

## **Union Budget 2010- Triumph for MSME Sector short-lived**

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The Budget 2010 presented in the Parliament on 26<sup>th</sup> February 2010 by the Finance Minister Pranab Mukherjee has brought disappointment amongst all, particularly the Aam Admi, but it is indeed a triumph for the MSME Sector. Although there is no respite to the MSME sector in the tax proposals, but more importantly, the Finance Minister has lauded the importance of the MSME Sector in his Budget speech. It would not be out of place to mention that this is the first time in the history of independent India that the Finance Minister in the Budget speech hailed the MSME sector, showered laurels and pledged for its sustainability & growth. He aptly said in his budget speech *“Micro, Small and Medium Enterprises (MSMEs) contribute 8 per cent of the country's GDP, 45 per cent of the manufactured output and 40 per cent of our exports. They provide employment to about 6 crore persons through 2.6 crore enterprises. To resolve a number of issues which affect the growth of this sector, Prime Minister constituted a High-Level Task Force which held detailed discussions with all stake holders and drew up an agenda for action. A High Level Council on Micro and Small Enterprises will monitor the implementation of the recommendations and the agenda for action”*. It is indeed a matter of pride & jubilation that the Indian Industries Association has been able to draw the attention of the PM & the FM towards the significant role of the MSME Sector in the development of the country. All credit goes to our National President, Shri Anil Gupta, who has been able to highlight the apathy to this ailing & uncared sector in the meetings of the High-Level Taskforce with the PM. Kudos to him & his team!

The Budget is not just an ordinary document. It spells out the economic policies of the country and is a pointer to the direction where the country is really heading. It deciphers the social ideologies to which the government is committed. The FM has tried his utmost to accomplish the promises made to the electorate and has tried to allocate funds to various schemes needed for the betterment of the poor &

downtrodden. But he has failed to address to the basic issue of inflation & rising commodity prices, which continue to oppress our people.

## BUDGET 2010-HIGHLIGHTS OF DIRECT TAXES

The following are the proposals effecting the income tax provisions:

The Budget 2010 has brought some encouraging news in the Direct Taxes. Although the basic exemption limits of Income Tax for individuals, HUF, women & senior citizens have not been increased from the present limits, more significantly there has been relaxation in tax slabs

### CHANGE IN INCOME TAX RATES

Individuals/HUF/AOP	Women assessee	Senior Citizens	Rate
Up to 160000	Up to 190000	Up to 240000	Nil
160001-500000	190001-500000	240001-500000	10%
500001-800000	500001-800000	500001-800000	20%
Above 800000	Above 800000	Above 800000	30%

The proposed savings in taxes are as under:

<i>Income Level</i>	<i>Old Slabs</i>	<i>New Slabs</i>	<i>Savings</i>
<i>Male</i>			
4,00,000	35,020	24,720	10,300
6,00,000	86,520	55,620	30,900

8,00,000	1,48,320	96,820	51,500
<b>Ladies</b>			
4,00,000	31,930	21,630	10,300
6,00,000	83,430	52,530	30,900
8,00,000	1,45,230	93,730	51,500
<b>Senior Citizens</b>			
4,00,000	26,780	16,480	10,300
6,00,000	78,280	47,380	30,900
8,00,000	1,40,080	88,580	51,500

From the above table, everyone who earns an income of above Rs. 8 Lacs lakh would pay a lower tax of Rs. 51,500. However, the lower income group has been totally ignored. Those who earn a taxable income of up to Rs. 3,00,000 do not save a penny and have been totally uncared for. They stand to gain nothing. This is indeed prejudicial to the 'Aam Admi'. The middle class would be able to combat the spiralling price rise with the savings in Income Tax but those with income lower than 3 lac will stand deprived & cheated. the worst part is the common man having income Rs 25,000 per month—his saving in Income Tax is a big zero. Not a single rupee saving in spite of the fact that they are having big rise in inflation -no income tax saving at all because the initial exemption limit has not been changed—that's the big problem.

There is no change in the rates of Corporate Assesses and Firms; however the surcharge on Corporates has been reduced from 10% to 7.5% on income above Rs 1.00 crore.

The following changes & amendments have been proposed in the Budget:

- **Definitions**

- **Charitable Purpose [Section 2(15)]**

- Any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration does not qualify as an activity for charitable purpose, therefore, income from the above activity is subject to income tax. In order to remove hardship, it is proposed to relax the above restriction where total receipts from any such activity do not exceed Rs.10,00,000 in the previous year. This amendment will take effect retrospectively from AY (Assessment Year) 2009-10.

- **Scope of Income**

- **Income deemed to accrue or arise in India [Section 9]**

- It has been held in certain judicial precedents that income from offshore services is not deemed to accrue or arise in India in the absence of a specific provision to that effect in the Act. For the removal of doubts, it is proposed to retrospectively include a clause stating that income would be deemed to accrue or arise in India whether or not the services have been rendered in India. This amendment will take effect, retrospectively, from 1 June 1976 in relation to the AY 1977-78 and subsequent years

- **Cancellation of Registration of Charitable Trust :**

- S. 12AA (3) has been amended to grant powers to the Commissioners to cancel Registration of Trusts registered under S. 12A. (wef 01/06/2010)

- **Business income**

- **Deduction for Scientific Research and Development and research associations:**

- - S. 35 (1) (iii) has been amended to include an approved research association, which has as its objects undertaking research in social science or statistical research.
    - - S. 35 (1) (ii) has been amended to provide for 175% weighted deduction in respect of contributions to approved institutions.
    - - S. 35 (2AA) (a) has been amended to provide for 175% weighted deduction in respect of contributions to National Laboratory or a University.
    - - S. 35 (2AB) (1) has been amended to provide for 200% weighted deduction in respect of contributions to approved institutions.
    - - S. 80GGA (2) (aa) has been amended to include research association as stated above as an approved institution for the purpose of claiming the deduction.
    - - S. 139 (4C) has been amended requiring a research association as stated above to file a return of income.
    - - S. 143 (3) first proviso has been amended to grant power to AO to withdraw approval of a research association.

- **Deduction in respect of specified business [Section 35AD]**

- - Existing section 35AD allows a deduction for the whole of capital expenditure incurred by certain specified businesses subject to certain conditions
    - - It is also proposed to include "business of building and operating a new hotel of two-star or above category as classified by Central Government" within the specified businesses eligible to claim deduction under this section
    - - It is proposed that where a deduction under 35AD is claimed and allowed in respect of the specified business for any assessment year, no deduction shall be allowed under the provisions of Chapter VI-A in relation to such specified business for the same or any other assessment year
    - - These amendments will apply from assessment year 2011-12 and subsequent years.

- **Time limit for deposit of TDS [Section 40]**
  - Under the existing provisions of section 40(a)(ia), deduction of expenditure such as interest, commission, brokerage, professional fees, etc. (other than expenses incurred in the last month of the financial year) is not allowed if tax on such expenditure was not deducted, or after deduction was not paid during the previous year
  - The proposed amendment in the section grants deduction of the expenditure incurred during the entire year if the tax deductible is deposited on or before the due date of filing of return of income
  - The above amendments will be effective retrospectively from assessment year 2010-11 and subsequent years.
  
- **Tax Audit [Section 44AB, Section 271B]**

Tax audit of accounts is not required if the turnover is below a threshold. Revised thresholds are Rs.6,000,000 (from existing Rs.4,000,000) for business and to Rs.1,500,000 (from existing Rs.1,000,000) for profession.
  
- **In light of the above, the following amendments have been made:**
  - Maximum penalty leviable under section 271B for failure to get accounts audited under section 44AB or to furnish a report of such audit has been increased from Rs.100,000 to Rs.150,000
  - Under Section 44AD, the maximum total turnover or gross receipts by individuals, HUF or partnership firms (excluding LLP) under presumptive scheme of taxation for plying, hiring or leasing goods carriages has been increased from Rs.4,000,000 to Rs.6,000,000.
  - These amendments will apply in relation to the assessment year 2011-12 and subsequent years
  
- **Capital Gains**

**Conversion of certain companies into LLP (Limited Liability Partnership) [Section 47 (xiiib)]**

  - Any transfer of capital asset or intangible asset by Private Company or Unlisted Public Company(referred to as 'company') pursuant to the conversion of such company into a LLP as per the provisions of LLP Act, 2008 will not be treated as transfer for the purpose of capital gains tax. The following conditions need to be satisfied in order to avail this benefit:
    - All the assets and liabilities of the company should become the assets and liability of the LLP
    - All the shareholders of the company should become partners in the LLP
    - The capital contribution and profit sharing ratio of the partners in LLP should be in the same proportion as their shareholding in the company on the date of conversion
    - The shareholders of the company do not receive any consideration or benefit, directly or indirectly, other than by way of share in profit and capital contribution of the LLP
    - The aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50% for 5 years from the date of conversion

- The turnover or gross receipts of the company in any 3 years preceding the year of conversion should not exceed Rs.6,000,000.
  - No amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the books of the company on the date of conversion for a period of three years from the date of conversion
- Corresponding amendments made:
- If any of the conditions specified above are violated, the capital gains exempted earlier will be taxed as capital gains income in the hands of the LLP in the year in which the condition is violated

**[Section 47A]**

- Depreciation allowed to LLP and company in the year of conversion cannot exceed the depreciation allowable to the company in case the conversion had not taken place [Section 32]
- Deduction for expenditure incurred by the company by way of payment to employees pursuant to voluntary retirement scheme will be available to the LLP. Further, no deduction shall be allowed to the company for such expenditure in the year of conversion [Section 35DDA]
- Where the entire actual cost of a capital asset has been allowed to a company as a deduction under section 35AD, the actual cost of such asset shall be nil in the hands of the LLP [Section 43(1)]
- The WDV (Written Down Value) of any block of assets in the hands of LLP shall be the WDV of such block in the hands of the company on the date of conversion [Section 43(6)]
- The cost of acquisition of a capital asset in the hands of LLP transferred on conversion shall be deemed to be the cost at which the company had acquired such asset [Section 49]
- Where a private company or unlisted public company has been converted into a LLP as per the provisions of LLP Act, 2008, then the LLP shall not be eligible to carry forward any MAT credit which was otherwise allowed to be carried forward in the hands of the company [Section 115JAA]

• **Income from Other Sources**

**Immovable property without consideration [Section 56(2)(vii)(b)]**

- With effect from 1 October 2009, where any individual or a HUF (Hindu Undivided Family) receives any immovable property for inadequate consideration, the difference will not be taxed as income from other sources
  - It is proposed that where an immovable property the stamp duty value of which exceeds Rs.50,000 is received without any consideration, such value will be taxed in the hands of the recipient of the property
  - This amendment will take effect from AY 2010-11
  - It is pertinent to note that under Section 50C, transfer of a capital asset being land or building for a consideration lower than stamp duty value is taxable in the hands of the transferor on the differential amount.
- **Scope of 'Property' amended [Explanation to Section 56(2)(vii)]**
    - Individuals or HUFs receiving specified assets ('property') for no consideration or for inadequate consideration, the value or difference of

which exceeds Rs.50,000 are subject tax under the head 'Income From Other Sources'

- The definition of property has been amended to restrict itself to any 'property' which is in the nature of capital asset of the assessee. Therefore, any specified asset which is in the nature of stock in trade of the recipient will not be taxed under this Section by virtue of this amendment
- The amendment will take effect retrospectively from 1 October 2009
- Further, 'bullion' has been included within the definition of property. This amendment will take effect from 1 June 2010

- **Receipt of shares by companies or firms [Section 56(2)(vii)]**

- With effect from 1 June 2010, where any shares of a company (not being a company in which the public are substantially interested) is received by firm or another company (not being a company in which the public are substantially interested), without consideration or where the fair market value exceeds consideration by an amount exceeding Rs.50,000, the difference is taxable as income from other sources
- The above is not applicable in cases where such property is received by way of transactions undertaken for business re-organisation, amalgamation and de-merger which are not regarded as transfer under Sections 47 (via), (vib), (vic), (vid) or (vii)
- Corresponding amendment has been made under Section 49(4) whereby the value of which has been subject to tax under this Section shall be deemed to be the cost of acquisition of such shares in the hands of the recipient
- A corresponding amendment has been made in the definition of 'Income' under Section 2(24)(xv) to include the above
- This above amendments will take effect from AY 2011-12

- **Income from other sources –Reference to Valuation Officer**

Corresponding amendment is made to Section 142A to allow the Assessing Officer to make reference to a valuation officer to estimate the fair market value of the property as defined under Section 56

- **Tax Holiday**

- Developing and building housing projects [Section 80IB(10)]**

- The following eligibility criteria prescribed for claiming deduction under Section 80(1B)(10) with respect to developing and building housing project are proposed to be amended
  - For housing projects which are approved by the local authority on or after 1 April 2004 and upto 31 March 2005, the period for completion of housing project is stipulated as 4 years from the end of the financial year in which the housing project is so approved
  - For housing projects which are approved by the local authority on or after 1 April 2005, the period for completion of housing project has been increased from 4 to 5 years from the end of the financial year in which the housing project is so approved
  - The existing limits with respect to the built-up area of the shops and other commercial establishments included in the housing project is 5% of the built-up area of the housing project or 2,000 square feet

whichever is less. This limit is proposed to be increased to 3% of the aggregate built-up area of the housing project or 5,000 square feet, whichever is higher

- This amendment will apply for AY 2010-11 and subsequent years
- **Investment made in long-term infrastructure Bonds [Section 80CCF]**
  - In case of an Individual or a Hindu Undivided Family, it is proposed to allow a deduction in respect of the amount paid or deposited as a subscription to long-term infrastructure bonds as may be notified by Central Government
  - The amount of deduction is in addition to the deduction of Rs.100,000 specified under Section 80C and shall be lower of:
    - o Actual amount of subscription; or
    - o Rs.20,000
  - This deduction is proposed in respect of amount paid or deposited during FY 2010-11 Deduction in respect of health insurance premium paid by the assessee for himself or his family [Section 80D]
  - It is proposed that with effect from 1 April 2011, deduction under Section 80D shall also be allowed in respect of any contribution made to the Central Government Health Scheme by Government Servants within the existing limits
- **Tax Deducted At Source**
  - Revision in the threshold for TDS**
    - The TDS provisions are not applicable if the transaction is below a prescribed threshold.
    - The change will take effect from 1 July 2010
    - Existing and the proposed threshold limits for aggregate of payment to a payee in a financial year are as follows:

Section	Existing threshold (Rs.)	Proposed threshold (Rs.)
194B – Winnings from lottery or crossword puzzle	5,000	10,000
194BB – Winnings from horse race	2,500	5,000
194C – Payment to contractors (for single transaction)	20,000	30,000
194C – Payment to contractors (for aggregate of transactions during the financial year)	50,000	75,000
194D – Insurance Commission	5,000	20,000
194H – Commission or brokerage	2,500	5,000
194-I – Rent	1,20,000	1,80,000
194J – Fees for professional or technical services	20,000	30,000

- **Interest on failure to deposit TDS [Section 201(1A)]**
  - Interest on failure to deposit the tax deducted will now be levied at 1.5% per month –for the month or part of the month from the date on which tax was deducted to the date on which tax is deposited
  - Interest on failure to deduct the tax will continue to be levied at 1% per month –for the month or part of the month from the date on which tax was deductible to the date on which tax is deducted



- The above changes will take effect from 1 July 2010

- **Settlement Commission**

- Definitions [Section 245A]**

- It is proposed to amend the definition of the term 'case' to permit an assessee to make an application to the Settlement Commission with respect to pending proceedings with respect to assessment or reassessment resulting from search or as a result of requisition of books of account or other documents or any assets
- The proceedings for assessment or reassessment shall be deemed to have commenced on the date of issue of notice initiating such proceedings and concluded on the date on which the assessment is made
- This amendment is proposed to take effect from 1 June 2010
- Similar consequential amendments are proposed under the Wealth Tax Act Application for settlement of cases [Section 245C]
- It is proposed that with respect to the cases described above, an application can be made to the Settlement Commission only where the additional amount of income-tax payable on such income disclosed exceeds Rs. 5,000,000
- In other cases, it is proposed that such application may be made to the Settlement Commission only where the additional amount of income-tax payable on income exceeds Rs 1,000,000
- This amendment will take effect from 1 June 2010
- Similar consequential amendments are proposed under the Wealth Tax Act

- **Procedure on receipt of application for settlement of cases [Section 245D]**

The time-limits for passing an order of the Settlement Commission has been amended as follows:

- In respect of applications made between 1 June 2007 and 1 June 2010, the order should be passed within twelve months from the end of the month in which such application was made;
- In respect of applications made to Settlement Commission on or after 1 June 2010, an order should be passed within eighteen months from the end of the month in which such application was made

- This amendment will take effect from 1 June 2010
- Similar consequential amendments are proposed under the Wealth Tax Act

- **Appellate Proceedings Statement of case to the High Court[Section 256(2A)]**

- In case of an order passed by Appellate Tribunal before 1 October 1998, an assessee / the tax department could have applied to the Appellate Tribunal and required it to refer a question of law decided against the assessee / the tax department to the High Court
- In cases where a refusal order was passed by the Appellant Tribunal with respect to the above, an appeal could have been filed with the High Court within a period of six months from the date of service of such refusal order

- It has now been proposed that such an appeal may be admitted by the High Court beyond the period of six months if the High Court is satisfied that there is a sufficient cause for delay
  - This amendment shall be applicable with retrospective effect from 1 June 1981
  - Similar amendment allowing the appeal to be admitted by the High Court beyond the prescribed time has been made in Section 27 of the Wealth-tax Act, 1957
- **Appellate Proceedings**
    - **Appeal to High Court [Section 260A(2A)]**
      - S. 256 (2A) has been inserted to empower High Court to condone the delay beyond the period of 6 months.(wef 01/06/1981).
      - S. 260A (2A) has been inserted to empower High Court to condone the delay beyond the period of 4 months.(wef 01/10/1998).
      - S. 27 and S. 27A of the Wealth Tax Act have been amended on the lines of **a** and **b** above.
  - **Centralized Processing of Returns**
    - S. 143 (1B) has been amended to extend the time limit for issue of notification for centralized processing of returns to 31/03/2011 (wef 01/04/2010).
    - S. 115WE (1B) has been amended to extend the time limit for issue of notification for centralized processing of FBT returns to 31/03/2011 (wef 01/04/2010).
  - **Allotment of Document Identification Number [Section 282B]**

Under the Finance Act 2009, it was proposed that with effect from 1 October 2010 the income-tax authorities will allot a computer generated Document Identification Number in respect of every notice, order, letter or any correspondence issued or accepted by an income-tax authority. The date for the introduction of the above requirement on a pan-India basis has been deferred to 1 July 2011
  - **Requirement to issue TDS/ TCS Certificates**

The Finance Act, 2009 had omitted the requirement to issue physical copies of TDS (Tax Deducted at Source) and TCS (Tax Collection at Source) certificates with effect from 1 April 2010 since the tax authorities were to furnish statement of tax credit to every assessee

Since the system is not fully operational and TDS and TCS certificates being important documents for claim of credit by the deductee, the requirement to issue such certificates by the deductor/collector has not been dispensed with.

**Conclusion:** There are 3 important issues that I wish to deal about the current Budget. Firstly, by just praising the MSME Sector in the Budget speech has not served any fruitful purpose. The MSME Sector needs some concrete incentives in taxes/exemptions/deductions. We cannot be

equated or compared to the large industries. Something concrete is needed to give the required enthusiasm to this sector. Secondly, it is an established phenomenon that to fill one pothole, you have to dig another. But our FM has dug numerous potholes to fill a few. Resultantly, the poor, the aam aadmi & the MSME Sector is bound to fall & doom. Lastly, I lament at the apathy shown by the members of Parliament during discussions about the Budget proposals. The Budget affects all Indian citizens but surprisingly there is hardly any debate and it sails through both the houses of Parliament with hardly 1-2 hours of unfruitful discussion. The presence of the members of Parliament is also very scanty. Perhaps, this is a real mockery of Democracy in India.