

# Finance Bill 2009 – Direct Tax Proposals

Presentation by :

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# OBJECT/SCOPE

*To deliberate upon proposals of Finance Bill  
2009 ( of July 6, 2009)*

# Basic Objective of FM to Taxation in Finance Bill (No 2) of 2009

## □ Taxation

- 36. *It is time that we complete the process that was started in 1991 for building a trust based, simple, neutral, tax system with almost no exemptions and low rates designed to promote voluntary compliance. The Income Tax Return Forms should be simple and user-friendly. I have asked the Department to work on SARAL-II forms for early introduction. We need a tax system which generates revenues on a sustained basis without use of coercive tax collection methods at the end of each year to meet targets. It is my intention to make a modest start in this direction in the current year and ensure that the process is completed in the next four years. At the end of this process, I hope the Finance Minister can credibly say that our 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.*

# Proposals at a glance

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- *New Direct Tax Code within next 45 days from budget day – to be implemented after public debate in Winter Session*
- *FBT AND CTT ABOLISHED W.E.F 1/4/2010/ AY 2010-2011 (FY 2009-2010)*
- *Corporate Tax Rate Remained Unchanged*
- *TDS Provisions Revamped*
- *LLP Tax Status Equivalent to General Partnership Firm*

# Proposals at a glance

- *Personal Income Tax (Individual; HUF AOP; BOI; Artificial Juridical Person) – Basic Tax Exemption Limit (in INR- Lacs) No Surcharge on Personal Income Tax (to be removed in phased manner) (persons covered: Firm and Local Authority also) (AY 2010-2011)*

Assessee	Earlier (AY 2009-10)	Changed (AY 2010-11)
Sr Citizen	2.25	2.40
Women	1.80	1.90
Others	1.50	1.60

# Clause by Clause Analysis

*Section 80E – Deduction in respect of loan taken for higher education (clause 32) – Applicable from AY 2010-2011*

Particular	Earlier Status	Amendment proposed
Compass of Higher Education	Only covered full time studies in graduate and post graduate course in specified subjects	Now extended to all fields of studies <u>including vocational studies</u> after Sr. Sec.Exams

# Clause by Clause Analysis

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*Section 208 – Advance Tax Payment Threshold  
Applicable from F Y 2009-2010 (clause 70)*

Particular	Earlier limit	Amendment proposed
Advance Tax Payable, if estimated tax Above →	INR 5000	INR 10,000

# Clause by Clause Analysis

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*Wealth Tax : Basic Exemption Limit (clause 82)*

Particular	Earlier limit	Amendment proposed
Wealth Tax Payable, if Net Wealth Above →	INR 15 Lac	INR 30 Lac



# Clause by Clause Analysis

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*Section 40A (3A): Disallowance for expense paid otherwise by a/c payee cheque/draft above INR 20,000 : Relief to Transporters (clause 16) From 1/10/2009*

Particular	Earlier limit	Amendment proposed
For Transporter to curb practical hardship→	INR 20,000	INR 35,000

# Clause by Clause Analysis

*Section 10 (23C): Time limit for filing tax exemption application u/s 10(23C) (clause 4)  
FROM FY 2008-2009 ONWARDS*

Particular	Earlier limit	Amendment proposed
Time limit for above →	Within financial year (where Receipts exceeded INR 1 Cr)	Within 30 Sep of next succeeding year

# Clause by Clause Analysis

*Section 2(15) : Scope of Charitable Purpose :  
Expanded (clause 3)*

*FROM AY 2009-2010 ONWARDS*

Particular	Earlier limit	Amendment proposed
Activities covered	Education; Medical; Relief to Poor; - & General Public Utility being Subject to non commercial	Specific insertion for: environment & monuments preservation etc activities to protect from any impact of Finance Act, 2008 amendment

# Clause by Clause Analysis

*Section 40(b)(v) : Remuneration to Partner's Limit Increased (clause 15)*

*FROM AY 2010-2011*

Particular	Earlier limit	Amendment proposed
Slab for payment of remuneration to working partner changed & alligned	Different for professional firms and others	Same for Both  In first 300,000 book profit or loss cases- INR 150,000 or 90% whichever is higher On balance= @ 60%

# Clause by Clause Analysis

*Section 115BBC: Anonymous Donations : Tax Relief in certain cases (clause 42)*

*FROM AY 2010-2011*

Particular	Earlier limit	Amendment proposed
Exemption for Anonymous Donations to certain limit	Zero/Nil	Anonymous donations exempt Upto 5% of Total Income of trust or INR 100,000 whichever is more

# Clause by Clause Analysis

*Weighted Deduction for Inhouse Research and Development Section 35(2AB): Scope Expanded (clause 12)  
FROM AY 2010-2011*

Particular	Earlier Scope	Amendment proposed
Nature of Industry Covered	Limited and Specified	Benefit extended to all manufacturing business houses except for items listed in XIth Schedule

# Clause by Clause Analysis

*Section 80G : Number of Years for which Approval u/s 80G(5) (vi) shall be applicable (clause 33)*

Particular	Earlier Scope	Amendment proposed
Maximum Time Span in terms of Asst Years for which Approval could be given	Five Asst Years	For approval expiring after 1/10/2009 u/s 80G(5), approval will be in perpetuity – unless withdrawn by concerned CIT etc – For which expired before 1/10- once granted – perpetual force <sup>15</sup>

# Clause by Clause Analysis

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*Section 293C: Inserted to empower wherever in Income Tax Act an approval is required from an authority- said authority has withdrawal power Also, subject to giving hearing to concerned Assessee (clause 78)*



# Clause by Clause Analysis

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*Section 13B and Section 80GGB/GGC (clause 3, 4, 8, 34, 35) – For AY 2010-2011- funding of political party*

- *Contribution to Electoral Trust/Trust as approved by CBDT in accordance with specified scheme of Central Govt (pass through vehicle)– Eligible for 100% deduction /for donor*
- *Aforesaid donations subject to tax u/s 2(24) in hands of trust; exempted u/s 13B Provided*
  - *Said trust: functions in accordance with applicable rules to be notified &*
    - *distributes to Political Party during concerned previous year 95% of aggregate donations as recd.to political party as registered u/s 29A (Representative of People Act)*

# Clause by Clause Analysis

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*Section 35AD – Investment Linked Tax Incentive for Specified Business (clause 10; 13; 17; 24; 28) – For AY 2010-2011 – Key Points;*

- ❖ for cold chain facility for specified products; for warehouse facilities for agricultural produce (business commences after 1/4/2009) and laying & operating a cross country natural gas pipeline distribution network (business commences after 1/4/2007)*
- ❖ For all capital expense (excl land ; goodwill and financial instrument)*
- ❖ loss of specified business – only adjustable against profits of the specified business – indefinite carry forward – section 73A*

# Clause by Clause Analysis

- ❖ *Tax Deduction at Source – TDS Law – Overhauled -*
  - a) *TDS Rates – 194I- Rental (in case PAN of deductee is not there- TDS 20% applicable w.e.f 1/4/2010)*

Particular	Existing Rate	Amendment/Proposal w.e.f 1/10/2009
Plant & Machinery	10%	2%
Land & Building		
- Individual/HUF Payee	15%	10%
- Other Payee	20%	10%

# Clause by Clause Analysis

- ❖ *Tax Deduction at Source – TDS Law – Overhauled - a) TDS Rates – 194C- Contract (in case PAN of deductee is not there- TDS 20% applicable, non transport)*

Particular	Existing Rate	Amendment/Proposal 1/10/2009
Individual HUF Contractor/Sub Contractor	Contractor – 2% Sub Contractor -1%	SAME FOR BOTH 1% (No separate rate for advertisement)
Other than above	Contractor – 2% Sub Contractor -1%	2%

# Clause by Clause Analysis

- ❖ *In TDS – On Non Salary Payments – No need to factor Surcharge and Edu Cess (resident taxpayers)*
- ❖ *Section 201(3) – Time limit for **passing orders** in case of **resident deductee** –*

Particular	Time Limit
Where Statement u/s 200 is filed	Within 2 yrs from end of relevant financial year – in which statement is filed
Other cases /Non Statement (Delhi High Court ruling in NHK Case- approved)	Within 4 Yrs from end of financial year in which tax deduction is made

- ❖ *NO TDS FOR TRANSPORT CONTRACTORS U/S 44AE AT ALL – PROVIDED PAN FURNISHED – DUTY OF DEDUCTOR TO MAKE FURTHER REPORTING (from 1/10/09)*

# Clause by Clause Analysis

- ❖ *Definition of Work u/s 194C clarified- TDS on outsourcing contract*
  - ❖ *Excluded where product made under specification of customer – raw material purchased from other person*
  - ❖ *However, Included Contract where raw material is supplied by customer Value for TDS- In case invoice separately reflects raw material value – TDS on amount excl Raw Material Value otherwise TDS on Full Invoice Amount*
- ❖ *PAN MUST - Section 206AA inserted : PAN to be mandatorily by tax deductee) : Failure Outcome : 20% TDS ("ANY PERSON" BEING INCOME RECIPIENT COVERED WHETHER NON RESIDENT PAYEES COVERED..?)- PAN MUST FOR 15G/15H/15I – CERTIFICATE U/S 197 W F F 1/4/2010- clause 68*

# Clause by Clause Analysis

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- ❖ *Processing of Tax Statement for TDS- Section 200A inserted – Clause 64*
- ❖ *From 1/4/2010*
- ❖ *Where ever TDS statement is submitted u/s 200 – to be processed for arithmetical error/ incorrect claim (inconsistent items etc)*
- ❖ *Intimation to be sent for Sum Payable/Refundable to Deductor – within 1 yr from end of financial year in which statement is filed*
- ❖ *Scheme for Centralized processing of aforesaid statement may be prescribed by CBDT*

*Flexibility to provide periodicity for filing tax statement u/s 200(3)- inculcated – on discretion of Govt ...*

# Clause by Clause Analysis

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- ❖ *LLP Tax Status*
- ❖ *General Partnership Scheme Applicable (taxation in hands of entity and exemption for partners)*
- ❖ *Designated Partner under LLP Law shall file tax return for LLP (exception there....section 140)*
- ❖ *Conversion of General Partnership shall be Tax Neutral – if rights and obligations of partners remain same – otherwise section 45 shall apply as usual*
- ❖ *Tax Recovery : Jointly and Severally from Every Partner – Plea of Non Connivance/involvement allowed*
- ❖ *Clauses 3·55·58*



# Clause by Clause Analysis

- ❖ *Section 44AE: (CLAUSE : 21)*
- ❖ *Anti Avoidance Tax Clause Inserted (Higher Actual Income versus Declared Presumptive Income)*
- ❖ *Increase in Income/Truck (W.E.F.AY 2011-2012)*

Particular	Earlier	Changed
Heavy Goods Carriage	3500/month/c arriage	5000/month/c arriage
Other Goods Carriage	3150/month/c arriage	4500/month/c arriage

# Clause by Clause Analysis

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- ❖ *Section 44AD: (CLAUSE : 18 TO 22)*
- ❖ *Applicable from AY 2011-2012*
- ❖ *Type of Assessee Eligible : Covering Individual/HUF/Firm excl LLP not claiming deduction u/s 10A/10AA/10B/10BA/CH VIA DEDUCTION*
- ❖ *Nature of Business Covered: Any Business excluding Section 44AE/Truck Operator Maximum Turnover INR 40 Lacs*
- ❖ *Immunity from Advance Tax Payment*
- ❖ *No Books; Audit if scheme opted (That is, In case not opted- books and audit mandatory)*
- ❖ *TAX AUDIT SCOPE IMPLIEDLY EXTENDED?*

# Clause by Clause Analysis

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- ❖ *Section 80IB(10): (CLAUSE : 37)*
- ❖ *Deduction Not available to Undertaking which executes housing project as works contract (applicable from AY 2001-2002)*
- ❖ *To plug loophole whereby developer sold multiple units to same person & circumvented the legislative intent- it is provided that Undertaking Developing Housing project shall not be allowed to allot more than one unit to same person (for individual allotment also possible in relation to said individual allottee to spouse/minor children/HUF etc) – FROM AY 2010-2011*

# Clause by Clause Analysis

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❖ *Section 2(29BA) Manufacture Definition Inserted for first time in the Law (CLAUSE : 3)*

❖ *Applicable for all tax concessions*

'manufacture', with all its grammatical variations, shall mean a change in a non-living physical object or article or thing,—

(a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or

(b) bringing into existence of a new object or article or thing with a different chemical composition or integral structure.

# Clause by Clause Analysis

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- ❖ *Reassessment Proceedings*
- ❖ *Clause 57 Explanation to Section 147 inserted*
- ❖ *Impliedly Overruled Kerala High Court in Travancore 305 ITR 170 and Delhi High Court in Jai Bharat Maruti cases ITA 501/2007*
- ❖ *No need for separate recording of reasons on "other issues" noticed in reassessment proceedings*

# Clause by Clause Analysis

- ❖ *Search Under Section 132 Clause 50/51*
- ❖ *Amendment having Mass Impact : Delhi High Court in Nalini Mahajan and Pawan Gupta & All HC in Raghu Partap overruled*
- ❖ *Provided from Retrospective Effect : Joint Director and Additional Director Had Power to Issue Warrant repc w.e.f 1/6/1994 & 1/10/1998*

- ❖ *DHC in Capital Power and Pawan Kumar 222 CTR 36/47*  
*P&HHC in Vinod 252 ITR 29*  
*All HC in Raghu Partap 307 ITR 450*  
*SC in Chand Vhurasia – Latest Development-*

# Clause by Clause Analysis

- ❖ *Anomaly in SEZ Unit Deduction u/s 10AA removed (Parity in Numerator and Denominator) from AY 2010- 2011*

Earlier Formulae  
For Deduction  
Computation

Profits of business of  
Unit\* Export Turnover  
**of Unit**/Total Turnover  
of Business of  
**Assessee**

Proposed Law  
For Deduction  
Computation

Profits of business of  
Unit\* Export Turnover  
**of Unit**/Total Turnover  
of Business of  
**undertaking/unit**

# Clause by Clause Analysis

- ❖ *Section 56(2)(vi) Transaction without consideration/inadequate consideration (for transactions on/after 1/10/2009)- clause 26*
- ❖ *Provided that Property recd without consideration will be included (which in turn will include immovable property; share/securities/ jewellery etc)*
- ❖ *In case of immovable property without consideration: if stamp duty value exceeds INR 50,000 : WHOLE STAMP VALUE TAXABLE and for Inadequate consideration : Difference in stamp value and declared value taxable*
- ❖ *For Movable Property recd without consideration: Fair Market Value shall be base of taxation (Method to be prescribed)*



# Clause by Clause Analysis

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- ❖ *Section 50C- Clause 25 for transactions on/after 1/10/2009*
- ❖ *Covered transactions executed through agreement to sell*
- ❖ *Jd ITAT RULINGS IN 110 ITD 525/112 TTJ 76 Impliedly Overruled*

# Clause by Clause Analysis

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- ❖ *MAT – Clause 43; 44; 45*
- ❖ *From AY 2010-2011*
- ❖ *Rate of Taxation u/s 115JB increased from 10% to 15%*
- ❖ *Carry Forward period u/s 115JAA(2) increased from 7 to 10 years*
- ❖ *From AY 1998-1999: Provision for Diminution in value of asset debited to P&L – to be added back to determine taxable book profits*

# Clause by Clause Analysis

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- ❖ *Section 10(10C): Compensation on voluntary retirement/termination of service*
- ❖ *Clause 4; 38 from AY 2010-2011*
- ❖ *Double Benefit Addressed – Proviso to section 89 & 10(10C) inserted*

# Clause by Clause Analysis

- ❖ *Introduction of Document Identification Number/DIN and facility of electronic communication*
- ❖ *With effect from 1/10/2010*
- ❖ *Section 282B : Every Income tax authority bound to allot a computer generated DIN for every document issued/recd by them*
- ❖ *Document issued/recd without DIN shall be invalid*
- ❖ *Provision for service of notice by electronic mode u/s 282 & courier service provided w.ef 1/10/2009 (for electronic service – rules to be made by CBDT)- CLAUSE 76; 77*

# Clause by Clause Analysis

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- ❖ *Concealment Penalty : Section 271(1)(c) Explanation 5A – Clause 73' For Search after 1/6/2007*
- ❖ *Deemed concealment – clarified to cover where return filed before search but income found in search not included in return – deemed to be concealed (for previous year being ended before search date)- section 56(2)(viii)*

# Clause by Clause Analysis

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- ❖ *Clause 26;27 & 56 – Interest on delayed /enhanced compensation*
- ❖ *SC Rama bai 181 ITR 400 – Taxable on mercantile basis*
- ❖ *Amendment proposed in section 145A : Taxable in year of receipt; irrespective of accounting method followed and under the head other sources*

# Clause by Clause Analysis

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- ❖ *Clause 40 & 41*
- ❖ *Transfer Pricing Law*
- ❖ *Safe Harbor Rules Concept introduced (from 1/4/2009)- to reduce the impact of judgment error in determining the transfer price*
- ❖ *Where more than one price is determined by most appropriate method – Arm Length Price shall be Arithmetic Mean of the same (If ALP is within 5% of Transfer price as reflected by Assessee – No further adjustment required in assessee declared Transfer Price)*
- ❖ *Kol ITAT in Development Consultants & Sony Delhi ITAT rulings apparently impacted*

# Clause by Clause Analysis

- ❖ *Alternate Dispute Resolution Mechanism for Person in whose case transfer pricing order u/s 92CA(3) by TPO is passed and any foreign company*
- ❖ *W.e.f 1/10/2009*
- ❖ *Draft Assessment Order to be prepared and sent to assessee*
- ❖ *Eligible Assessee can file either acceptance or his objections thereon to i) Dispute Resolution Panel and II) AO*
- ❖ *Dispute Resolution Panel to consist of three CIT's nominated by CBDT- Directions binding on revenue/AO -*
- ❖ *Powers similar to CIT-A are available to Panel*
- ❖ *Assessee can Appeal to ITAT from order of AO passed in pursuant to Panel Directions*
- ❖ *Section 144C inserted*



# Clause by Clause Analysis

## ❖ *Other Amendments as proposed:*

- ❖ *Extension of Sunset clause for tax holiday u/s 80IA (TERMINAL DATE FOR COMMENCING ACTIVITY OF POWER DISTRIBUTION EXTENDED FROM 31/3/2008 TO 31/3/2011 – 80IA(4)(v)(b) & under 80IA(4)iv)- to 31.3.2011 from 31.3.2010- clause 36 Power Sector Tax Reform*
- ❖ *Oil Refineries – Time limit u/s 80IB(9) FOR commencing operations upto 31/3/2009 extended to 31/3/2012 (both for public and private sector); Natural Gas production licensed under NELP VIIIth round bidding & beginning production after 1/4/2009 – entitled (AHD ITAT IN NIKO FOR EARLIER PERIOD? 22 DTR 225*
- ❖ *Undertaking u/s 80IB(9) Not every well in Oil Block but all blocks under single contract of NELP- one undertaking – from AY 2000-2001*

# Clause by Clause Analysis

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- ❖ *Other Amendments as proposed:*
  - ❖ *Section 10A/10B deduction available for one more year – viz AY 2011-2012 (earlier sunset by AY 2010-2011)*
  - ❖ *Abolition of FBT Paves way for revival of old tax regime*
    - ❖ *Perquisite in hands of employees*
    - ❖ *Capital Gains taxation on ESOP's etc*

Thank You

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