 2008-09, the nominal value of the rupee declined from 40.36 per US dollar in March 2008 to 51.23 per US dollar in March 2009. With signs of recovery and return of FII flows after March 2009, rupee has again been strengthening against the US dollar.

- While the pre-financial crisis surge in inflows led to increase in foreign exchange reserves, it also contributed to monetary expansion, which fueled liquidity growth. The outflow of foreign exchange, as a fallout of the global financial crisis, also meant tightening of liquidity situation in the economy.
- Following this trend, coupled with a global cost push on account of rising commodity prices, a noteworthy development during the year was a sharp rise in the WPI inflation followed by an equally sharp fall, with the WPI falling to unprecedented level to close to zero per cent by March 2009. However, there has been a wide variation in the constituents of the Index, with WPI Food Index showing year-on-year inflation of 6.8% at the same point of time, which has been a cause for concern. The average WPI inflation for 2008-09 was 8.4% as against 4.7% in 2007-08.
- A notable feature of the Indian economy since 2002-03 has been the rising trend in the gross domestic capital formation. Gross capital formation increased from 25.4% of GDP in 2002-03 increased to 39.3% in 2007-08. Much of this increase is attributable to a rise in the rate of investment by the corporate sector on account of transformation in the investment climate, coupled with an optimistic outlook for the growth prospects for the Indian economy.
- The gross domestic savings as a percentage of GDP at current market prices stood at 37.9% in 2007-08 as compared to 30% in 2003-04. Private sector savings dominated the total savings of 2007-08 and were at 33.3% of GDP. Of this, the household sector savings was 24.5% of the GDP.
- The BoP situation remained resilient during 2008-09. Higher private transfers and software earnings and increase in non-resident deposit flows and foreign direct investment, together with lower crude oil prices and decline in imports, muted the overall impact on BoP.
- During 2008-09, the growth in exports was robust till August 2008. However, due to the recessionary trends in the developed markets where demand had plummeted, in September 2008, export growth declined sharply and turned negative in October 2008, remaining negative till the end of the FY. The growth in merchandise exports during 2008-09 was 3.6% in US dollar terms and 16.9% in rupee terms (compared to 28.9% and 14.7% respectively in 2007-08).
- Import growth started declining from October 2008 and was negative over the period January to March 2009. For the year as a whole, the overall import growth was subdued at 14.4% in US dollar terms and 29% in rupee terms. The trade deficit increased from US dollar 88.5 billion (as per customs data) in 2007-08 to US dollar 119.1 billion in 2008-09.

- The Survey notes that despite the global financial crisis, India has still registered a growth rate of 6.7%. The economy continues to face wide-ranging challenges – from improving its social and physical infrastructure to enhancing the productivity in agriculture and industry and addressing environmental concerns. Meeting these challenges will be critical for improving India's social and human development indicators and the quality of life.
- At the same time, the Indian economy has shock absorbers that will facilitate early revival of growth. India has a strong banking sector – the banks are financially sound and well capitalized. The foreign exchange position remains comfortable and the external debt position has been in the comfort zone. The rate of inflation has since decreased and provides a degree of comfort on the cost side for the production sectors. Agriculture and rural demand continue to be strong and agriculture production prospects are normal.

---

### Key recommendations by the survey

- Restore the Centre's fiscal deficit to the FRBM target to 3% of GDP at the earliest; examine the possibility of a new target of zero fiscal deficit
  - Set disinvestment target at Rs 250 billion per year; complete the process of selling 5-10% of profitable non-navratnas
  - Review customs duty exemptions and move to a uniform duty structure to eliminate inverted duties
  - Private entry into coal mining
  - Amendment of The Atomic Act to permit private corporate investment in nuclear power
  - The Survey makes several recommendations on foreign direct investment policy –
    - Consider FDI up to 49% in atomic energy
    - Increase FDI in insurance to 49%. In addition, consider allowing 100% foreign equity in a special category of insurance companies that provide all types of insurance (eg. health, weather) to rural residents and for all agricultural related activities
    - Permit FDI in multi-format retail, starting with food retailing.
    - Raise FDI limit in defence industries to 49% (from the current 26%), allow up to 100% FDI on a case by case basis in high technology, strategic defence goods, services and systems that can help eliminate import dependence.
-

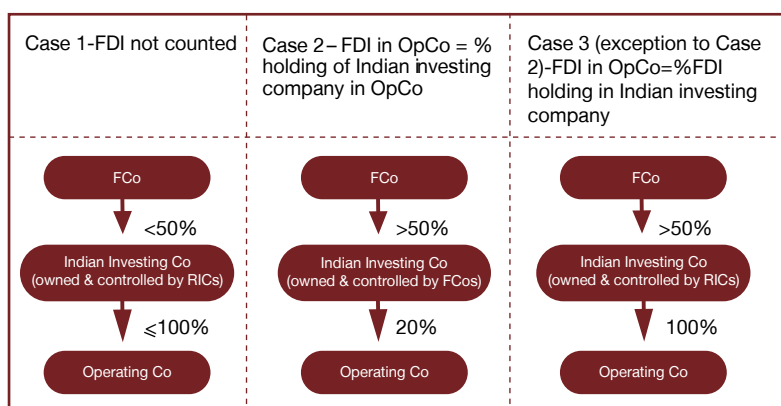
# 3

## Recent Policy Measures



## Inbound Investment

- In an attempt to make FDI norms consistent and transparent, the DIPP through Press Notes 2, 3 and 4 of 2009, issued guidelines for computation of foreign holding in Indian companies, linking approvals to the concept of control for the first time.
- Press Note 2 prescribes the methodology for computing the total foreign investment wherein:
  - All investment directly by a non-resident entity into the Indian operating company will be counted towards foreign investment.
  - Indirect foreign investment shall include all types of foreign investment in the Indian investing company, namely FDI, NRIs, portfolio investment by FII / NRIs, ADRs / GDRs, FCCBs, Convertible Preference Shares / Convertible Debentures, FVCIs. NRI investments made on non-repatriation basis will not be counted as FDI for this purpose.
  - Calculation of indirect foreign investment in Indian operating companies will be as illustrated in the following charts:
- Press note 3 (2009) prescribes prior approval from FIPB for transfer of ownership or control from RICs to non residents (directly or through an Indian company owned or controlled by non residents) in sectors / activities which either have a FDI cap or require prior FIPB approval.
- The guiding principle of Press Note 4 is that downstream investments by companies "owned or controlled" by non resident entities would require to follow the same norms as direct investment. While prior approval from FIPB will be required for FDI in pure investing companies (irrespective of quantum of FDI), FDI in operating cum investing companies, will only need to adhere to sectoral FDI norms.
- Foreign investment in Credit information companies ("CICs") permitted upto 49%
  - Investment by FIIs permitted up to 24% (within the overall limit of 49%) only in listed CICs, subject to certain conditions
    - Prior approval of the Government and regulatory clearance from RBI required
    - Foreign investment subject to the Credit Information Companies (Regulation) Act, 2005



- For the purposes of above mentioned computation, an Indian investing company will be deemed to be:
  - owned by RICs if RICs beneficially own more than 50% of the equity interest in the Indian investing company, either directly or through Indian companies.
  - controlled by RICs if they have the right to appoint majority of Directors.
- In I&B and defence sectors where the sectoral cap is less than 49%, the company will need to be owned and controlled ultimately by RICs either directly or through Indian companies. Further, the largest Indian shareholder will need to hold at least 51% of the issued equity capital, excluding equity held by public sector banks and public financial institutions.
- Methodology for computation of foreign investment does not apply to sectors which are governed specifically by a separate statute such as insurance sector.
- Composite foreign investment (FDI + FII) permitted up to 49% with prior FIPB approval in Commodity exchanges
  - Maximum FDI permitted upto 26%
  - Maximum FII permitted upto 23%
  - FII can purchase only in secondary market
  - 5% equity limit by each foreign investor / entity, including persons acting in concert.
- FDI upto 100% under the automatic route has been permitted, both for setting up and in established industrial parks. Press Note 2 (2005) conditionalities would not be applicable provided the following conditions are met:
  - Industrial Park to comprise of a minimum of 10 units. No single unit to occupy more than 50% of the allocable area
  - Minimum 66% of the total allocable area to be allotted for industrial activity as specifically defined.

- FDI policy in Civil Aviation sector has been revised through Press note 4 (2008) as under:

Activity	FDI Cap (%) <sup>*</sup>	Approval/ Automatic Route	Conditions
Domestic Scheduled Passenger Airlines	49	Automatic	No direct or indirect participation by foreign airlines
Non Scheduled airlines and Chartered airlines	74	Automatic	No direct or indirect participation by foreign airlines
Cargo airlines	74	Automatic	Foreign Airlines allowed to participate in the equity
Ground Handling Services	74	Automatic	Subject to sectoral regulations and security clearance
Maintenance and repair organizations, flying training institutes and technical training institutions	100	Automatic	
Helicopter services / seaplane services requiring DGCA approval	100	Automatic	Foreign Airlines allowed to participate in the equity
Airports			
- Greenfield	100	Automatic	
- Existing	100	Approval beyond 74%	

*\*NRI investment up to 100% under automatic route in all the above.*

- FDI Policy for the Petroleum & Natural Gas Sector has been rationalized as under:
  - Deletion of the condition of compulsory divestment of up to 26% equity within 5 years for actual trading and marketing of petroleum products.
  - FDI allowed up to 49% (earlier 26%) with prior FIPB approval in petroleum refining by PSUs without involving any divestment of dilution of domestic equity in the existing PSUs.
- FDI upto 100% allowed with prior Government approval in mining and mineral separation of titanium bearing minerals & ores, its value addition and integrated activities subject to sectoral regulations and the Mines and Minerals (Development and Regulation Act 1957). FDI for separation of titanium bearing minerals & ores will be subject to additional conditions.
- Comprehensive FDI policy was announced through Press Note 7 (2008). In the NBFC sector, “Credit Reference Agencies” was removed from the list of NBFC activities wherein FDI is permitted.
- Changes have been notified in the reporting requirements and KYC norms for issuance of shares and convertible debentures as well as for transfer from a resident to a non-resident / non-resident Indian and vice versa.
- Indian companies in the energy and natural resources sectors such as oil, gas, coal and mineral ores have been permitted to invest in excess of 400% of their net worth with prior approval of RBI.
- In May 2007 specified PSUs were permitted to invest in overseas unincorporated entities in oil and gas sector (duly approved by the Government of India) without any investment limits. In June 2008 this facility has been extended to other Indian entities provided the proposal has been approved by the competent authority and investment in excess of 400% of net worth requires prior RBI approval.
- Indian parties now need to approach RBI for capitalization of export proceeds only in cases where exports remain outstanding beyond the prescribed period of realization (earlier 6 months).
- Registered Trusts and Societies engaged in manufacturing / educational sector and those which have set up hospital(s) in India are now permitted to make investment in the same sector(s) in a JV or WoS outside India, with the prior approval of the RBI subject to satisfaction of certain eligibility criteria.
- Share certificates pertaining to the overseas investment or any other document as an evidence of investment in the foreign entity, no longer need to be submitted to RBI. These documents shall, henceforth, be submitted to and retained by the AD who would be required to monitor the receipt of such documents and satisfy themselves about the bonafide.

## Outbound Investment

## External Commercial Borrowings (ECB)

- ECB guidelines have been revised to allow ECB up to USD 500 million per borrower per financial year for Rupee expenditure and / or foreign currency expenditure for permissible end - uses under the Automatic Route for infrastructure and industrial sector. The permissible borrower and end use requirements have been revised as under:
  - Definition of infrastructure sector has been expanded to include Mining, exploration and refining.
  - Corporates in the Hotels, Hospitals and Software sectors have been allowed to avail of ECB up to USD 100 million per financial year, under the Automatic Route (earlier not permitted), for foreign currency and / or Rupee capital expenditure for permissible end-use (except for land acquisition).
  - Payment for obtaining license/permit for 3G Spectrum now considered as eligible end - use.
  - 'Development of Integrated Township' re-recognized as a permissible end-use upto Dec 31, 2009 but only under the approval route (earlier derecognized in May 2007)
  - SEZ developers have now been allowed to avail of ECB under the approval route for providing infrastructure facilities as defined in the ECB Policy within the SEZ. However, ECB shall not be permissible for development of integrated Township & commercial real estate within the SEZ
- Revised 'all-in-cost' ceilings (applicable to ECBs under automatic as well as approval route)
  - 300bps (earlier 150bps) over 6 month LIBOR for ECBs with average maturity period between 3-5 years:
  - 500bps (earlier 250bps) over 6 month LIBOR for ECBs with average maturity period greater than 5 years.
  - Proposals for ECB beyond prescribed all-in-cost ceilings can approach RBI under the approval route (this relaxation will be reviewed in December 2009).
- It has been clarified that
  - the existing guidelines on trade credit, allowing companies including those in the services sector, to avail trade credit up to USD 20 million per import of capital goods, shall continue.
  - corporates which have violated the ECB policy and are under investigation by RBI and/or directorate of enforcement will not be allowed to access the automatic route.
- Upto October 2008, ECB proceeds were required to be kept off-shore until actual requirement in India. Flexibility has now been provided to also keep the proceeds with overseas branches / subsidiaries of Indian banks abroad or to remit these funds to India for credit to the borrowers' INR accounts with AD Category I banks in India, pending utilization for permissible end-uses.
- Subject to conditions, AD Category - I banks have been allowed to convey 'no objection' under FEMA for
  - creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees in favour of overseas lender / security trustee, to secure the ECB to be raised by the borrower;
  - issue of corporate guarantee for operating lease in respect of import of aircraft / aircraft engine / helicopter.

## Foreign Currency Convertible Bonds (FCCBs)

- Indian companies are now permitted to buyback FCCBs up to USD 100 million of the redemption value per company, out of internal accruals, with RBI approval (earlier allowed upto USD 50 million), subject to specified minimum discounts of 25%/ 35%/ 50% of book value for redemption value up to USD 50 million/75 million/100 million, respectively. The entire procedure of buyback should be completed by December 31, 2009.

## Insurance

- In line with the international practice, IRDA released a memorandum on April 4, 2008 permitting Corporate Houses to promote insurance broking company while owning insurance entities. IRDA also laid down the norms to be complied with by the promoter, insurer and broker entity of the same Group.
- With a view to enhancing the flow of insurance funds to meet the needs of infrastructure financing and keeping policyholders' interest in view, IRDA vide circular dated December 26, 2008 has relaxed the requirements relating to exposure limits applicable to investments (in both debt and equity segment) by insurance companies in public limited companies engaged in Infrastructure Sector and Housing Sector.
- IRDA vide circular dated January 21, 2009 has issued revised guidelines for opening of representative/ liaison offices overseas by an Indian insurance company registered with IRDA, specifying eligibility criteria, conditions to be complied with, reporting requirements, etc.
- IRDA vide Press release dated February 20, 2009 has clarified that the manner of calculation of foreign investment limit shall continue to be governed by the provisions of the relevant Insurance Laws and Regulations and that Press Note No. 2 (2009 Series) dated February 13, 2009 issued by DIPP excludes the insurance sector from its purview.

## Mutual Funds

- SEBI has now decided to allow mutual funds to sell government securities contracted for purchase in DVP III mode for government securities market in accordance with the guidelines issued by Reserve Bank of India in this regard. This will put mutual funds at par with other market participants like Banks, Primary Dealers and Insurance Companies as they can now go in for the net settlement of government securities transactions.

- In consultation with the Government of India and the RBI the aggregate ceiling for overseas investment by Mutual Funds registered with SEBI has been enhanced to USD 7 billion from USD 5 billion. The existing facility to allow a limited number of qualified Indian Mutual Funds to invest cumulatively up to USD 1 billion in overseas Exchange Traded Funds, as may be permitted by SEBI, shall continue.
- SEBI permitted existing mutual fund schemes to engage in short selling of securities as well as lending and borrowing of securities after making additional disclosures including risk factors in the Scheme Information Document
- SEBI mandated that units of a close ended scheme (except equity linked savings schemes) to be compulsorily listed. Trustees have to ensure that before launch of the scheme the in-principal approval for listing is obtained from the stock exchange(s) and also appropriate disclosures are made in the Scheme Information Document. Units of a close ended scheme (other than those of an equity linked savings scheme) launched on or after the commencement of SEBI (Mutual Funds) (Amendment) Regulations, 2009 shall not be repurchased before the end of maturity period of such scheme.
- SEBI decided that Mutual Funds should not offer any indicative portfolio and indicative yield as the same may be misleading to the investors.
- In order to enhance the transparency of portfolio of debt oriented close-ended and interval schemes/plans, SEBI has made it mandatory for the Asset Management Companies to disclose the portfolio of such schemes in the prescribed format on a monthly basis on their respective websites.
- SEBI clarified that mutual funds are permitted to invest in Indian Depositary Receipts (IDRs) as defined in the Companies (Issue of Indian Depositary Receipts) Rules, 2004 subject to compliance with SEBI (Mutual Funds) Regulations, 1996 and guidelines issued thereunder, specifically investment restrictions as specified in the Seventh Schedule of the Regulations.
- With a view to ensure that the value of debt securities reflects the current market scenario in calculation of NAV, SEBI has amended the discretionary mark up and mark down levels.
- SEBI enhanced the minimum net worth requirement for Portfolio Managers from existing INR 5 million to INR 20 million.

Further, the Portfolio Managers should not float a scheme or pool the resources of the client in a way which is akin to mutual fund activity. They would be required to keep assets of each client separately and not in a pooled manner.

- SEBI, in its board meeting on June 18, 2009, decided that there shall be no entry load for the existing or new schemes of Mutual Fund. Further, the upfront commission to distributors shall be paid by the investor to the distributor directly and also the distributors shall disclose the commission received by them for different schemes/ mutual funds.

SEBI is likely to issue a separate communique on the effective date of the abovementioned decisions.

## Broking

- SEBI, vide its Notification dated August 11, 2008, has amended the Stock Brokers Regulations to provide for the introduction of currency derivatives segment on the stock exchange.
- Stock brokers/trading members/clearing members are now required to get a complete internal audit undertaken on a half yearly basis by chartered accountants, company secretaries or cost and management accountants who are in practice and who do not have any conflict of interest.

## NBFCs

- RBI has deferred the implementation of increase in CRAR to 12% and 15% from March 31, 2009 and March 31, 2010, respectively, to March 31, 2010 and March 31, 2011, respectively.
- RBI has amended its earlier directions to consider investments in fixed deposits of SIDBI and NABARD for meeting the requirements of section 45IB of RBI Act (maintenance of percentage of assets). Further, RBI has also issued guidelines for specifying the aggregate and individual limits for the said prescribed investments.
- Non-deposit taking systemically important non-banking financial companies ('NBFC-ND-SIs')
  - RBI has clarified that the regulatory requirements for NBFC-ND-SI shall be applicable to NBFCs once it reaches an asset size of INR 100 crore and above despite not having such assets as on the date of last balance sheet. Further, the NBFC-ND-SI regulations would continue to apply even in case the asset size of the NBFC falls below INR 100 crore in a given month due to temporary fluctuations and not due to actual downsizing.
  - RBI has recently allowed all NBFC-ND-SIs to augment their capital funds by issue of perpetual debt instruments in the form of bonds and debentures, in accordance with the prescribed guidelines. RBI has also permitted NBFC-ND-SIs to raise short-term overseas loans under the approval route, subject to certain prescribed conditions.
  - RBI has introduced reporting for NBFC-ND-SI in prescribed format, in view of the possibilities of leveraged investments and asset liability mismatches resulting from use of short-term sources to fund NBFC activities. NBFC-ND-SI's are required to provide additional disclosures in their Balance sheet relating to capital risk assets ratio, exposure to real estate sector (direct and indirect) and maturity pattern of assets and liabilities.
- NBFCs are permitted to use ECBs for a minimum average maturity period of 5 years to finance import of infrastructure equipments for leasing to infrastructure projects in India. In January 2009 RBI permitted NBFCs, which are exclusively involved in such financing activities, for on-lending to borrowers in the infrastructure sector, under the Approval Route subject to prescribed terms and conditions.



- Additional reporting requirements for NBFCs
  - NBFCs with asset size of INR 500 million and above but less than INR 1 billion now need to file quarterly return on important financial parameters.
  - Statutory auditors are now required to undertake separate reporting to Board of Directors of the NBFCs (in addition to auditors' report u/s 227 of the Companies Act, 1956) in relation to matters prescribed in the RBI-issued Circular.
  - RBI has also prescribed reporting by NBFCs to enable monitoring of frauds which include prescribed reportings to RBI as well as to their Board of Directors.
  - All NBFCs (both deposit taking and non-deposit taking) with asset size of INR 1 billion and above are required to furnish information to the RBI about downgrading / upgrading of assigned rating of any financial product issued by them within 15 days of such change.
  - RBI has allowed housing finance companies ('HFCs') registered with National Housing Board ('NHB'), as a temporary measure to raise short-term foreign currency borrowings under the approval route, subject to their compliance with prudential norms laid down by the NHB.

## Foreign Institutional Investors (FIIs)

- SEBI FII regulations amended to provide that :
  - in case of a newly established fund, track record of the Investment Manager may be considered
  - University funds, endowments, foundations, charitable trusts and charitable societies may be considered for SEBI registration even though they are not regulated by a foreign regulatory authority.
  - Sovereign Wealth Funds can register as an FII
- Restriction on issuance of P-notes have been withdrawn
- In order to accord flexibility to the FII's, to allocate the investments across equity and debt, the conditions provided in SEBI FII regulations pertaining to restrictions of 70:30 ratio of investment in equity and debt respectively has been done away with
- Sub-accounts registered under the "foreign corporates" category are not eligible to invest under the 100% debt route even after the relaxation on the 70:30 condition
- Limits for FII Investments in Government Securities and Corporate debt increased to USD 15 billion and USD 5 billion respectively
- New bidding platform viz. "ebidxchange" for allocating debt investment limits to FII/Sub-accounts launched

## Pension Funds

- Government of India has set up Pension Funds Regulatory and Development Authority (PFRDA), a regulatory authority to promote old age income security and to regulate the 'New Pension Scheme' ('NPS'), a pension introduced by Ministry of Finance for the new entrants to Central Government Employees on or after January 1, 2004 which has now been extended on a voluntary basis to all citizens of India including workers of unorganized sector with effect from May 1, 2009.
- The salient features of NPS are as follows:
  - NPS has two types of accounts:
    - Tier I is a non withdrawable account in which an individual would contribute his savings for retirement;
    - Tier II is a voluntary saving facility.
  - Currently, the NPS has only initialized Tier I accounts.
  - NPS gives subscribers the choice to follow any one of the following options, for their investments:
    - Active choice – Individual can invest in class of assets such as equity market instruments, fixed income instruments and Government securities;
    - Auto choice – Individual opts not to manage funds on his own and funds will be managed by the pension fund managers.

## Banking

- A host of measures have been taken by RBI during the period April 2008 to March 2009 to ensure that there is adequate liquidity in the system. The measures include reduction in
  - Reduction in Fixed Repo Rate under the Liquidity Adjustment Facility from 7.75% as on April 1, 2008 to 4.75% as on March 31, 2009;
  - Reduction in CRR / SLR from 7.5% / 25% as on April 1, 2008 to 5% / 24% as on March 31, 2009.
- The principles governing restructuring of different types of advances (other than under Corporate Debt Restructuring mechanism) were aligned and fresh guidelines on the subject superseding all earlier guidelines on the subject were issued by the RBI vide Circular dated August 27, 2008.
- RBI has allowed banks to take trading positions in Interest Rate Futures vide circular dated October 13, 2008. Further, vide another circular dated August 6, 2008 RBI permitted scheduled commercial banks (AD Category I) to become trading / clearing members of the currency derivatives segment to be set up by the Stock Exchanges recognized by SEBI, subject to fulfillment of prudential requirements.
- In view of the developments in the global financial markets, RBI issued guidelines in August 2008 providing for prudential norms in respect of specific off-balance sheet exposures.
- As per the 2009-10 Annual Statement RBI has considered it advisable, for the time being, to continue with the current policy and procedures governing the presence of foreign banks in India. The proposed review as laid under the RBI Roadmap will be taken up after due consultation with the stakeholders once there is greater clarity regarding stability, recovery of the global financial system, and a shared understanding on the regulatory and supervisory architecture around the world.
- RBI issued a circular dated December 11, 2008 per which where the financial services relating to the Indian operations of the bank are outsourced offshore, banks need to inter alia ensure the following:
  - Where the offshore service provider is a regulated entity, the relevant offshore regulator neither obstructs the arrangement nor objects to RBI inspection visits;
  - Despite the liquidation of either the offshore custodian or the bank in India, the records are available to the management and RBI;
  - The regulatory authority of the offshore location does not have access to the data relating to the Indian operations simply on the ground that the processing is being undertaken there (not applicable if offshore processing is done in the home country of the bank);
  - Jurisdiction of the courts in the offshore location where data is maintained does not extend to the operations of the bank in India on the strength of the fact that the data is being processed there.
  - All original records are maintained in India.



## Real Estate

- The Government vide Press Note 3 (2008), dated March 12, 2008 has allowed 100% FDI under the Automatic route for setting up of & in established Industrial Parks subject to certain conditions.
- Vide Notification dated April 16, 2008, SEBI has amended SEBI (Mutual Funds) Regulations, 1996 to permit mutual funds to launch REMFs. The key highlights are outlined below:
  - REMF scheme has been defined to mean a mutual fund scheme that invests directly or indirectly in real estate assets or other permissible assets.
  - The term 'real estate asset' is defined to mean an identifiable immovable property on which construction is completed. The property should be located in one of the Indian cities as may be specified by SEBI or located in a Special Economic Zone.
  - A project under construction, vacant land, deserted property, land specified for agricultural use and a property which is reserved or attached by the Government or other authority or pursuant to orders of a court of law or acquisition of which is otherwise prohibited under any law for the time being in force are specifically excluded from the definition of 'real estate asset' and REMFs cannot invest in such properties.
  - Every REMF Scheme shall be close-ended and its units shall be listed on a recognized stock exchange.
  - The real estate assets are required to be valued at fair price on every ninetieth day from the date of purchase. NAV of the Scheme is required to be declared daily on the basis of the most current valuation of the assets and accrued income thereon.
  - At least 35% of the net assets of the Scheme shall be invested directly in real estate assets. Further, at least 75% of the net assets are required to be invested in real estate asset, mortgage backed securities, securities of companies engaged in dealing in real estate assets or in undertaking real estate development projects and other securities.
- In May 2007, Government had withdrawn the exemption accorded to the 'development of integrated township' as a permissible end-use of ECB. The Government has permitted corporates engaged in the development of integrated township, as defined in Press Note 3 (2002 Series) dated January 04, 2002, to avail of ECB under the Approval Route.
- Various measures have been taken to improve the liquidity for real estate players:
  - Standard asset provisioning requirement for banks in respect of exposure to commercial real estate (earlier 2%) and home loans beyond INR 20 lakhs (earlier 1%) reduced to 0.40%.
  - Risk weight for claims secured by commercial real estate / large NBFCs reduced from 150% to 100%.
  - Refinance facility of INR 4,000 crore to National Housing Bank.
  - Bank loans to HFCs for on-lending to individuals for purchase/construction of dwelling units to be categorized under priority sector lending provided the housing loans granted by HFCs do not exceed INR 20 lakh per dwelling unit per family.
  - Restructuring of commercial real estate exposures to be given special regulatory treatment of retaining the asset classification of the restructured standard accounts in standard category.

## Information & Broadcasting

- Guidelines for provisioning of Internet Protocol Television (IPTV) services were issued by the MIB on September 8, 2008. These guidelines provide for a framework to determine:
  - Eligibility for a IPTV service provider - Telecom access service provider having license to provide triple play service; ISP with a net worth of INR 1 billion; Telecom service provider duly authorized by DOT; Cable TV operator registers under Cable TV Network Regulation Act.
  - License Fee payable by telecom service provider -to be a percentage of Adjusted Gross Revenue.
  - Content sharing - Telecom Licensees can obtain content from MSO or Cable Operator for providing IPTV services. Telecom licensees providing IPTV services to broadcast only Channels registered with MIB, and ensure compliance to program and advertisement code.
- MIB issued guidelines on December 4, 2008 allowing publication of Indian editions of foreign magazines dealing with news and current affairs, salient features of which are given below:
  - FDI cap of 26%;
  - 5 year track record of the publication coupled with a circulation of at least 10,000 paid copies in the last financial year in the country of its origin;
  - 100% identical content of the foreign magazine concerned to be allowed;
  - Indian publisher free to add local content and advertisements.
- The DIPP vide Press Note 1 (2009) has allowed 100% FDI in Indian companies set up for publication of facsimile edition of foreign newspapers provided the FDI is brought in by the owner of the original foreign newspaper(s). In other cases, as per a press release issued by MIB on January 16, 2009, FDI cap of 26% would apply.

## Civil Aviation

- On April 24, 2008, the Union Cabinet cleared a consolidated and updated policy on setting up Greenfield Airports. Some of the salient features of the policy are:
  - Government to consider permitting setting up Greenfield airports within 150 km radius of existing airports;
  - DGCA empowered to grant licenses for airports beyond 150 km of existing civilian airports as per existing rules and notifications;
  - Airports for cargo or non-scheduled flights and for heliports may be considered and decided by the DGCA;
  - Development of private airports, airstrips and heliports for private use by corporations will now be decided by the Ministry for Civil Aviation or DGCA based on security clearance from the Ministry of Home Affairs (as opposed to Cabinet clearance as earlier required).
- Prior approval from DGCA has been mandated for leasing of aircraft by Indian Operators.
- Airline operators or other ground handling service providers not covered under Ground Handling policy announced vide AIC 7 / 2007 dated September 28, 2007, shall not be allowed to undertake self handling or third party handling with effect from July 1, 2009.
- In-principle approval from DGCA now required for establishing training institutes for aircraft maintenance engineering.
- Scheduled / non-scheduled operators are now required to make an application for renewal of their permit at least 60 days in advance from the date of expiry of their permits, along with requisite fee and complete documents.

## Oil and Gas sector

- Under the 7th round of New Exploration Licensing Policy (NELP), 41 blocks have been awarded in November 2008
- The 8th round of NELP was announced on April 9, 2009 offering 70 exploration blocks comprising of 24 deepwater blocks, 28 shallow water blocks, 18 onshore blocks including 10 onshore small sized (Type-S) blocks
- 4th round of Coal Bed Methane blocks has been announced offering 10 CBM blocks covering an area of about 5,000 sq. km. These CBM blocks fall in the States of Assam (1), part Chhattisgarh & part Madhya Pradesh (1), Jharkhand (1), Madhya Pradesh (2), Maharashtra (2), Orissa (2) and Tamil Nadu (1).

## Power Sector

The Ministry of Power announced a generation based incentive scheme on June 23, 2008 for grid connected Wind Power Projects. The salient features of the scheme are as follow:

- New project to have a minimum of 5 MW of grid-connected capacity, to be synchronized to the grid and certified by the concerned utility;
- Investors in eligible projects to receive an INR 0.5 per unit of electricity for a period of ten years, over and above the tariff determined for wind power by the State Regulatory Commission;
- Tariff not applicable to investors setting up capacities for captive consumption, third party sale, merchant plants, and to those claiming benefit from accelerated depreciation;
- Incentive to be linked to actual generation and not commissioning of the plant.

## Education

- AICTE has allowed engineering institutes and polytechnics in existing engineering institutions to start second shifts from the 2009-10 academic session with prior approval from AICTE.
- AICTE issued guidelines for academic year 2009-10 on nomenclature, duration, contact hours, academic calendar and eligibility of Post Graduate Programme in Management (PGDM) Programmes. According to the Guidelines, PGDM may be offered either as a University-Affiliated Programme or as AICTE approved Non-affiliated (Autonomous) Programme.

Ordinance for establishing 15 central universities has been promulgated. 6 new Indian Institutes of Technology (IITs) in Bihar, Andhra Pradesh, Rajasthan, Orissa, Punjab and Gujarat have started functioning and 2 new schools of Planning and Architecture at Vijayawada in Andhra Pradesh and Bhopal in Madhya Pradesh have started functioning.

## Telecom

- On September 24, 2008, DoT introduced a new category of License called as "Resale of International Private Leased Circuits ('IPLC')". The salient features of the license are as follows:
  - Maximum 74% FDI permitted
  - Net worth requirements, FBG payment and license payment requirements apply
  - IPLC reseller shall provide end to end IPLC between India and country of destination for capacity denomination
  - Licensee to take IPLC from licensed ILD's
  - The Licensee can access subscribers only for provision of IPLC
  - No connection to public network



- DoT has announced on August 1, 2008 detailed guidelines for auction and allotment of spectrum for Broadband Wireless Access service. Some of the features of the guidelines are as follows:
  - Spectrum in 2.5 GHz band to be allocated through bidding/ auction
  - UAS and ISP (Category A and B) licensees eligible for bidding
  - Reserve price per MHz in 2.3 and 2.5 GHz bands shall be 25% of the 3G reserve price
  - Licensee to obtain SACFA clearance and wireless operating license from WPC
- DoT has announced on August 1, 2008 detailed guidelines for auction and allotment of spectrum for 3G telecom service. Some of the features of the guidelines are as follows:
  - Spectrum in 2.1 GHz band to be allocated through bidding/ auction
  - Only a UAS licensee eligible for bidding
  - Roll out obligations apply
- Mobile Number Portability – On March 20, 2009 DoT has issued license to two private sector companies (one each for Zone 1 and 2) for providing mobile number portability ('MNP') service. Consequently, DoT has amended the license conditions of various mobile operators (such as UAS, CMTS, ILD, NLD etc) making it mandatory to offer MNP services to customers
- On April 22, 2008, DoT issued guidelines for intra services are merger of CMTS/ UAS licensees. Some of the features of the guidelines are:
  - Merger of licenses restricted to same service area with prior DoT approval
  - Market share of the merged entity shall not be greater than 40% either In terms of subscriber base or AGR
  - No M&A allowed if the number of UAS/CMTS licensee falls below 4 in the service area
- DoT has made amendments to UAS license agreements for roll out obligations some of which are:
  - Roll out obligations restricted only to wireless network and not for wireline network
  - Metro service area to be covered within one year of date of allocation
- DoT, with a view to curb the misuse of Wi-Fi Networks by anti social elements, has prescribed security conditions to the Internet Service Providers such as:
  - Deploying suitable Customer Premises Equipment for wired/ wireless internet connectivity at subscriber end
  - Ensuring that unique User ID and Password do not have provisions for simultaneous multiple logins
- DoT has issued a revised policy w.r.t sale/rent of international roaming cards / global calling cards to customers in India after. Some of the features of the policy are:
  - NoC to be sought from DoT
  - Customer identification must before selling cards
  - Complete details of global calling cards to be provided to security agencies periodically
  - Traffic originated in other country for termination in India will be routed through valid ILD licensees/ gateways
- DoT has decentralized the registration of call centers (Domestic and International) under 'Other Service Provider Category' and Telemarketing category to respective Telecom Enforcement Resource and Monitoring ('TERM') cells of respective circles
- OSP terms were amended vide DoT notification dated August 5, 2008. Salient features are set out below:
  - The concept of agent positions working from Home has been introduced on submission of a Bank Guarantee of INR 50 million
  - The restriction of 10% outgoing PSTN lines in a Domestic Call Centre (DCC) and submission of associated Bank Guarantee of INR 1 million has been dispensed with
  - The amount of Bank Guarantee has been reduced from INR 25 million to INR 5 million and from INR 50 million to INR 10 million for each location in cases of resources sharing between International OSP and Domestic OSP
  - Provision of separate category of Standalone OSP centres have been removed and it has been merged with the Domestic OSPs category
  - Definition of 'Telecom Resources' has been expanded to include Public Land Mobile Network (PLMN)

# 4

## Key Legislative Amendments



## SEBI

- **Key Amendments to the Disclosure and Investor Protection ('DIP') Guidelines**

- The term 'Qualified institutional buyer' (QIB) is now defined in the SEBI (DIP) Guidelines, 2000 and sub-accounts falling in the categories of "foreign corporate" and "foreign individual" are excluded from the definition of QIBs.
- Shares acquired pursuant to a restructuring exercise approved by High Court(s) which had been in existence for a period of more than one year prior to the restructuring exercise are now eligible (i) to be offered for sale and (ii) to be included for the purpose of promoters' contribution.
- Exemption from one year lock in period has been granted to shares which have been acquired during the year preceding date of filing of draft offer document pursuant to a restructuring exercise approved by High Court(s) for acquisition of a business and investment capital which was in existence for over a year prior to the restructuring.
- The "Applications Supported by Blocked Amount (ASBA)" process has been made available in all public issues made through the book building route. The advantage of this system is that the application money remains in the investors' account till finalization of basis of allotment in the issue. This facility has also been extended to rights issue on a pilot (case) basis.
- The term 'Convertible Debt Instrument' is now more specifically defined and simultaneously the definition of debt instruments has been deleted.
- In order to mitigate exposure of investors and issuers to market risks and to enable listed companies to raise funds from its shareholders in a more time effective manner current timelines for rights issue have been reduced as under:
  - Issue to now remain open for 15 to 30 days instead of earlier limit of 30 to 60 days.
  - Advertisement giving the date of completion of dispatch of letters of offer must be published at least 3 days before the date of opening of the issue (earlier 7 days).
  - Time period for issue of allotment letters/refunds is now reduced to 15 days instead of 7 weeks.
  - Time period for refund of subscription is now reduced to 15 days from closure of the issue instead of 42 days. Also for underwritten rights issue the time period for refund of subscription is now 15 days instead of 42 days.

*Note: Corresponding amendments have been made in clauses 16 and 19 of the equity listing agreement.*

- Unlisted company making a public issue of convertible debt instruments and application for listing now needs to fulfill the following additional conditions:
  - Obtain credit rating from at least one credit rating agency; and
  - At least 20 % of the project cost to be brought in the form of equity.
- Listing history of the company with which the approved scheme(s) of merger/ demerger/ arrangement is entered into by a company which has been listed for more than one year in stock exchange(s) shall now be taken into consideration for meeting the eligibility criteria for making QIP.
- Pricing guidelines for preferential issue to QIBs as well as for QIPs have been modified to bring the issue price closer to the market price viz. issue to be at a price not less than the average of the weekly high and low of the closing prices of the related shares quoted on a stock exchange during the two weeks preceding the relevant date.
- Shares allotted pursuant to exercise of options attached to warrants issued on preferential basis shall be subject to full lock-in of one year and the lock in period shall not be reduced by the period for which they have already been locked in.
- Draft offer documents of issue size up to INR 500 million (earlier limit INR 200 million) can now be filed with the concerned Regional Office of SEBI.
- Provisions of the SEBI (DIP) Guidelines, in so far as these relate to issue and Listing of debt securities are rescinded upon notification of SEBI (Issue and Listing of Debt Securities) Regulations, 2008.
- Listing and trading of warrants issued as part of a QIP being a combined issuance of Non-convertible Debentures (NCDs) with Warrants is now permitted. The minimum contract value for trading of NCDs/ warrants has been set at INR100,000. NCDs and warrants issued pursuant to a combined offering as mentioned above, can be listed and traded separately.

- **Key Amendments to Takeover Code**

- Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009 were issued on February 3, 2009 mandating disclosures regarding pledge of shares by the promoter and persons forming part of the promoter group.

- **Debentures Listing Agreement – Amendment**
  - In order to develop the primary market for corporate bonds in India, SEBI has notified the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008. The regulations provide for a simplified regulatory framework for issuance and listing of non-convertible debt securities by any issuer company, public sector undertaking or statutory corporation.
  - The Listing Agreement for debt securities consists of two parts:
    - First part prescribes only incremental disclosures which are relevant for debt securities of such issuers whose equity shares are listed
    - Second part prescribes detailed disclosures applicable to issuers whose equity shares are not listed.
- **Equity Listing Agreement – Amendments**
  - Clause 5A has been inserted to provide a uniform procedure for dealing with unclaimed shares.
  - Clauses 16 and Clause 19 have been amended to reduce the timelines for notice period for all corporate actions like dividend, bonus, etc, for all scripts. The notice period for record date has been reduced to 7 working days and for board meeting has been reduced to 2 working days.
  - Clause 20A has been inserted to provide that listed companies shall declare their dividend on per share basis only.
  - Clause 24 has been amended to safeguard the interest of shareholders. Listed company as well as the unlisted company which are getting merged shall each be required to appoint an independent merchant banker for giving a fairness opinion on the valuation.
  - Clauses 35 and 41 have been amended to bring more efficiency in the disclosures of shareholding pattern and financial results. Reporting formats have been modified to include details of promoters and promoter group shareholding including the details of shares pledged by promoters and promoter group entities.
  - Clause 49 has been amended to provide that at least half of the Board should consist of independent directors, where the non-executive Chairman is a promoter or is “related to promoters” (term has been defined) or persons occupying management positions at the Board level or at one level below the Board.
- **Other amendments**
  - SEBI has issued Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 which provide procedure for voluntary and compulsory delisting, exit price determination through book building.
  - For securities market transactions and off-market/ private transactions involving transfer of shares in physical form of listed companies, it is now mandatory for the transferee(s) to furnish copy of PAN card for registration of such transfer of shares (Central / State Government, Official liquidator, etc exempt from this requirement).
  - Guidelines have been issued for parking of funds in short term deposits of scheduled commercial banks and prescribing disclosure requirements relating to term deposits placed as margins.
  - Format for submission of periodical information by the custodians has been revised.
  - Stock exchanges have been directed to get a comprehensive audit of their systems conducted by a reputed independent auditor on an annual basis.
  - Listed companies which have established connectivity with NSDL and CSDL are eligible for shifting from Trade for Trade Settlement (TFTS) to normal Rolling Settlement subject to conditions including certification from Registrar and Transfer Agent (RTA) or a practicing CS /CA for submission to the stock exchange/s.
  - Nominee director is now eligible to participate in the ESOS of the company, if the contract/agreement entered into between the nominating institution and the director so appointed specifically provides so.
  - Master Circular on Anti Money Laundering and Combating Financing of Terrorism (AML and CFT) has been issued.
  - There has been a revision in format and method of submission of reports on two way fungibility of ADRs/ GDRs. It has also been decided to do away with the submission of copies of contract notes to SEBI.
  - The Securities Lending and Borrowing (SLB) Framework has been revised. The tenure has been increased to 30 days from the present 7 days.
  - The facility of issuance of Electronic Contract Notes (ECNs) as a legal document using Straight through Processing (STP) to the equity derivatives segment has been extended.
  - In order to improve the efficiency of the use of the margin capital by market participants, it has now been decided to revise the existing facility of Cross Margining across all exchange traded Equity (Cash) and Exchange traded Equity Derivatives (Derivatives) segments.



## Companies Act

- The threshold limit of paid-up capital for appointment of Company Secretary has been raised from INR 20 Million to INR 50 Million vide the Companies (Appointment and Qualifications of Secretary) Amendment Rules, 2009.
  - As per the Companies (Issue of Indian Depository Receipts) (Amendment) Rules, 2009, IDRs issued may now be purchased, possessed and transferred by a person other than person resident in India. Further the one year lock in for redemption of IDRs has been removed.
  - Sections 220, 303 and 594 of the Companies Act have been amended to simplify filings required to be made with the RoC.
  - Forms prescribed for reporting/filings with RoC have been amended (including Forms 1, 1A, 2, 5, 18, 23, 32, etc.)
  - The Companies (Central Government's) General Rules and Forms (Fourth Amendment) Rules, 2008 provide for a separate method of certification of documents of companies incorporated in countries that are party to Hague Apostille Convention, 1961. An additional requirement of the documents being apostilled as per the Hague Convention has been introduced in addition to the earlier requirement of certification by an officer of government in possession of the documents, notary or officer of company.
  - Companies (Amendment) Regulations 2008 provide that RoC shall examine or cause to be examined all documents filed with the Ministry of Corporate Affairs delivered even in the electronic form.
- The LLP Agreement is a charter of the LLP which denotes its scope of operation and rights and duties of the partners vis-à-vis LLP.
  - Minimum 2 partners with no limitation on maximum number of partners.
  - Foreign Nationals can be a Partner in an LLP.
  - The liability of partners is limited to the extent of their contribution, except in case of intentional fraud or wrongful act of omission or commission by the partner.
- In essence LLP combines the advantages of both the Company and Partnership into a single form of organization. While one partner is not responsible or liable for another partner's misconduct or negligence, in an LLP, all partners have a form of limited liability for each individual's protection within the partnership, similar to that of the shareholders of a corporation. However, unlike corporate shareholders, the partners have the right to manage the business directly.

## Competition Act, 2002 – Substantive Provisions Operationalised

- Ministry of Corporate Affairs (MCA) appointed May 20, 2009 as the date for operationalising some of the substantive provisions of the Competition Act 2002. This gives effect to the provisions dealing with anti competitive agreements and abuse of dominance. The provision dealing with notification of mergers and acquisitions are yet to be notified.
- MCA established the Competition Appellate Tribunal, having its headquarters at Delhi, w.e.f. May 15, 2009.

## Limited Liability Partnership Act 2008 and Limited Liability Partnership Rules, 2009

- The Limited Liability Partnership (LLP) Bill 2008 was passed by the Parliament on December 12, 2008 and legislated vide notification of the Act in the Gazette of India on January 7, 2009. Subsequently 'The Limited Liability Partnership Rules, 2009' were notified by the Central Government on April 01, 2009.
  - Key features of the LLP Act are as below:
    - An LLP is a separate legal entity under the Limited Liability Partnership Act, 2008 and can sue and be sued.
    - An LLP has a perpetual succession and partners may come and go.
- Subject to compliance with certain prescribed conditions, importer of goods (other than a Public Sector Company or a Department / Undertaking of the Government of India / State Government) are allowed to make advance remittance upto USD 5 million (earlier USD 1 million) without furnishing bank guarantee / standby letter of credit from the overseas supplier.
  - Authorized dealers are permitted to allow importers to make advance remittance upto USD 500,000 (earlier USD 100,000) without insisting for bank guarantee for all admissible current account transactions for import of services.
  - Importers are allowed to make remittance for imports, where the value of import bills/documents directly received by him from the overseas supplier does not exceed USD 300,000 (earlier USD 100,000), subject to fulfillment of certain conditions.
  - The present period of 6 months for realisation and repatriation into India of the full export value of goods or software exported, has been enhanced to 12 months, subject to review after one year.
  - The all-in-cost ceiling in respect of Trade Credits upto 1 year and for Trade Credits more than 1 year but upto 3 years has been enhanced to 200 basis points over 6-month LIBOR.

## FEMA

### Foreign Currency Exchangeable Bonds Scheme, 2008 – Operationalised

RBI operationalized the scheme of "Issue of Foreign Currency Exchangeable Bonds ('FCEB') Scheme, 2008" notified by the Government of India on February 15, 2008. This allowed Indian companies to unlock a part of their holding in group companies by issue of FCEBs for meeting group financing requirements.

### Amendments related to Imports and Exports

- Subject to compliance with certain prescribed conditions, importer of goods (other than a Public Sector Company or a Department / Undertaking of the Government of India / State Government) are allowed to make advance remittance upto USD 5 million (earlier USD 1 million) without furnishing bank guarantee / standby letter of credit from the overseas supplier.
- Authorized dealers are permitted to allow importers to make advance remittance upto USD 500,000 (earlier USD 100,000) without insisting for bank guarantee for all admissible current account transactions for import of services.
- Importers are allowed to make remittance for imports, where the value of import bills/documents directly received by him from the overseas supplier does not exceed USD 300,000 (earlier USD 100,000), subject to fulfillment of certain conditions.
- The present period of 6 months for realisation and repatriation into India of the full export value of goods or software exported, has been enhanced to 12 months, subject to review after one year.
- The all-in-cost ceiling in respect of Trade Credits upto 1 year and for Trade Credits more than 1 year but upto 3 years has been enhanced to 200 basis points over 6-month LIBOR.

### Commodity Hedging Exposures

- Domestic crude oil refining companies are permitted to:
  - hedge their commodity price risk on overseas exchanges/markets in respect of domestic purchase of crude oil and sale of petroleum products, allowed on the basis of underlying contract linked to international prices.
  - hedge their commodity price risk on overseas exchanges/markets in respect of crude oil imports upto prescribed limits.
- AD Category - I banks, approved by RBI, are permitted to allow hedging of freight risk by domestic oil-refining companies and shipping companies, subject to certain

### Trading in Currency Futures in India

Presently, persons resident in India are permitted to hedge their currency risk by opting for various over-the-counter products, such as currency forwards, swaps and options.

To enhance the flexibility for the residents to manage their currency risk dynamically by widening hedging opportunities and further develop the derivatives market in India, RBI introduced currency futures in recognized stock exchanges or new exchanges recognized in India by SEBI.

### Remittance related to Commodity Derivative Contract - Issuance of Standby Letter of Credit / Bank Guarantee

AD Category-I banks are permitted to issue guarantees / standby letters of credit to cover payment obligations of resident entities towards margin money in relation to approved commodity derivative contracts, subject to certain prescribed conditions / guidelines.

### Bids in foreign currency for projects to be executed in India

Persons resident in India who have been awarded contracts are permitted to incur liability in foreign exchange and to make or receive payments in foreign exchange in respect of global bids for projects to be executed in India without obtaining prior approval of the concerned Administrative Ministry for the International Competitive Bidding.

### Foreign Currency Accounts in India

- Foreign companies having project offices in India were permitted to open only one foreign currency account for each project. Foreign companies are now allowed to open two foreign currency accounts for each project office with the same AD bank in order to hedge currency exposures in their home currency and another in US Dollar.
- Effective November 1, 2008, all EEFC accounts can be opened and maintained only in the form of non-interest bearing current account.

### Allocation of FII investment in debt and equity

Pursuant to a Circular issued by SEBI in October 2008, in order to accord flexibility to FIIs in allocating their investments across equity and debt instruments, RBI has dispensed with the requirement of making investments in equity and debt instruments in the ratio of 70:30.

### Overseas Foreign Currency borrowing by AD – Enhancement of limit

RBI has enhanced the limit upto which AD Category – I banks may borrow funds from their Head Office, overseas branches and correspondents and overdrafts in nostro accounts from 25% to 50% of their unimpaired Tier I capital as at the close of the previous quarter or USD 10 million (or its equivalent), whichever is higher.

### Foreign Travel – Mode of Payment in Rupees

With a view to provide greater flexibility to travellers in making payment against sale of foreign exchange in excess of INR 50,000 for travel abroad, RBI has permitted AD Category I & II and Full Fledged Money Changers to accept payments through debit cards/credit cards/prepaid cards.

These modes of payment are in addition to existing modes which include crossed cheque drawn on the bank account of the traveller or the firm / company sponsoring the visit of the traveler and Banker's cheque / Pay order / Demand draft.

### Issue of Guarantee for operating lease

Authorised Dealers are permitted to convey their 'no objection' from FEMA angle for issue of corporate guarantee in favour of the overseas lessor, for operating lease in respect of import of aircraft / aircraft engine / helicopter.

## Income Tax

Following legislative amendments have taken place after Budget 2008 and before Budget 2009.

### Expenditure to be disallowed under section 14A-how to compute:

The method for determining the expenditure to be disallowed as per section 14A, relating to income not forming part of the total income has been specified. The expenditure which is to be disallowed shall be the aggregate of (i) to (iii) below:

- The amount of expenditure directly relating to exempt income
- Where interest is not directly attributable to any particular income or receipt, an amount computed in accordance with the following formula:

$\frac{A \times B}{C}$

C

A = Total interest paid less interest included in (i) above

B = average of value of investment (income from which is exempt), as per balance sheet, on the first and last day of the financial year

C = the average of total assets, as per balance sheet, on the first and last day of the financial year

- 0.5 per cent of the average of the value of investment, as per balance sheet, on the first and last day of the financial year.

### Tax Deducted / Collected at Source

TDS under section 194J to be deducted on gross amount inclusive of service tax

The CBDT has clarified in its reply to Bombay Chamber of Commerce & Industry that TDS under section 194J (relating to fees for professional or technical services) is required to be deducted on the gross amount, including service tax.

### CBDT amends withholding tax return filing dates for non-residents

The CBDT has amended Rule 37A for filing withholding tax returns for non-residents. The following table summarizes:

Quarters	Earlier 'Due Date'	Revised 'Due Date'
Quarter I (April to June)	14 July	15 July
Quarter II (Jul to Sep)	14 October	15 October
Quarter III (Oct to Dec)	14 January	15 January
Quarter IV (Jan to Mar)	14 April/14 June	15 June

### CBDT Notifications amending Rules for TDS/TCS procedures and payments

Rules have been framed in relation to TDS/TCS wherein the provisions pertaining to time and mode of payment of TDS/TCS, return forms, challans, time limit for issuing TDS certificates and format of TDS certificates (like Form No. 16 and 16A, etc.) have been substantially amended. The concept of Unique Transaction Number (UTN) has been introduced in these forms. The application of these rules have however been deferred till further notice. Rules have also been notified for reporting of all foreign payments to the tax authorities.

### CBDT notifies rules for claiming withholding tax credits by persons other than the deductee

The CBDT has notified rules 37BA and 37I wherein the credit for TDS/TCS shall be given for the year in which the income is assessable. When income is for more than one year, credit for TDS/TCS shall be allowed across those years in proportion to the income assessable in respective years.

Under Rule 37BA, credit for TDS shall be given to the person to whom the payment is made or credited, i.e. the deductee, on the basis of information furnished by the deductor.

Under Rule 37, the credit for TCS shall be given to the person from whom tax has been collected, on the basis of information furnished by the collector.

### New Return Forms

- The CBDT has replaced the existing Income-Tax return forms, viz. ITR-1 to ITR-8 and ITR-V with the new forms as contained in Appendix-II to Income-Tax Rules, 1962. Further, ITR-V shall henceforth be received only in Centralized Processing Centre of the Income – tax department in Bangalore.
- CBDT has issued a circular explaining procedural guideline to be observed while preparing the Return of Income for AY 2009-10 and the manner and mode of filing the Return of Income.

### DTAAs

- DTAA with Luxembourg signed but yet to be notified. Key features are:
  - The rate of tax in source country shall not exceed 10% of the gross amount of taxation of dividend, interest, royalties and fees for technical services.

- Capital gains from alienation of shares of a company shall be taxable in the country where the company is resident.
- The tax treaty provides “Limitation of Benefits“ in order to prevent misuse of the provisions of the tax treaty.

- Revised DTAA with Syrian Arab Republic signed.
- DTAA with Tajikistan signed

### OECD RELEASES “THE 2008 UPDATE TO THE OECD MODEL TAX CONVENTION”

- The OECD recently released “The 2008 Update to The OECD Model Convention”. India is now granted an observer status and has for the first time given its comments / reservations on the OECD Model and the OECD Commentary.

### Fringe Benefit Tax

- Pursuant to the amendment by Finance Act, 2008, “which provided that any expenditure on, or payment through, non-transferable pre-paid electronic meal card usable only at eating joints, or outlets, which fulfils certain prescribed conditions would be considered as deemed fringe benefits”, the CBDT has notified the rules prescribing the key conditions as below:
  - The card shall be granted by the employer to its employee under a scheme specifying the circumstances under which it can be used.
  - An employee shall not be issued more than one card.
  - The card shall bear the name, photograph and signature of the employee.
  - The card shall be used by the employee only for the purpose of purchasing food from a member establishment.
  - The aggregate amount of purchases during a day by an employee shall not exceed one hundred rupees.
  - The details of each purchase by the card shall be maintained by the employer and the member establishment in a prescribed manner as per the Rule.

### Others

- **Higher rate of depreciation on new commercial vehicles**  
Rules have been amended in relation to the rate of depreciation applicable to a new commercial vehicle, under the heading ‘Machinery and Plant’ which provides for 50% depreciation on commercial vehicle acquired on or after 1 January 2009, but before 1 October 2009, and put to use before 1 October 2009 for business purposes.
- **Overseas income to be first added to the total income to seek elimination or avoidance of double taxation**  
The Central Government has notified that where an Indian taxpayer / a specified association (under section 90A of the Act) has received overseas income / income from a specified association outside territory of India and the Double Taxation Avoidance Agreement (Tax Treaty) provides that any income of a taxpayer ‘may be taxed’ in the foreign country / source state, then to claim relief from double taxation, the taxpayer would be required to first add the

said income to its total income chargeable to tax and then seek elimination or avoidance of double taxation.

- **Non-residents employed in India and Indian nationals employed outside India are covered under the Provident Fund Scheme**

The Government of India has modified the Employee's Provident Fund Scheme, 1952 ("Scheme") with effect from 1 October, 2008 to increase its scope to include non-residents employed in India and Indian nationals employed outside India within the purview of the Provident Fund (PF) Act, and added a new category of employees, viz., "international workers" to mean:

- An Indian employee in a foreign country with which India has a social security agreement on reciprocal basis and the employee is eligible under the social security agreement;
- A foreign employee, not holding Indian passport, working for an establishment covered under Indian PF Act.

An "excluded employee" is a person contributing to a social security program of his / her country of origin, either as a citizen / resident, with which India has entered into a social security agreement on reciprocal basis.

Under the amended provisions of the Scheme, every international worker who is employed to do any work for an Indian establishment, unless covered within the category of excluded employee, is required to be a member and contribute 12% of the base pay (towards PF and Pension Fund). An equivalent amount is to be contributed by the employer.

## Indirect Taxes

### Customs Law

- **Validity of Duty Entitlement Passbook (DEPB) Scheme extended**

In the absence of a suitable alternative, the validity of the DEPB Scheme was extended till December 31, 2009.

- **Customs Duties imposed of various ferrous products**

Customs duties were imposed on a number of products including ferrous products such as steel, steel products, pig iron and its products and basmati rice were made chargeable to customs duty on their export out of India.

- **Implementation of provision regarding provisional attachment of property clarified**

A detailed clarification was issued regarding the implementation of Section 28BA of the Customs Act, 1962 which provides for provisional attachment of property for the purpose of protecting the interests of the Revenue during the pendency of proceedings under the Act.

- **Limitation of time regarding refund of Additional Customs Duty in lieu of Sales tax / VAT (ADC) notified**

A time period of one year from the date of payment of duty has been notified with regard to submission of claims for refund of the 4% ADC paid to the Customs authorities at the port of import on all goods covered under the Customs Tariff and imported for trading purposes.

- **Customs Tariff (Determination of Origin of Products under the Duty Free Tariff Preference Scheme for Least Developed Countries) Rules, 2008 notified**

In pursuance of the announcement of the Duty Free Tariff Preference Scheme for Least Developed Countries by the Prime Minister at the Indo – African Forum Summit in April 2008, the Rules of Origin under the Scheme were notified. The Scheme under which India unilaterally provides preferential market access for exports from all 50 least developed countries, 34 of which are in Africa, was introduced as a part of India's contribution towards processes of growth and development in Africa.

- **Import licensing requirement for automobiles amended**

The import licensing requirement for automobiles were relaxed to allow import of new vehicles, having an FOB value of US \$ 40,000 or more and engine capacity of more than 3000cc for petrol run vehicles and more than 2500cc for diesel run vehicles, from countries other than the country of manufacture. These imports are permitted to be made through specified ports.

- **Handling of Cargo in Customs Areas Regulations, 2009 notified**

The Handling of Cargo in Customs Areas Regulations, 2009 were notified with a view to regulate the manner in which imported goods or goods meant for export are received, stored, delivered or otherwise handled in the customs areas and to prescribe the responsibilities of the persons engaged in such activities.

### Excise Law

- **Formula for computation of credit eligibility towards domestic sales by 100% EOU revised**

The formula regarding credit eligibility on domestic sales by units under the 100% EOU Scheme was revised. The revision was brought about to correct the anomaly existing between the calculation of the duty payable by such units on domestic sales and the credit available on such duty.

- **Abatement rates for goods subject to MRP based valuation revised**

Further to the reductions notified in excise duty rates, and in order to maintain the levels of revenue collections of the Government, the abatement rates for the goods covered under the MRP based valuation scheme were also reduced

- **Admissibility of CENVAT Credit on conversion of 100% EOU to a unit in the Domestic Tariff Area (DTA)**

The CENVAT Credit Rules have been amended to allow for admissibility of credits of excise duty paid on inputs / capital goods at the time of conversion of a unit from the 100% EOU Scheme to the DTA.

- **Restriction in CENVAT exemptions relating to North East and Jammu & Kashmir**

An amending notification has been issued regarding the benefit of exemption from CENVAT available to units in the North East States and Jammu & Kashmir. The notification restricts refunds of duty to a residual duty rate of 36% of

the duty payable on the manufactured goods except where the inputs are used in the manufacture of such products in which case refunds at specific prescribed percentages are allowed. The notification also allows for the fixation of a special rate of refund in cases of value addition of 115% or higher.

- **Inapplicability of reversal of CENVAT Credit on inputs of excisable goods removed to SEZ**  
The CENVAT Credit Rules have been amended to provide that there is no requirement of reversal of credits availed on inputs used in manufacture of excisable goods which are removed without payment of duty to SEZ for authorized operations.

#### Sales Tax/VAT Laws

- **Introduction of new Entry Tax legislation**  
The Haryana Tax on Entry of Goods into Local Areas Act, 2008 was introduced. The rate of tax applicable to goods entering the State of Haryana April 16, 2008 has been notified at 2%. The notification was subsequently held unconstitutional by a bench of the High Court of Punjab and Haryana and pending reversal of the decision, is stayed from operation.
- **Central Sales Tax (CST) rate reduced**  
The rate of CST commenced for inter-State sales against Form C was reduced from 3% to 2% effective 1 June 2008.
- **Value Added Tax (VAT) imposed on sales of DFIA, DEPB, DFRC in the State of Punjab**  
Duty credit scrips under export incentive schemes such as DFIA, DEPB and DFRC are chargeable to VAT at the rate of 4%.
- **Additional Tax imposed on specified goods under the Uttar Pradesh Value Added Tax Act, 2008**  
The State Government of Uttar Pradesh has notified the imposition of an additional tax of 0.5% to 1% on sale and purchase of specified goods in the State. The tax is effective June 01, 2009. Simultaneously, the State Government has removed the levy of entry tax on specified items.

#### Service Tax Law

- **Introduction of Dispute Resolution Scheme Rules, 2008**  
The Central Government has notified the Dispute Resolution Scheme Rules, 2008 effective July 01, 2008. The Scheme is applicable in relation to service tax demands extending upto INR 25,000.
- **Service Tax (Provisional Attachment of Property) Rules, 2008 notified**  
To streamline the provisions and procedures for provisional attachment of property pending adjudication under the service tax laws, the government has notified the Service Tax (Provisional Attachment of Property) Rules, 2008. A circular detailing the provisions has also been issued.

- **Mechanism for exemption by way of refund of input tax notified by units in Special Economic Zones**

Superseding the earlier provision of exemption from service tax to services consumed within an SEZ, the Central Government notified that SEZ developers and SEZ units can claim refund of the service tax paid on all input services, regardless of whether or not the input services are provided inside the SEZ. The provisions are equally applicable to 'reverse charge' tax payments. Detailed procedures have been laid down for payment of taxes on such services by the service providers and for the refund claims to be thereafter filed by the developers/ units. Subsequently, the governing notification has been amended to provide an outright exemption from payment of service tax for services wholly consumed within the SEZ. Services consumed wholly or partially outside the SEZ are subject to the exemption through refund. In both case cases, a list of services to be utilised for the authorised operations is required to be approved by the Approval Committee.

## Accounting Standards and Announcements

- A new Accounting Standard, AS 32 (Financial Instruments : Disclosures), was issued by ICAI which comes into effect in respect of accounting periods commencing on or after April 1, 2009 (recommendatory in nature for a period of two years). Consequent to the issuance of AS 32, a limited revision to AS 19 (Leases) has also been made.
- The Companies (Accounting Standards) Rules, 2006 have been amended in relation to Accounting Standard 11 on 'Effect of changes in Foreign Exchange Rates':
  - Exchange differences arising on reporting of long-term foreign currency monetary items, in so far as they relate to acquisition of depreciable capital assets, can be added to, or deducted from, the cost of the asset, and shall be depreciated over the balance life of the asset.
  - In other cases, the exchange difference can be accumulated in a "Foreign Currency Monetary Item Translation Difference Account" and amortized over the balance period of the long term asset / liability, but not beyond March 31, 2011.
  - The applicability of this notification is at the option of the reporting enterprise.
- ICAI issued an announcement on Accounting for Derivatives on March 29, 2008 applicable to financial statements for the period ending March 31, 2008, or thereafter.
  - As per the Announcement, AS 30 - Financial Instruments: Recognition and Measurement (which becomes recommendatory from April 1, 2009 and mandatory from April 1, 2011) contains appropriate accounting for derivatives and the same can be followed by the entities.

- In case an entity does not follow AS 30, then it should mark-to market all the outstanding derivative contracts on the balance sheet date and the resulting mark-to-market losses should be provided for keeping in view the principle of prudence as enunciated in AS 1, Disclosure of Accounting Policies.

## Sector Specific Laws

### SEZs

- **Key Amendments in SEZ Rules, 2006**

SEZ rules have been notified with the following salient features:

- Minimum area requirements for a sector specific Handicrafts SEZ shall be 10 hectares
- Reimbursement of duty in lieu of drawback or Duty Entitlement Pass Book credit against supply of goods by Domestic Tariff Area supplier to SEZ developers shall be admissible even if payment is made in Indian Rupees
- Exemptions, drawbacks and concessions on the goods and services allowed to a Developer or Co-developer, shall also be available to the contractors including subcontractors appointed by such Developer or Co-developer
- Vacant Land's definition has been broadened to include the land where there are no functional ports, manufacturing units, industrial activities or structures in which any commercial or economic activity is in progress.
- Ceiling of 5000 hectares of land for SEZ development relaxed

- **Guidelines for Setting up Power Plants in SEZs**

The Ministry of Commerce issued guidelines allowing power generation plants to be set up by SEZ Developer/Co-developer but only in the Non Processing Area (NPA). Salient features of these guidelines are as under:

- Fiscal benefits on initial capital expenditure only
- No NFE Obligation
- Can supply to SEZs (same & other) as well as to DTA
- License required for distribution of power
- Required to adhere to all provisions of Electricity Act and Rules including for Tariff.
- Custom duty applicable for supply of power to DTA from NPA

Similarly, SEZ units are allowed to set up Power Plant but only in the processing area. Key features that distinguish these guidelines from those relating to power plants set up by Developer / Co Developer are as under:

- Fiscal benefits on both initial capital expenditure as well as O&M expenditure

- Duty free import of raw materials and consumables for the generation of power
- Needs to meet NFE Obligation

- **Instructions/Directions issued by Ministry of Commerce/ Ministry of Finance**

- Procurement of used capital goods from Domestic Tariff Area including EOU, EHTP/STP (DTA) and the Zone by SEZ Units

- No second hand capital goods will be allowed to be moved into the SEZ without prior approval from the Development Commissioner.
- The Approval Committee or the Development Commissioner shall ensure that the procurement of second hand capital goods be allowed only in terms of the provisions of sub-section (4) of Section 10AA of the Income-tax Act, 1961, which provides for movement of used Machinery and Plant based on the following conditions:

- a. Such Machinery and Plant was not previously used in India
- b. No deduction on account of depreciation is allowed or is allowable under Income-tax Act
- c. Such Machinery and Plant has been imported from outside India provided the above two conditions are satisfied.

- In computing the value of the used/second hand capital goods sought to be transferred into SEZ from DTA, the depreciation rates stipulated as per the provisions of Income-tax Act and Rules made there under will be adopted for arriving at the depreciated value of such second hand capital goods intended to be moved into the SEZ.

- SEZ Units moving used capital goods in excess of 20% will not be entitled to benefits under the Income-tax Act.
- Provisions of this Instruction will not be applicable to goods which are temporarily removed to DTA under Rule 50 of the SEZ Rules, 2006 and brought back into the SEZ.

- Service Tax Exemption for services consumed wholly within the SEZ  
Ministry of Finance vide a notification dated May 20, 2009 (issued in super cession of earlier Notification dated March 3, 2009), provided that for the services consumed wholly within the SEZ, there shall be unconditional exemption from the service tax.
- Procedural changes relating to Approvals  
With a view to speeding up the notification of an SEZ, Developers are now required to submit all the documentary evidence required for the notification at the time of seeking formal approval so that the notification can be issued immediately upon grant of formal approval.

- Keeping in view economic downturn and in view of the requests received from SEZ units, it has been decided to allow one year extension of Letter of Permission (LOP) in respect of all cases where the validity period of 4 years is being completed between March 1, 2009 to February 28, 2010.

- **Other key changes:**

- Export duty on steel products on supply of goods from DTA to SEZ has been removed through a Customs Notification dated October 31, 2008.
- SEZ developers can now avail External Commercial Borrowing (ECB) under the approval route. The ECB can be availed for providing infrastructure facilities within the SEZ.

#### Civil Aviation

- Airports Economic Regulatory Authority of India ('AERA') Act, 2008 was notified and became effective from 5th December 2008. AERA is the regulatory body set up for achieving the following objectives:
  - Regulate tariffs and other charges for aeronautical services rendered at airports such as cargo facilities, fuel supply and ground handling;
  - Monitor performance standards of airports;
  - To establish a judicial body for adjudicating any dispute between service providers or between service providers and a group of consumers.
  - Disaster Management/Recovery Centre of foreign companies can be set up in the IT/ITES SEZs irrespective of the fact as to whether the Center so setup is manned or not.
  - SEZ Developers can now lease out space in IT/ITES SEZ on a shift to shift basis.



# 5

## Budget Financials





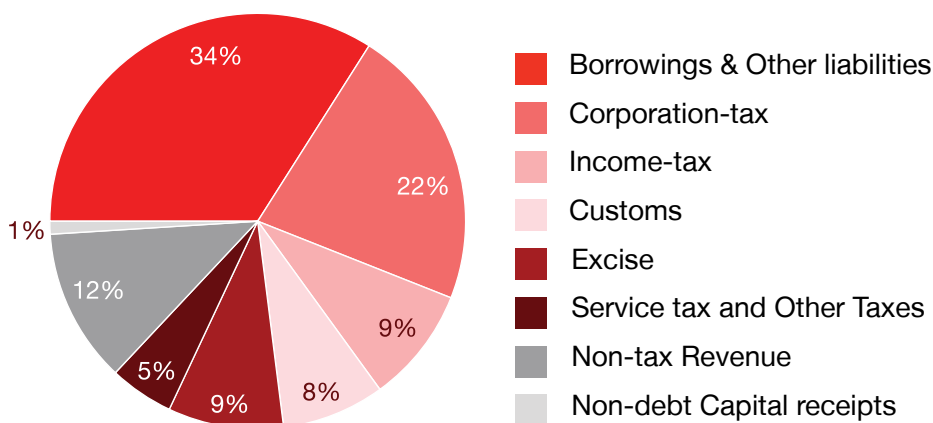
The following table sets out the Key Budget Financials:

	(INR in crores)			
	2007-2008 Actuals	2008-2009 Budget Estimates	2008-2009 Revised Estimates	2009-2010* Budget Estimates
1. Revenue Receipts	541,864	602,935	562,173	614,497
2. Capital Receipts <sup>^</sup>	170,807	147,949	338,780	406,341
3. Total Receipts (1+2) <sup>^</sup>	712,671	750,884	900,953	1,020,838
4. Non-Plan Expenditure	507,589	507,498	617,996	695,689
5. Plan Expenditure	205,082	243,386	282,957	325,149
6. Total Expenditure (4+5)	712,671	750,884	900,953	1,020,838
7. Revenue Expenditure	594,433	658,119	803,446	897,232
8. Capital Expenditure	118,238	92,765	97,507	123,606
9. Revenue Deficit (7-1) As a percentage of GDP	52,569 1.1%	55,184 1.0%	241,273 4.4%	282,735 4.8%
10. Fiscal Deficit {6 -(1+Recoveries of Loans+Other receipts)} As a percentage of GDP	126,912 2.7%	133,287 2.5%	326,515 6.0%	400,996 6.8%
11. Primary Deficit (10-Interest payments) As a percentage of GDP	(44,118) -0.9%	(57,520) -1.1%	(133,821) 2.5%	(175,485) 3.0%

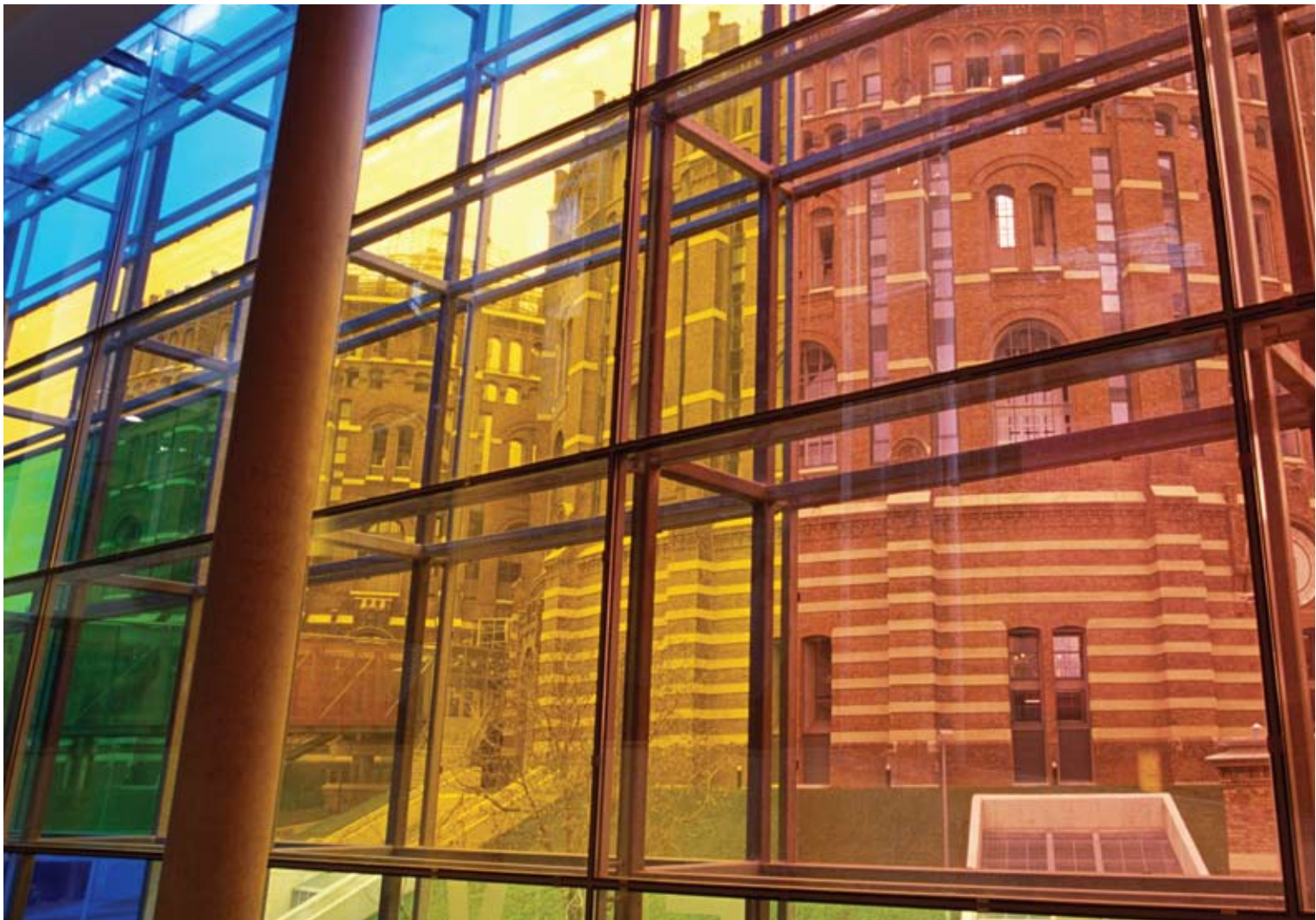
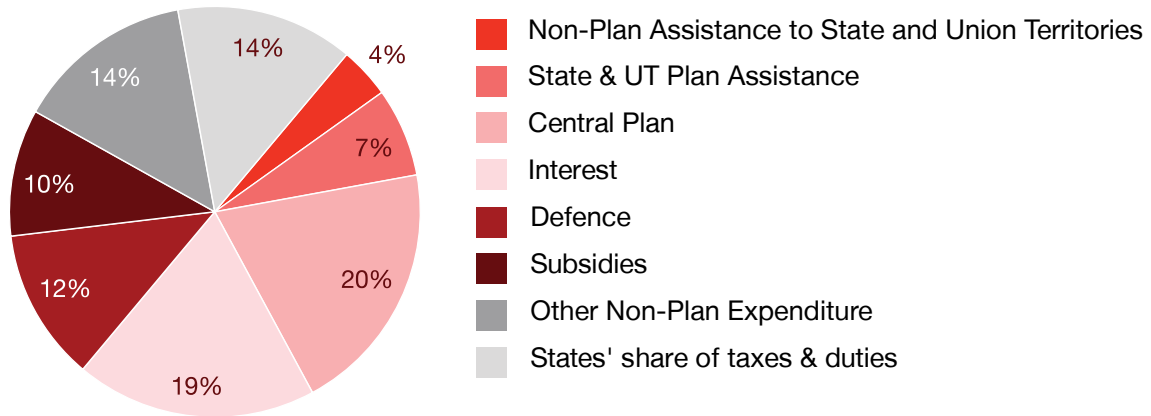
<sup>^</sup> Does not include receipts in respect of Market Stabilisation Scheme.

\*GDP for BE 2009-2010 has been projected at INR 5856569 crore assuming 10.05% growth over the revised estimates of 2008-2009 (INR 5321753 crore) released by CSO. Deficit indicators in RE 2008-09 have been retained on the basis of advance estimate for 2008-09 (INR 5426277 crore).

## Where the Rupee comes from



## Where the Rupee goes to



# 6

## Direct Taxes



## Tax Rates

### Individuals

- The exemption limit is proposed to be revised. The new slabs are as under:

Income (INR)	Tax Rate
Upto 160,000*	Nil
160,001 -300,000	10%
300,001 – 500,000	20%
Above 500,000	30%

*[\*Basic exemption for resident women to be INR 190,000 and INR 240,000 for resident senior citizen]*

- Surcharge is proposed to be abolished.

### Firms and Companies

- Maximum marginal tax rate for Firms reduced from 33.99% to 30.90% on account of removal of surcharge.
- No change in the corporate tax rates.
- Fringe Benefit Tax Scheme is proposed to be abolished. It is also proposed to restore the taxation of fringe benefits including employee stock options as perquisites in the hands of employees.
- The rate of Minimum Alternate Tax is proposed to be increased from 11.33% to 16.995%.

### General

- The threshold limit for payment of Wealth Tax is proposed to be increased from INR 15,00,000 to INR 30,00,000.
- Advance tax would be payable from the current year (FY 2009-10) only if the tax liability is INR 10,000 or more.
- Commodities Transaction Tax is proposed to be abolished.

## Business Income

- New direct tax code to be introduced in the winter session of the parliament.
- Presently, weighted deduction of 150% is available in respect of expenditure incurred on approved in-house scientific R&D facility to assessee engaged inter alia in the business of bio-technology, manufacture or production of drugs, pharmaceuticals etc. With a view to promote R&D in all economic sectors, it is proposed to extend this benefit to all businesses of manufacture or production of an article or thing except for articles contained in Eleventh Schedule. This amendment is proposed to be effective from FY 2009-10.
- It is proposed to provide a new investment-linked tax incentive to allow 100% deduction in respect of capital expenditure (other than on land, goodwill and financial instrument) incurred wholly and exclusively for the purposes of following specified business:
  - setting up and operating a cold chain facilities for specified products, if such business commences its operations on or after April 1, 2009;
  - setting up and operating warehousing facilities for storage of agriculture produce, if such business commences its operations on or after April 1, 2009;
  - 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, if such business commences its operations on or after April 1, 2007.

Consequently, the existing deduction available under section 80-IA to the business of laying and operating a cross country natural gas distribution network will be discontinued.

Any loss computed in respect of the above specified businesses shall be allowed to be set off or carry forward and set off only against the profits and gains of specified businesses.

The above amendments are proposed to be effective from FY 2009-10.

- Presently, only infrastructure capital company / funds and public sector company are empowered to issue zero-coupon bonds. It is proposed to empower Scheduled Banks to issue such zero-coupon bonds to source their long-term funds.
- Under the provisions of the Act, depreciation is allowed on the WDV of assets which is computed by taking the actual cost of the assets less “depreciation actually allowed” under the Act. It is proposed to insert an explanation to clarify that where the income of the tax payer is derived, in part from agriculture and in part from business income, for computing the WDV of assets, the total amount of depreciation shall be computed as if the entire income is derived from business income and the depreciation so computed shall be deemed to be the “depreciation actually allowed” under the Act. This amendment is proposed to be effective from FY 2009-10.
- Currently, disallowance in relation to payments made otherwise than by an account payee cheque drawn on a bank or account payee bank draft is made if payment exceeds twenty thousand rupees. To provide relief to transport operators in case of expenditure incurred on long haul journeys, it is proposed to raise this limit to thirty-five thousand rupees. The proposed amendment will apply to transactions effected on or after October 1, 2009.
- Presumptive taxable income @ 8% of turnover or gross receipts extended to all kinds of businesses undertaken by Individuals, HUF and partnership firm (except LLP’s) provided turnover does not exceed INR 40 lacs. Advance Tax is not applicable to such assessee. Deemed profit limits proposed to be increased in the case of business of plying, hiring or leasing of goods carriages.

## Deductions

- The long standing demand of assessee engaged in export of Computer Software, articles, etc. and eligible to claim exemption under Section 10A / 10B for extension of the benefit has been accepted by extending the same by one more year till FY 2010-11.
- The Government has acceded to rectify the anomaly in relation to method of computation of exempt profits u/s 10AA of SEZ units by seeking to clarify that the total turnover would be that of an “undertaking”, instead of total turnover of the “assessee”, while computing the proportion of export profits for exemption.

The above amendments are proposed to be effective from FY 2009-10.

- A concept of market value is proposed to be inserted for the purpose of determining the transfer prices of goods, services exchanged between the eligible business and other business/units of the assessee.
- It is also proposed that profit based tax holiday/benefits would be available to the assessee only in case the same are claimed in the return of income. This amendment is proposed with a retrospective effect from FY 2002-03.
- The Bill proposes to extend the sunset clause in relation to tax holiday under section 80-IA to undertakings engaged in business of power generation/ distribution etc and reconstruction or revival of power generating plant upto March 31, 2011.
- The Bill proposes to extend the deduction in respect of profit and gain arising from refining of mineral oils under section 80-IB (which was hitherto available only to specified PSU's etc.) to the private sector entrepreneurs who begin refining of mineral oil during next 3 years (i.e. upto March 31, 2012). It is also proposed that all oil blocks licensed under a single contract, shall be treated as a single undertaking. This amendment is proposed to be effective retrospectively from FY 1999-2000. The tax holiday available in respect of profits arising from the commercial production of mineral oil is further proposed to be extended to natural gas (from blocks licensed under NELP VIII) and which begins commercial production on or after April 1, 2009.
- To encourage allotment of residential units to lower and middle income households and to circumvent the practice of developers selling multiple adjacent units to a single buyer, it is proposed to rationalize the tax holiday available to developers of housing projects under section 80IB, by placing restrictions on allotment of residential units to non-individuals / relative of an existing individual allottee. This amendment is proposed to be effective from April 1, 2010.

## Minimum Alternate Tax

- It is proposed to extend the period for carry forward and set off of MAT credit to next ten years from the existing period of seven years. This amendment is proposed to be effective from FY 2009-10.
- It is also proposed to amend the meaning of "book profits" to provide that any amount set aside as provision for diminution in the value of any asset debited to the profit and loss account, shall be added to net profit as shown in the profit and loss account for the purpose of computation of "book profits". This amendment will apply with retrospective effect from FY 1997-98.

## Transfer Pricing

- CBDT is proposed to be empowered to formulate safe harbour rules.
- Section 92C is proposed to be amended to provide that the arm's length price shall be the arithmetic mean of prices determined by the most appropriate method. In cases where

the variation between such arm's length price and transfer price of assessee does not exceed five percent of the transfer price, the taxpayers' prices shall be deemed to be at arm's length. This amendment is proposed to be effective from October 1, 2009, i.e. for Transfer Pricing Orders passed on or after this date.

## Alternative Dispute Resolution Mechanism

- To facilitate expeditious resolution of disputes, a Dispute Resolution Panel comprising 3 Commissioners of Income Tax is proposed to be constituted.
- In cases of Foreign Companies/ Transfer Pricing Orders to be passed on or after October 1, 2009, which are prejudicial to the assessee, the Assessing Officer shall be required to forward a draft order to the assessee.
- Assessee can file objections against the draft order before the Dispute Resolution Panel. After considering all evidence/ objections and further enquiries, the Panel to issue binding directions to the Assessing Officer within 9 months. Assessing Officer to pass an order within one month, in conformity with the directions of the Panel.
- Time limits for completion of assessment prescribed under Section 153 not to apply in such cases. Orders passed on the basis of directions of Dispute Resolution Panel to be directly appealed before the Tribunal.

## International Tax

It is proposed to empower the Indian Government to enter into DTAA or TIEA even with non-sovereign countries with effect from October 1, 2009.

## Individual Taxation

- Employees had been claiming tax relief in respect of amounts received under Voluntary retirement scheme to mitigate higher tax liability arising due to difference in rates applicable to salary received in advance/arrears. The employees also claimed such lump-sum amount (upto INR 5 lacs) as exempt under Section 10(10C). In order to discourage this practice of claiming double benefit, retiree employee having once claimed an exemption under Section 10(10C) will not be allowed to again claim a tax relief under Section 89 and vice-versa.

### Abolition of FBT

FBT is proposed to be abolished with effect from April 1, 2009. As a consequence, the taxation of fringe benefits has been proposed to be restored as perquisites in the hands of the employees. The proposed amendments would cover the following as perquisites:

- Shares given to the employees under ESOPs
- Amount of any contribution to an approved superannuation fund by the employer in respect of the employee to the extent it exceeds INR 100,000.
- Value of any other fringe benefit or amenity as may be prescribed.

### Deductions under Chapter VIA

- Deduction in respect of interest on loan taken for higher education is proposed to be extended to cover all fields of studies pursued after Senior Secondary Examination.
- Deduction for medical treatment expenses for a dependent suffering from severe disabilities is proposed to be enhanced to INR 1,00,000 from INR 75,000.

### Capital gains

- The existing provisions of Section 50C are proposed to be extended to cover transactions of transfer of land and/or building which are executed through Agreement to Sell or Power of Attorney.

### Other Income

- With effect from October 1, 2009, any movable or immovable property, received by an individual or HUF without consideration or for inadequate consideration, would form part of his taxable income as Income from Other Sources. Such property would include land or building, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures or any work of art.

In case of movable property, its value would be the fair market value (method of computation to be prescribed) as on the date of receipt. In case of immovable property, the value of property shall be the stamp duty value of the property.

- It is proposed that with effect from FY 2009-10 the interest received by an assessee on delayed compensation or enhanced compensation shall be taxable in the year in which such interest is received irrespective of the method of accounting followed by the assessee after allowing deduction of 50% of such income.

### Firms

- Much awaited clarity on the taxation of LLPs has now been provided in the Finance Bill, which provides that LLP will be treated at par with the partnership firms. LLP will be taxed at entity level and income of Partners of LLP will be exempt from tax.
- It is also proposed to increase the ceiling limits of remuneration paid to the working partner of a partnership firm, which is allowed as deduction from income. For simplicity and administrative ease, the limits for professional and non-professional firms have been brought in uniformity. The proposed ceiling limits with effect from FY 2009-10 are:

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





## Charitable institutions

Preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest specifically included along with relief to poor, education and medical relief in the definition of charitable purposes. This amendment is applicable with effect from April 1, 2009

### Voluntary contribution to Electoral Trust

- Any voluntary contribution received by an electoral trust shall not be included in total income on the fulfilment of following conditions:
  - Such electoral trust distributes to registered political party during the previous year, 95% of the aggregate donations along with surplus brought forward from any previous year; and
  - Such electoral trust functions in accordance with the rules framed by the Central Government
- Anonymous donations received by partly religious and charitable institutions run by such entities shall be taxable only to the extent such donations exceed 5% of total income of such trust or institution or a sum of INR 100,000 whichever is more. Anonymous donation received by wholly religious institutions shall remain exempt from tax.

The above amendments are proposed to be effective from FY 2009-10.

## Tax Deduction at Source

### Payments to Contractors

- Section 194C has been proposed to be substituted to provide for a simplified withholding tax rate structure i.e. 1% tax deduction in case of payments to individuals or HUF, and 2% in all other cases. The earlier TDS rate differentials in respect of advertisement and subcontracting arrangements are proposed to be done away with. Further, the Bill seeks to enlarge the scope of TDS provisions to include works contracts entered into between the contractor and foreign enterprises/ Governments.
- In case of composite contracts i.e. arrangements involving supply of material along with labour, in order to put to rest the long standing controversy, it is proposed that the value of material would not be subjected to tax withholding, if the same is separately reflected on the invoice. It has also been proposed that works contracts shall include manufacturing or supplying product according to the customer's specification by using material purchased from such customer.

These amendments are proposed to be effective from October 1, 2009.

### Payment towards Rent

It is proposed to reduce the rate of tax deduction on machinery, plant or equipment to 2% from existing 10%. Further, it has been proposed that leasing of land and building, furniture or fittings would attract tax withholding @ 10% as against present applicable rate of 15 % /20%. The amendment is proposed to be effective from October 1, 2009.

### Procedural changes

- Under the existing provisions, no time limit has been provided for completion of proceedings initiated u/s 201(1) of the Act for deeming an assessee in default for non compliance with withholding tax provisions. The Bill seeks to provide for an outer time limit upto 2/ 4 years for completion of such proceedings.
- To encourage voluntary compliance on part of the deductee to furnish PAN to the deductor in respect of taxes withheld, it has been proposed that failure to furnish PAN would attract tax withholding at higher rates i.e. higher of the rate specified in the relevant provision, rates in force or 20%.

These amendments are proposed to be effective from April 1, 2010.

### Assessment / Appeal

- It is proposed to allow the Assessing Officer power to assess or reassess any income which comes to his notice subsequently in the course of reassessment proceedings, notwithstanding that the reasons for such issue have not been included in the reasons recorded while initiating such proceedings. This amendment is proposed to take effect from April 1, 1989 and will apply from FY 1988-89 onwards.
- The current provision regarding valid service of notice / summon / any office communication has been reworded. It is proposed to include that any service made by way 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, will also be valid mode of service. This amendment is proposed to be effective from October 1, 2009.
- It is proposed that every notice, order, letter or any correspondence by the tax authorities and every document, letter or any correspondence by the assessee with the tax authorities, are required to be authenticated by a computer generated Document Identification Number. In the absence of the same, no such notice, order, letter or correspondence etc. would be considered as valid and shall be deemed never to have been received. This amendment is proposed to be effective from October 1, 2010.

### Others

- Application for claiming exemption under Section 10(23C) by eligible institutions (university, education institution, hospital etc.) can be made till 30th September of the succeeding financial year, instead of upto 31st March of the financial year.

#### Insurance companies

- For the purpose of computation of profits and gains of non-life insurance business, adjustments would be made on account of appreciation or diminution arising on account of investments held by such business in accordance with Regulations prescribed by IRDA. This amendment is proposed to be effective from FY 2010-11.

#### Provident Fund Recognition

- Income Tax recognition to the provident fund is available provided the establishments obtained exemption under Section 17 of the Employees Provident Funds and Miscellaneous Provident Fund Act, 1952. It is proposed to

extend the time limit for seeking the exemption from March 31, 2009 to December 31, 2010.

#### New Pension Scheme

- In order to ensure that the tax treatment of savings under the new pension scheme is synchronized with exempt-exempt-tax method following amendments are proposed:
  - a. Any income of NPS Trust shall be exempt from tax.
  - b. Dividend paid to NPS Trust shall be exempt from DDT.
  - c. All purchases and sales of equity and derivatives by NPS Trust shall be exempt from STT.
  - d. Any income of NPS Trust will not be subject to withholding tax.
- It is also proposed that the amount received by an individual contributor from NPS Trust shall not be taxed, if such amount is used for purchasing an annuity plan in the same year.

These amendments are proposed to be effective from FY 2008-09

#### List of certain judicial precedents proposed to be neutralized

As done in the last year's budget, the trend seeking to neutralize certain judicial decisions in favour of tax payer, continues this year as well. Below is a list of certain important decisions sought to be neutralized in this Finance Bill through proposed amendments and in some cases with retrospective effect:

**CIT vs. G.V. Venugopal; 273 ITR 307 (Mad)** - It was held that where an assessee receives payment under a Voluntary Retirement Scheme, he is entitled for relief both under section 10(10C) and 89(1) of the Act subject to the monetary limits. The proposed amendment denies the double relief.

**Jay Bharat Maruti Ltd. vs. CIT 180 Taxman 192 (Del), CIT vs. Ram Singh 217 CTR 345 (Raj)** - In these cases, the courts held that any income for which no reasons have been recorded cannot be added in the course of making assessment of escaped income. The proposed retrospective amendment further clarifies that assessing officer while making assessment under section 147 can make any other addition which comes to his notice during the course of assessment which did not form part of the reasons recorded at the time of issuance of notice.





**ACIT v. Niko Resources Ltd.; [ITA Nos. 661 & 789/Ahd/2005]**

- It was held that each well or a cluster of wells producing mineral oil would be considered as a separate undertaking eligible for tax holiday under section 80-IB of Act. The proposed retrospective amendment provides that for the purposes of claiming deduction, all blocks licensed under a single contract shall be treated as a single undertaking.

**CIT vs. HCL Comnet System and Services Ltd; 305 ITR 409 (SC)**

- The Supreme Court affirming various judgments, held that provision for diminution of value of an asset was not to be added back for the purposes of computing book profits for computing income for the purposes of section 115J, 115JA and 115JB of the Act. The proposed retrospective amendment requires such provision is to be added back.

**Dr. Nalini Mahajan Vs. CIT; 257 ITR 123(Del), CIT vs. Pawan Kumar Goel; 222 CTR 36 (Del)**

- It was held that Addl. Director did not have power to issue warrant of authorization as such powers were granted to the Director General, Director, Chief Commissioner or Commissioner of Income Tax. The proposed retrospective amendment also empowers the Additional Director or Additional Commissioner to issue warrant of authorization.

**Rama Bai vs. CIT 181 ITR 400(SC), DCIT Vs. Padam Prakash (HUF); 104 ITD 1 (Delhi – Special Bench)** - The various courts have held that interest on enhanced compensation accrues on year to year basis for the purposes of taxation. The amendment now proposed in section 145A, provides that interest on enhanced compensation would be deemed to be the income of the year in which it is received after allowing deduction of a sum equal to fifty percent of such interest income, irrespective of the method of accounting followed by the assessee.

**CIT vs. Doom Dooma India Ltd. 222 CTR 105 (SC):** In this case it was held that in view of the language employed in section 43(6)(b) of the Act, regarding depreciation actually allowed, where any income is partially exempt and partially chargeable to tax, the depreciation deducted in arriving at the taxable income alone can be taken into account for computing the WDV for the subsequent year. In other words the depreciation allowed on exempt income was to be ignored while computing WDV for subsequent year. It is now proposed to provide that

in case of composite income, depreciation shall be computed as if the total composite income of the assessee is chargeable under the Act and such depreciation shall be deemed to have been actually allowed to the assessee for computation of WDV of subsequent year.

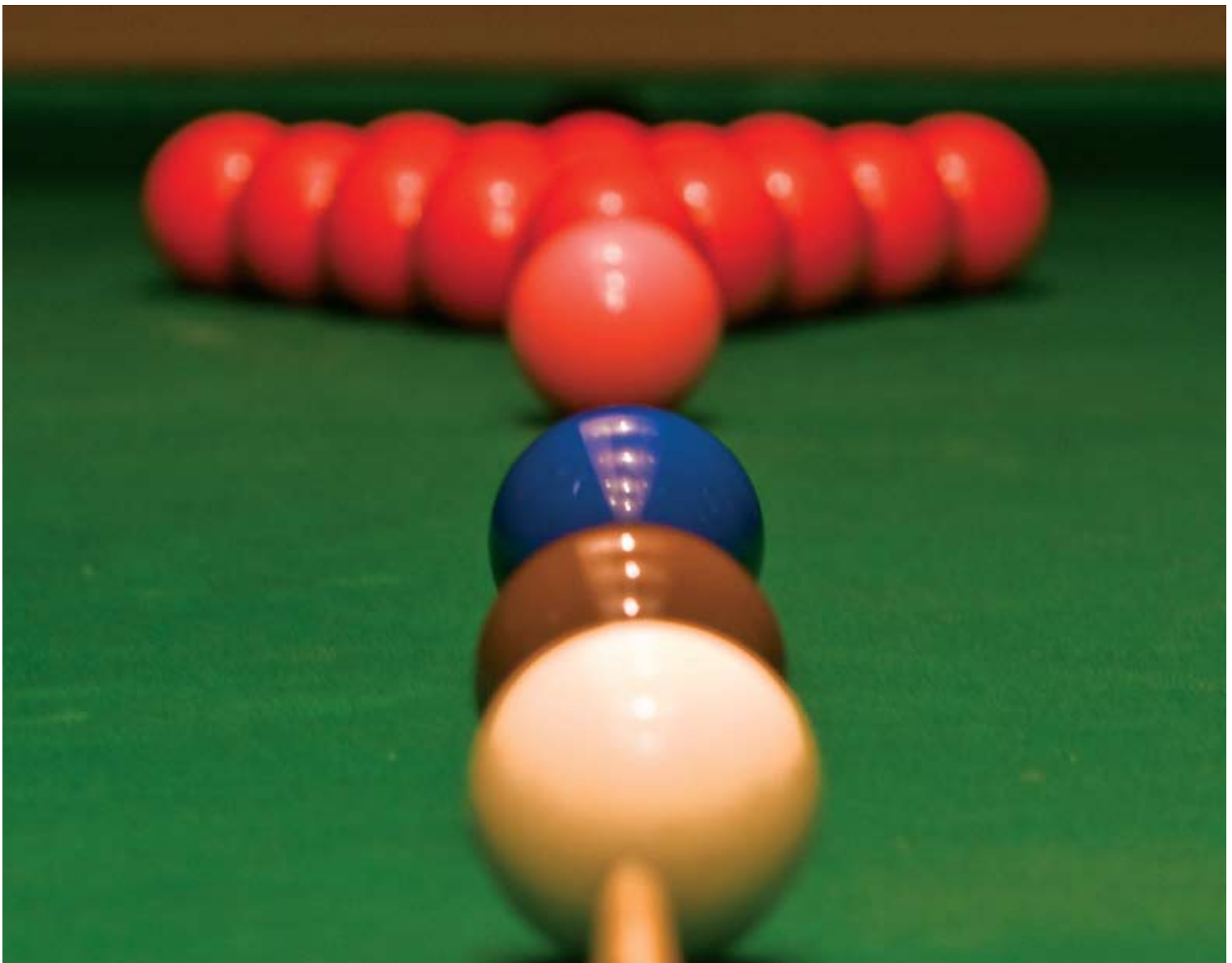
**Mahindra & Mahindra Ltd vs DCIT 122 TTJ 577 (Delhi – Special Bench)**

: In this case, the Tribunal held that the proceedings under section 201(1) can be initiated within a period of six years from the end of the relevant assessment year if income chargeable to tax in the hands of the payer was Rs.1 lakh or more and four years where such income was less than Rs. 1 lakh. Further, the order under section 201(1) has to be passed within one year from the end of the financial year in which the proceedings under section 201(1) were initiated. It is now proposed that an order under section 201(1) 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 or where no such statement is filed, order could be passed up till four years from the end of the financial year in which the payment is made or credit is given.



# 7

## Indirect Taxes



## General

The Finance Minister has reaffirmed the Central Government's commitment to accelerate the introduction of the Goods and Service Tax (GST) from April 1, 2010 and has commended the work done by the Empowered Committee of State Finance Ministers in preparing the design of the dual GST. The dual GST will comprise the Central GST and the State GST and the Centre and State will each legislate, levy and administer the Central GST and the State GST respectively.

There has been no changes in the general rate of Cenvat and Service tax. New services have been added to the list of taxable services and scope of existing taxable services widened. Certain goods earlier attracting Cenvat of 4% have now been made taxable at 8%. All these reflect a step towards convergence of the Cenvat at 8% which augurs well with the expected Central GST of around 8%.

## I. Customs Duties

### Direction

- The Central Government has maintained the overall rate structure for customs duties.

### Details of proposals

#### Tariff

- The following goods has been exempted from BCD:
  - unworked corals
  - inflatable rafts, snow-skis and snow ski equipment, water skis, surf-boats, sail-boards and other water sports equipment; and
  - specified raw materials and consumables for use in the manufacture of sports goods for export, upto 3% of the FOB value of exports in the preceding year
- The rate of BCD on the following goods has been reduced from 10% to 5%:
  - LCD panels for manufacture of LCD televisions
  - specified life saving drugs and bulk drugs used for the manufacture of such drugs
- The rate of BCD on the following goods has been reduced from 7.5% to 5%:
  - specified life saving devices
  - permanent magnets for manufacture of PM synchronous generators above 500 KW used in wind operated electricity generators
- The rate of BCD on the following goods has been reduced from 7.5% to 2.5%:
  - bio-diesel
- The rate of BCD on the following goods has been reduced from 5% to 2%:
  - rock phosphate
- The rate of BCD on the following goods has been reduced from 15% to 10%:
  - waste of wool and cotton
- The BCD exemption has been withdrawn on the following items:
  - set top boxes for television broadcasting (chargeable to BCD of 5%)

- concrete batching plants of capacity 50 cum per hour or more (chargeable to BCD of 7.5%)
- Concessional BCD of 5% has been imposed / re-introduced on the following items:
  - specified machinery for tea, coffee and rubber plantations (till July 06, 2010)
- Others
  - BCD on gold bars and other forms of gold (excluding jewellery) increased from Rs. 100 per ten grams and Rs. 250 per ten grams to Rs. 200 per ten grams and Rs. 500 per ten grams, respectively.
  - Customs duty on silver increased from Rs. 500 per kilogram to Rs. 1000 per kilogram
- With effect from July 07, 2009, the exemption from 4% additional duty of customs on accessories, parts and components imported for manufacture of mobile handsets including cellular phones has been extended by one year upto July 06, 2010.
- With effect from July 07, 2009, the exemption from CVD on Aerial Passenger Ropeway Projects has been withdrawn making import of goods for such projects subject to applicable excise duty
- 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.

#### Non-Tariff

- Section 28F of the Customs Act, 1962 is proposed to be amended so as to allow the notification of the Authority for Advance Rulings (AAR) constituted under the provisions of the Income Tax Act, 1961 to be the authorized AAR for the purposes of Customs, Central Excise and Service Tax
- A new provision (Section 26A) is proposed to be inserted to the Customs Act, 1962 so as to provide for a refund of customs duty paid on imported goods, if found defective or not conforming to the specifications agreed upon between the importer and the supplier of the goods, subject to prescribed conditions.
- Fixed tariff values under the Central Excise Act, 1944 to be taken for the purposes of valuation of like goods, when imported into India, for the purpose of additional duties under Section 3 of the Customs Tariff Act, 1975.
- The relevant provisions under Chapter XV, relating to appeals and applications before the High Court, have been amended in order to allow for condonation of delay in filing of such appeals and applications by the Commissioner of Customs or the other party aggrieved by any Order passed by the Appellate Tribunal.
- The application of the machinery provisions of the Customs Act, 1962 including those relating to the date of determination of the rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties are proposed to be extended to the safeguard duties, countervailing duty and anti-dumping duty levied under Section 8B, 8C, 9 and 9A of the Customs Tariff Act, 1975.

## II. CENVAT

### Direction

- Median ad valorem rate of 8% remains unchanged.
- Excise duty rate of 4% on certain goods has been increased to 8%

### Details of proposals

#### Tariff

- Excise duty exempted on the following categories of goods:
  - High Speed Diesel blended upto 20% bio-diesel
  - Branded Jewellery
  - Coffee and tea premixes
  - Naptha or Natural Gasoline Liquid for use in the manufacture of fertilizer, if such fertilizer is cleared as such from the factory of production
  - Naptha or Natural Gasoline Liquid for use in the manufacture of ammonia, Provided the ammonia is used in the manufacture of fertilizers and the fertilizers is cleared as such from the factory of production
  - Partial exemption from excise duty provided to value of packaged or canned software which represents the consideration for the transfer of the right to use such software
  - Optional exemption to tops of man-made fibre manufactured from duty paid tow using tow-to-top process where the manufacturer does not manufacture tow in the factory.
  - Optional exemption provided to recorded smart cards and recorded proximity cards and tags.
- Excise duty reduced on the following categories of goods:
  - duty reduced from 20% to 8% on
    - Petrol driven trucks
    - Chassis of petrol driven trucks
  - duty reduced from 16% to 14%
    - naptha
  - duty reduced from 14% + Rs. 15 per liter to 14%:
    - special boiling point spirits
  - Specific component of excise duty reduced from Rs. 20,000/- to Rs. 15,000/- on:
    - large cars/utility vehicles of engine capacity 2000 cc and above
  - duty of 4% restored on:
    - Textile goods of pure cotton not containing any other textile material
- The goods falling under existing excise duty rate of 4% has been increased to 8% with the following major exceptions
  - Specified food items including biscuits
  - Drugs and pharmaceutical products
  - Medical equipments
  - Certain varies of paper, paper board, and articles thereof
  - Paraxylene
  - Power driven pumps for handling water
  - Footwear of RSP exceeding Rs. 250/- but not exceeding Rs. 750/- per pair
  - Pressure cookers
  - Vacuum and gas filled bulbs of RSP not exceeding Rs. 20 per bulb
  - Compact Fluorescent Lamps
  - Cars for physically handicapped persons

- Goods on which advalorem + specific duty converted to specific duty
  - Petrol intended for sale with a brand name
    - from 6% + Rs. 13 per liter to Rs. 14.5 per liter
  - Diesel intended for sale with a brand name
    - from 6% + Rs. 3.25 per liter to Rs. 4.75 per liter

*(Above changes to be effective from 7th July, 2009)*

#### Non-Tariff

- Rule 2 of CENVAT Credit Rules, 2004 has been amended to clarify that 'input' would not include cement, angles, channels, CTD/TMT bars etc. used for construction of shed, building or structure for support of capital goods.
- Rule 6(3) Cenvat Credit Rules, 2004 has been amended to prescribe that a manufacturer of both dutiable and exempted goods, who does not maintain separate accounts of inputs shall pay an amount equal to 5% of the total price of exempted goods against the earlier 10%.
- The provision in relation to the reversal of credit on input or unused capital goods which has been written off in the books of accounts under Rule 3(5B) of Cenvat Credit Rules, 2004 is made applicable to the service providers also.
- Consequent in the increase in excise duty rates the abatement percentages on certain products such as vitrified tiles whether polished or not, glazed tiles, LPG gas stoves, MP3, MPEG4 players and toothbrush has been increased accordingly.

*(Above changes to be effective from 7th July, 2009)*

- Section 14 A and 14AA of Central Excise Act, 1944 have been amended to empower the department officers to appoint chartered accountants and cost accountants for undertaking special audits.
- Section 23A of Central Excise Act, 1944 has been amended to provide that the Authority Advance Rulings will mean the authority constituted under sub-section (1) or authorized by the Central Government under sub-section (2A) of section 28F of the Customs Act, 1962.
- Section 35G of Central Excise Act, 1944 has been retrospectively amended w.e.f 1st July 2003 to provide that the High Court has the power to admit appeals after expiry of 180 days if sufficient cause for not filing it in time exists.
- Section 35H of the Central Excise Act, 1944 has been retrospectively amended w.e.f. 1st July 1999 to provide that the High Court may permit filing of application or memorandum of cross objections after expiry of relevant period if sufficient cause for not filing it in time exists.

*(Above changes to be effective from enactment of Finance (No. 2) Bill 2009)*

### III. Service Tax

#### Direction

- Rate of service tax continues at 10%
- Applicability of service tax extended to several new categories of services and scope of certain existing services enlarged
- Extension of territorial jurisdiction for applicability of service tax provision
- Amendment made in CENVAT Credit rules
- Rationalisation of refund procédures

#### Details of proposals

- The scope of Notification No. 1/2002 dated 1st March 2002, has been enlarged to extend the applicability of service tax provisions to installation, structures and vessels in the entire Continental Shelf of India and Exclusive Economic Zones of India. (effective July 7, 2009). Corresponding changes have been in the definition of 'India' as provided under the Taxation of Services (Provided from outside India and Received in India), Rules 2006
- The chargeability of service tax has been extended to the following new categories of services:
  - services provided in relation to transport of goods by rail
  - services provided in relation to transport of coastal goods and goods through national waterways or inland waters
  - services in relation to advice, consultancy or assistance in any branch of law
  - services in relation to cosmetic and plastic surgery

The above changes will come into effect from a date to be notified after the enactment of the Finance (No.2) Bill, 2009

- The scope of some existing categories of taxable services has been amended as follows:
  - the exclusion clause as currently provided under the definition of business auxiliary service has been modified to state that it would apply only if the activity results in manufacture of 'excisable goods'
  - the definition of stock brokers has been amended to exclude sub-brokers within its ambit
  - the taxable service of Information Technology Software service has been amended to replace the word 'acquiring' by the word 'providing' retrospective from 16th May 2008

The above changes will come into effect from a date to be notified after the enactment of the Finance (No.2) Bill, 2009

- Exemption from service tax w.e.f. 7th July 2009 has been provided to:
  - tour operator services provided by tour operators bearing contract carriage permit for inter-state or intra-state transportation of passengers provided such transportation is not in relation to tourism or conducted tours, or charter or hire
  - banking and other financial services or foreign exchange broker services provided by a Scheduled bank to a Scheduled bank in relation to the inter-bank transactions of purchase or sale of foreign currency
  - club or association services provided by Federation of Indian Export Promotion Organization and twenty-one

specified export promotion councils sponsored by the Department of Commerce or by the Ministry of Textiles. Exemption available till 31st March 2010

- Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 have been modified effective July 7, 2009 so to define the term 'gross amount charged' to:
  - a. include-
    - i. the value of all goods used in or in relation to the execution of the works contract, whether supplied under any other contract for a consideration or otherwise; and
    - ii. the value of all the services that are required to be provided for the execution of the works contract;
  - b. exclude
    - i. the value added tax or sales tax as the case may be paid on transfer of property in goods involved; and
    - ii. the cost of machinery and tools used in the execution of the said works contract except for the charges for obtaining them on hire

This change is not applicable to a works contract, where the execution under the said contract has commenced or where any payment, except by way of credit or debit to any account, has been made in relation to the said contract on or before July 7, 2009

The option is permissible only where the declared value of the works contract is not less than the gross amount charged for such works contract.

- CENVAT Credit Rules, 2004 have been amended effective 7th July 2009 as follows:
  - service provider to pay back the amount of CENVAT credit taken on any input or capital goods if value of such input or capital goods is fully written off or where provision to write off has been made in the books of account before being put to use.
  - service providers to pay 6% of the value of exempted services now instead of 8% where both taxable and exempted services are being provided by them and separate accounts are not maintained by them.
- The Finance Act, 1994 has been amended to
  - amend section 84, so as to abolish the revision procedure prescribed therein
  - amend section 94 so as to empower the Central Government to frame rules with respect to the place of supply of taxable services and the relevant date for determination of service tax

The above changes will come into effect from the date of enactment of the Finance Bill, 2009

- Changes have been made in the refund scheme for exporters of goods to ensure speedier sanction and disbursement of refunds. The major highlights are as follows:
  - a. Two taxable services, namely 'transport of goods by road' and 'commission paid to foreign agents subject to a limit of 10%' have been exempted from the levy of service tax, if the exporter is liable to pay service tax under reverse charge basis.

- b. Services in relation to Terminal handling has been added to the list of eligible services
- c. The time period for filing of refund claim has been increased to one year from date of export
- d. The condition for filing refund claims once in a quarter has been dispensed with
- e. A simplified format has been prescribed for filing refund claims
- f. Self-certification by exporter has been introduced where total refund claim does not exceed 0.25% of the total f.o.b. value of exports under a claim
- g. Certificate from Chartered Accountant, who audits the annual accounts of exporter, shall be required where the amount of refund claim exceeds 0.25% of the f.o.b. value of exports
- h. The refund shall be sanctioned by the department within one month, without any pre-audit
- The exemption given vide Notification No. 1/2009 dated 5th January 2009 to persons providing specified services to goods transport agency has been given retrospective effect from 1st January 2005.

## Swings In Customs Duty Rates (Illustrative)

### Goods On Which Duty Reduced From 10% To 5%

Goods	Existing Rate (%)	New Rate (%)
LCD panels for manufacture of LCD televisions	10	5
Specified life saving drugs and bulk drugs used for the manufacture of such drugs	10	5

### Goods On Which Duty Reduced From 7.5% To 5%

Goods	Existing Rate (%)	New Rate (%)
Permanent magnets for manufacture of PM synchronous generators above 500 KW used in wind operated electricity generators	7.5	5
Specified life saving devices	7.5	5
Specified machinery for tea, coffee and rubber plantations	7.5	5

### Goods On Which Duty Reduced From 5% To 2%

Goods	Existing Rate (%)	New Rate (%)
Rock phosphate	5	2

### Goods On Which Duty Reduced From 7.5% To 2.5%

Goods	Existing Rate (%)	New Rate (%)
Bio-Diesel	7.5	2.5

### Goods On Which Duty Reduced From 15% To 10%

Goods	Existing Rate (%)	New Rate (%)
Waste of Wool and Cotton	15	10

Goods On Which Duty Reduced From 5% To Nil

Goods	Existing Rate (%)	New Rate (%)
Unworked corals	5	Nil
Inflatable rafts, snow-skis and snow ski equipment, water skis, surf-boats, sail-boards and other water sports equipment	10	Nil
Specified raw materials and consumables for use in the manufacture of sports goods for export	10	Nil

Goods On Which Exemption Has Been Withdrawn And Duty Re-Imposed

Goods	Existing Rate (%)	New Rate (%)
Set-top boxes	NIL	5
concrete batching plants of capacity 50 cum per hour or more	NIL	7.5

Miscellaneous

Goods	Existing Rate (Rs.)	New Rate Rs)
Gold bars, other than tola bars, bearing manufacturers' or refiners engraved serial number and weight expressed in metric units and gold coins	100 / ten grams	200 / ten grams
Gold, in any other form (excluding jewellery)	250 / ten grams	500 / ten grams
Silver, in any form (excluding jewellery)	500 / kilo	1000 / kilo



## Swings In Excise Duty Rates (Illustrative)

### Reduction In Excise Duty Rates

Goods On Which Rate Reduced From 20% To 8%

Goods	Existing Rate (%)	New Rate (%)
Petrol driven trucks / lorries (Notif 16/09-CE dated 7.7.2009 refers)	20	8
Chassis of such trucks/lorries (Notif 16/09-CE dated 7.7.2009 refers)	20% + Rs. 10,000/-	8% + Rs.10,000/-

Goods On Which Rate Reduced From 14% + Rs. 15 Per Litre To 14%

Goods	Existing Rate (%)	New Rate (%)
Special boiling point spirits falling under tariff items 27101111, 27101112 and 27101113 (Notif 18.09-CE dated 7.7.2009 refers)	14% + Rs. 15 per liter	14
Naphtha falling under heading 2710 (Notif 18.09-CE dated 7.7.2009 refers)	16	14

Goods On Which Rate Has Been Reduced In Specific Component

Goods	Existing Rate (%)	New Rate (%)
Large cars/utility vehicles of engine capacity 2000 cc and above (Notif No. 16/2009-CE dated 7.7.2009 refers)	20% + Rs. 20000/- per vehicle	20% + Rs. 15,000 per vehicle

Goods Earlier Chargeable To Duty Now Exempt

Goods	Existing Rate (%)	New Rate (%)
High Speed Diesel blended upto 20% bio-diesel (Notif No. 14/09 dated 7.7.2009 refers)	6% + Rs.3.25 per litre'	Nil
Branded jewellery (Notif No. 17/09-CE dated 7.7.2009 refers)	2	Nil
Coffee and tea premixes (Notification No. 13/2009 dated 7.7.2009 refers)	8	Nil
Naptha or Natural Gasoline Liquid for use in the manufacture of fertilizer, if such fertilizer is cleared as such from the factory of production. (Notification No. 14/2009 dated 7.7.2009 refers)	16	Nil
Naptha or Natural Gasoline Liquid for use in the manufacture of ammonia, Provided the ammonia is used in the manufacture of fertilizers and such fertilizer is cleared as such from the factory of production. (Notification No. 14/2009 dated 7.7.2009 refers)	16	Nil
Partial exemption from excise duty provided to value of packaged or canned software which represents the consideration for the transfer of the right to use such software (Notif 22/09-CE dated 7.7.2009 refers)	8	Nil
Optional exemption to tops of man-made fibre manufactured from duty paid tow using tow-to-top process where the manufacturer does not manufacture tow in the factory. (Notif No. 12/09-CE dated 7.7.2009 refers)	4	Nil
Goods falling under Chapter 68 manufactured at site of construction for use in construction work at such site without any condition (Notif No. 15/09-CE dated 7.7.2009 with certain conditions)	Nil*	Nil
Optional exemption provided to recorded smart cards and recorded proximity cards and Tags. (Notif No. 16/09-CE dated 7.7.2009 refers)	Nil	Nil

\*subject to the condition that the goods contained 25% or more by weight red mud, press mud or blast furnace slag



## Increase In Excise Duty Rates

### Goods On Which Duty Increased From 4% To 8%

Goods	Existing Rate (%)	New Rate (%)
All goods earlier attracting 4% with certain exceptions	4	8
Man-made and natural fibres other than pure cotton, beyond the fibre and yarn stage (under the existing optional scheme)	4	8

### Goods On Which Excise Duty Imposed From Nil To 4%

Goods	Existing Rate (%)	New Rate (%)
Textile Goods Of Pure Cotton Not Containing Any Other Textile Material	Nil	4

### Goods On Which Advalorem To Duty Converted Specific Duty

Goods	Existing Rate (%)	New Rate (%)
Petrol Intended For Sale With A Brand Name (Notif No. 14/09 Dated 7.7.2009 Refers)	6% + Rs.13 Per Litre	Rs.14.50 Per Litre
Diesel Intended For Sale With A Brand Name (Notif No. 14/09 Dated 7.7.2009 Refers)	6% + Rs.3.25 Per Litre	Rs. 4.75 Per Litre



# 8

## In the Pipeline



## SEBI

- **Discussion paper on rationalization of disclosure norms for Rights Issues**

In order to encourage entities to look at rights issues as a viable form of capital raising, SEBI had taken up a comprehensive review of existing provisions relating to rights issues. Measures that are under consideration relate to electronic trading of Rights Entitlements and rationalization of disclosures for rights issues.

- **Increase in market hours of trading in exchanges**

SEBI has introduced a discussion paper to elicit the response / views of various stakeholders on the different aspects related to extending market hours of trading on exchanges based on which SEBI proposes to take a decision in the near future.

- **Proposed framework for securities trading using wireless technology**

It is proposed to explore the possibility of extending the existing framework of internet trading to enable use of wireless technology for securities trading subject to certain safeguards. SEBI has invited public comments for the same.

- **Average public float to be increased**

The Finance Minister in his Budget speech announced that the threshold for non promoter public holdings is to be increased with a view to increasing the average public float in Indian listed companies which currently stands at about 15%.

## Companies Act

The Companies Bill, 2008 was approved by the Union Cabinet on 29th August 2008, paving the way for introduction of the Bill in Parliament to replace the existing Companies Act, 1956.

## Banking & Financial Services

### NBFCs

- The Government has announced in its second stimulus package that it would work out an arrangement with public sector banks to provide a special credit line to NBFCs to bolster financing to the commercial vehicle sector.
- RBI had earlier issued guidelines on corporate governance which inter alia included guidelines on connected lending. Pursuant to the suggestions received in relation to the compliance of connected lending relationships, RBI has issued a Circular that such instructions will become operational after final evaluation of suggestions and modifications. The said guidelines have not yet been finalized.

## Capital Markets

- SEBI is working on a policy to allow certain categories of FII's to invest in Indian securities markets through the automatic route, without having to register themselves with SEBI, subject to KYC (know-your customer) requirements being complied by the concerned brokers and custodians. SEBI is also likely to issue guidelines for foreign investors seeking registration under the "foreign corporate" category.

## Banking

The Banking Regulation Amendment Bill, 2004 ('Bill') provided for alignment of voting rights in private banks with the shareholding. The government has not moved further on this front for a long period.

## Insurance

- The Insurance Laws (Amendment) Bill, 2008 ('Bill') was introduced in the Rajya Sabha in December 2008, proposing amendments to the Insurance Act, 1938, the Insurance Regulatory and Development Authority Act, 1999 and the General Insurance Business (Nationalisation) Act, 1972. The Bill which is likely to be tabled in the Parliament soon for its approval, proposes the following key amendments:
  - Foreign equity in Indian insurance company permitted to be raised from 26% to 49%.
  - Facilitate entry of Lloyd's of London in insurance business in India as a foreign company in joint venture with Indian partners and also as a branch of the foreign re-insurer.
  - Deletion of provisions which currently require Indian promoters to bring down their equity holding to 26% within a period of 10 years from the commencement of business.
  - Permit foreign re-insurers to open branches in India subject to minimum net owned funds requirement of INR 500 million.
  - Allow insurance companies to raise newer capital through instruments on pattern of banks.
- The Bill also seeks to formulate regulations for:
  - Payment of commission and control of management expenses;
  - Opening and closing of foreign branches, the closing of domestic branches of Indian insurers and norms for opening domestic branches.
- Following the proposal of the Government to allow foreign stake up to 49% instead of the present limit of 26%, IRDA has begun the exercise of introducing a uniform and standard valuation methodology based on the insurance company's embedded value and for this purpose, in June 2009, it engaged the Institute of Actuaries to firm up the methodology for simplifying the valuation of insurance companies. IRDA is also working on merger & acquisitions guidelines for insurance players.
- In May 2009, IRDA issued draft guidelines on corporate governance for insurers to prepare them with strong governance to have a smooth transition while getting listed on the bourses. The draft guidelines cover issues such as board of directors, control functions, senior management and chief executive officer and other senior functionaries, appointment of statutory auditors, outsourcing, disclosures, and whistle-blowing mechanism.
- The accounting body, ICAI has appointed an expert committee that will come up with new accounting standards/norms specific to insurance sector.

## Real Estate

- Uniformity and reduction in stamp duty rates are on the anvil in order to reduce cost of the transaction and prevent manipulation of prices.

## Telecom

- TRAI's issued a consultation paper dated 5 May 2008 discussing issues such as concept & definition of MVNO's, different MVNO models, need and timing for entry of MVNO, regulatory approaches, spectrum sharing, licensing & regulatory issues etc.,. Subsequently TRAI issued a recommendation paper dated 6 August 2008 on MVNO. Thereafter there has been an exchange of correspondence between DoT and TRAI, the latest being on 12 March 2009 where TRAI replied to DoT with their reconsidered views on DoT's observations on recommendations, which have been accepted by DoT vide its press release dated 25 February 2009. Detailed guidelines on MVNO are expected to be announced soon by DoT.
- Draft recommendations have been released by TRAI on new measures to pave growth of value added services. Some of the key recommendations are as follows:
  - Separate category of licenses for value added services is not envisaged.
  - Registration of value added service providers to be under the OSP Category.
  - DoT to make appropriate arrangements for allocation of common short codes for value added services.
- TRAI has recommended a 3 year lock in period for Promoter's Equity for Unified Access Service Licensees.
- The rollout of spectrum allocation for 3G and BWA for private players likely to be launched in 2010.

## Information & Broadcasting

### Cross Media ownership

- TRAI on 25th February 2009 came out with its recommendations on media ownership. The recommendations include putting in place safeguards for:
- Ownership across different segments of media such as print/television/radio.
  - Cross holding restrictions to prevent consolidation including vertical integration within a media segment such as television or radio
  - Restrictions based on market share in a given geography within each media segment.

### Restructuring of cable TV services

TRAI vide its recommendation paper of 25th July 2008 has suggested restructuring of cable TV services. One of the main recommendations is to shift from existing analogue transmission system into digital transmission system.

An important amendment suggested vide this paper is on the definition of "person" who can undertake cable services.

### Satellite Radio

TRAI has sent its final comments on draft Satellite Radio policy to MIB. Satellite Radio Service refers to distribution of single or multi channel radio programs by using a satellite system which provides encrypted digital radio signals direct to subscribers' receiver sets. Salient provisions in the draft policy guidelines include:

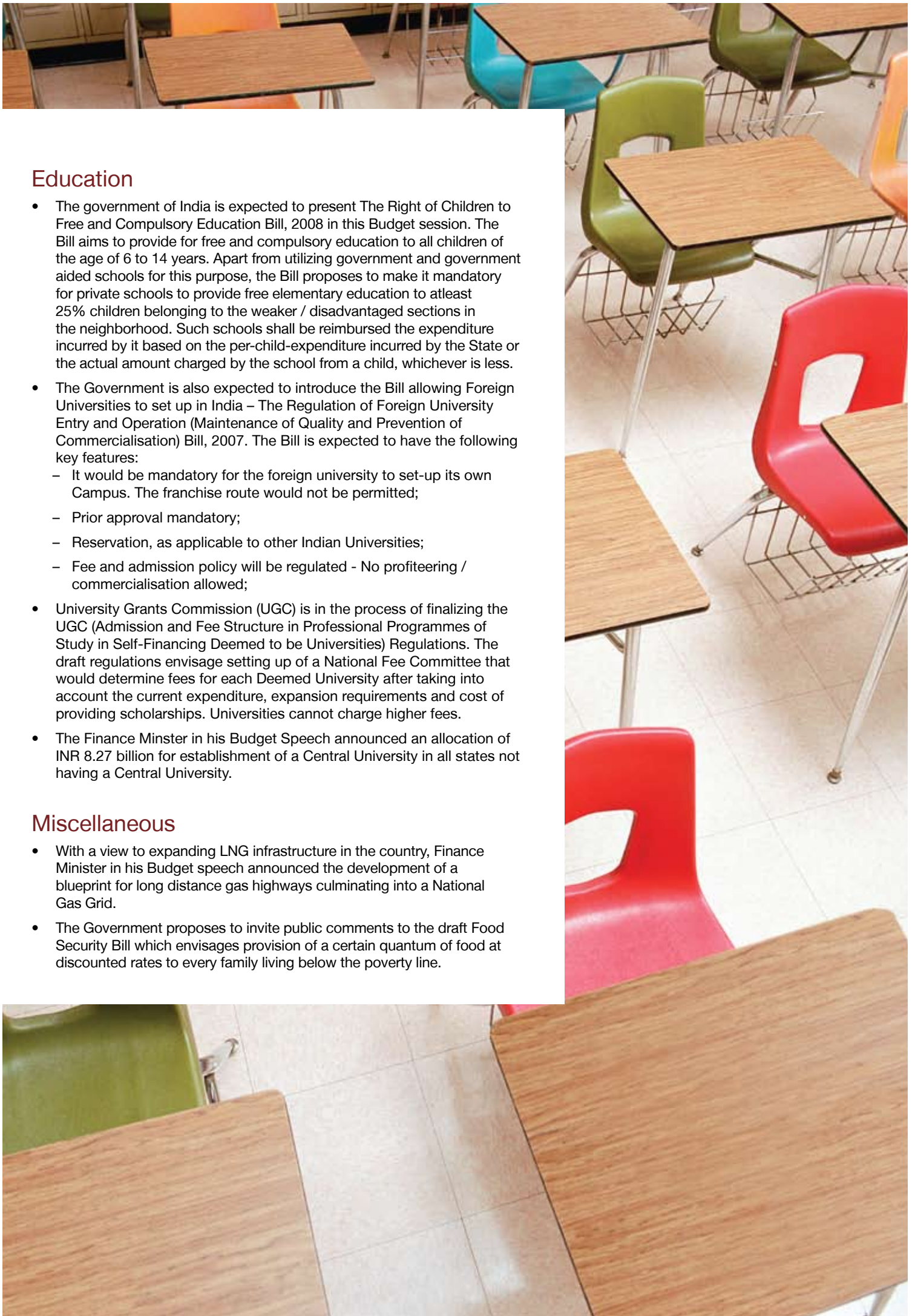
- The license to be valid for a period of 10 years initially, with provision for further extension for ten years.
- The licensee will have to pay an annual license fee of 4% of the gross revenue.
- Obligation on the licensee to roll out the service within one year of getting the license.
- Auctioning the license if the number of eligible applicants exceeds the number of licenses being offered depending upon the availability of spectrum and satellite. Initially, the Government may consider offering two licenses in addition to existing service provider.

### Revision in Foreign Investment Limits

Presently, the rules regarding FDI vary from segment to segment in the media sector. Keeping in view the increasing convergence in Broadcasting and Telecommunications technologies and its impact on competition in the market, MIB has sought recommendations of TRAI on foreign investment limits for various segments of broadcasting sector.

The basic approach of TRAI in the matter has been to consider broadcasting services as falling into carriage services and content services.

Classification	Scope	Proposed Foreign Investment limits
Carriage Services	DTH, Cable TV, HITS, Mobile TV, Teleports	74% (FIPB approval beyond 49%)
Content Services	Downlinking	100%
	Uplinking - non-news - News & current Affairs	100% 49% (up from existing 26%)
	Radio	49% (up from existing 20%)



## Education

- The government of India is expected to present The Right of Children to Free and Compulsory Education Bill, 2008 in this Budget session. The Bill aims to provide for free and compulsory education to all children of the age of 6 to 14 years. Apart from utilizing government and government aided schools for this purpose, the Bill proposes to make it mandatory for private schools to provide free elementary education to atleast 25% children belonging to the weaker / disadvantaged sections in the neighborhood. Such schools shall be reimbursed the expenditure incurred by it based on the per-child-expenditure incurred by the State or the actual amount charged by the school from a child, whichever is less.
- The Government is also expected to introduce the Bill allowing Foreign Universities to set up in India – The Regulation of Foreign University Entry and Operation (Maintenance of Quality and Prevention of Commercialisation) Bill, 2007. The Bill is expected to have the following key features:
  - It would be mandatory for the foreign university to set-up its own Campus. The franchise route would not be permitted;
  - Prior approval mandatory;
  - Reservation, as applicable to other Indian Universities;
  - Fee and admission policy will be regulated - No profiteering / commercialisation allowed;
- University Grants Commission (UGC) is in the process of finalizing the UGC (Admission and Fee Structure in Professional Programmes of Study in Self-Financing Deemed to be Universities) Regulations. The draft regulations envisage setting up of a National Fee Committee that would determine fees for each Deemed University after taking into account the current expenditure, expansion requirements and cost of providing scholarships. Universities cannot charge higher fees.
- The Finance Minister in his Budget Speech announced an allocation of INR 8.27 billion for establishment of a Central University in all states not having a Central University.

## Miscellaneous

- With a view to expanding LNG infrastructure in the country, Finance Minister in his Budget speech announced the development of a blueprint for long distance gas highways culminating into a National Gas Grid.
- The Government proposes to invite public comments to the draft Food Security Bill which envisages provision of a certain quantum of food at discounted rates to every family living below the poverty line.

# Abbreviations

3G	3rd Generation mobile telephony standards	DFRC	Duty Free Replenishment Certificate
AAR	Authority for Advance Rulings	DCC	Domestic Call Centre
AD	Authorized Dealer	DGCA	Directorate General of Civil Aviation
ADRs	American Depository Receipts	DIP	Disclosure and Investor Protection
AERA	Airports Economic Regulatory Authority of India	DIPP	Department of Industrial Policy & Promotion
AGR	Adjusted Gross Revenue	DoT	Department of Telecommunications
AICTE	All India Counsel for Technical Education	DRP	Dispute Resolution Panel
AML	Anti Money Laundering	DTA	Domestic Tariff Area
AS	Accounting Standard	DTAA	Double Tax Avoidance Agreement
ASBA	Applications Supported by Blocked Amounts	DTH	Direct To Home
BCD	Basic Customs Duty	ECB	External Commercial Borrowings
BoP	Balance of Payments	ECNs	Electronic Contract Notes
BRAI	Broadcast Regulatory Authority of India	EEFC	Export Earner's Foreign Currency
BWA	Broadband Wireless Access	EHTP	Electronic Hardware Technology Park
CBM	Coal Bed Methane	EOUs	Export Oriented Units
CBDT	Central Board of Direct Taxes	ESOS	Employee Stock Option Scheme
CCI	Competition Commission of India	FBT	Fringe Benefit Tax
CE Act	CENVAT	FCo	Foreign Company
CET	Common Entrance Test	FCCB	Foreign Currency Convertible Bonds
CFT	Combating Financing of Terrorism	FCEB	Foreign Currency Exchangeable Bonds
CIC	Credit Information Companies	FDI	Foreign Direct Investment
CMTS	Cellular Mobile Telephone Service	FEMA	Foreign Exchange Management Act
CRA	Credit Rating Agency	FII	Foreign Institutional Investors
CRAR	Capital to Risk Weighted Assets Ratio	FIPB	Foreign Investment Promotion Board
CSDL	Central Securities Depository Ltd	FoB	Free on Board
CTH	Customs Tariff Heading	FVCI	Foreign Venture Capital Investor
CST	Central Sales Tax	FY	Financial Year
CVD	Countervailing Duty	GDP	Gross Domestic Product
DDT	Dividend Distribution Tax	GDRs	Global Depository Receipts
DEPB	Duty Entitlement Passbook	GST	Goods and Service Tax
DFIA	Duty Free Import Authorization	HFC	Housing Finance Companies



HITS	Head – End in the Sky	NBFCs	Non Banking Financial Corporations
HUF	Hindu Undivided Family	NCDs	Non Convertible Debentures
I & B	Information and Broadcasting	ND-SI	Non Deposit taking – Systematically Important
ICAI	Institute of Chartered Accountants of India	NELP	New Exploration Licensing Policy
IDRs	Indian Depository Receipts	NFE	Net Foreign Exchange
IIFCL	India Infrastructure Finance Company Limited	NLD	National Long Distance
ILD	International Long Distance	NOC	No Objection Certificate
INR	Indian National Rupees	NPA	Non Processing Area
IPLC	International Private Leased Circuit	NPS	New Pension System
IPTV	Internet Protocol Television	REGA	National Rural Employment Guarantee Act
IRDA	Insurance Regulatory and Development Authority	NSDL	National Securities Depository Ltd
ISP	Internet Service Provider	OECD	Organisation for Economic Co-operation and Development
IT	Information Technology	O&M	Operations and Maintenance
IT Act	Income-tax Act, 1961	OSP	Other Service Provider
ITES	Information Technology Enabled Services	PA	Processing Area
KYC	Know – your – Customers	PAN	Personal Access Number
LIBOR	London Interbank Offered Rate	PF	Provident Fund
LLP	Limited Liability Partnership	PFRDA	Pension Fund Regulatory and Development Authority
LoP	Letter of Permission	PFT	Provident Fund Trust
LNG	Liquified Natural Gas	PGBP	Profits and Gains of Business and Profession
M&A	Mergers and Acquisitions	PLMN	Public Land Mobile Network
MAT	Minimum Alternate Tax	PSBC	Public Service Broadcasting Council
MCA	Ministry of Corporate Affairs	PSTN	Public Switched Telephone Network
MIB	Ministry of Information and Broadcasting	PSU	Public Sector Undertaking
MNP	Mobile Number Portability	QIB	Qualified Institutional Buyer
MoA	Memorandum of Association	QIP	Qualified Institutional Placement
MSO	Multi System Operator	R&D	Research and Development
MRP	Manufacturing Resource Planning	RBI	Reserve Bank of India
MRP	Maximum Retail Price	REMF	Real Estate Mutual Funds
MVNO	Mobile Virtual Network Operator	RIC	Resident Indian Citizen
NAV	Net Asset Value		



RoC	Registrar of Companies
RTA	Registrar and Transfer Agent
SEBI	Securities and Exchange Board of India
SEZ	Special Economic Zones
SLB	Securities Lending and Borrowing
SSI	Small Scale Industry
STP	Straight Through Processing
STP	Software Technology Park
STPI	Software Technology Park of India
STT	Securities Transaction Tax
TCS	Tax collected at source
TDS	Tax deducted at source
TFTS	Trade for Trade Settlement
TIEA	Tax Information Exchange Agreement
TRAI	Telecommunications Regulatory Authority of India
UAS	Universal Access Service
UGC	University Grants Commission
USD	United State Dollar
UPA	United Progressive Alliance
UTN	Unique Transaction Number
VAT	Value Added Tax
WDV	Written Down Value
WHT	Withholding Tax
WOS	Wholly Owned Subsidiary
WPI	Wholesale Price Index



# Notes

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

# Contacts

## Ahmedabad

President Plaza  
1st Floor, Plot No 36  
Opp Muktidham Derasar  
Thaltej Cross Road, SG Highway  
Ahmedabad 380 054  
Tel: +91 79 3091 7000  
Fax: +91 79 3091 7082  
Email : pwctrs.ahm@in.pwc.com

## Bangalore

6th Floor, Tower 'D', The Millenia  
No. 1 & 2, Murphy Road  
Ulsoor  
Bangalore 560 008  
Tel: +91 80 4079 6000  
Fax: +91 80 4079 6222/2558 6354  
Email: pwcblr.trs@in.pwc.com

## Chennai

PwC Centre  
#32, Khader Nawaz Khan Road  
Nungambakkam  
Chennai 600 006  
Tel: +91 44 4228 5000  
Fax: +91 44 4228 5100  
Email: pwctls.maa@in.pwc.com

## Hyderabad

# 8-2-293/82/A/1131A  
Road No. 36, Jubilee Hills  
Hyderabad 500 034  
Tel: +91 40 6624 6600  
Fax: +91 40 6624 6300  
Email: pwctrs.hyd@in.pwc.com

## Kolkata

South City Pinnacle  
Plot No. X-1/1  
Block EP, Sector-V  
Salt lake  
Kolkata 700 091  
Tel: +91 33 44046000/23579100  
Fax: +91 33 4404 6166  
Email: pwctls.kol@in.pwc.com

## Mumbai

PwC House, 4th Floor,  
Plot 18/A, Guru Nanak Road (Station Road)  
Bandra (West)  
Mumbai 400 050  
Tel: +91 22 6689 1000  
Fax: +91 22 6689 1888  
Email: pwctrs.mum@in.pwc.com

## New Delhi

Sucheta Bhawan  
(Gate No. 2, 1st Floor)  
11-A Vishnu Digamber Marg  
New Delhi 110 002  
Tel: +91 11 4115 0000  
Fax: +91 11 2321 0594/2321 0596  
Email: pwctls.nd@in.pwc.com

## Pune

Suite No. 8, 5th floor,  
Muttha Towers,  
Airport Road, Yerawada,  
Pune 411 006  
Tel: +91 20 4100 4444  
Fax: +91 20 4100 6161  
Email: pwc.pune@in.pwc.com

[pwc.com/india](http://pwc.com/india)