FINANCE BILL - 2008

The fifth budget of the UPA Government for the year 2008 – 2009 presented by the finance minister on 29th February 2008 is apparently election oriented. The finance minister has attempted to please different sections of voters by offering to them various tax sops through his budget.

The proposals introduced in the budget 2008 – 2009 i.e. the finance bill 2008 are analysed and discussed under Part – I for Direct Taxes and Part – II for Service Tax.

Part – I

Proposals relating to Direct Taxes

1. Changes in Income Tax Rates:

1.1 For Individuals and H.U.F. :

For assessment 2009 - 10 the finance minister has proposed to give substantial relief to all categories of Individual tax payers and H. U. F.

He has proposed to revise the tax slabs upwards as under:

Income Slab	**Tax rate**
Upto Rs. 150,000/=	No tax
Rs.150,001/= to Rs.300,000/=	10%
Rs.300,0001/= to Rs.500,000/=	20%
Above Rs.500,000/=	30%

However, in case of a woman assessee, resident in India and below 65 years of age at any time during the previous year, a higher basic exemption limit of Rs. 1,80,000=00 will be applicable for assessment year 2009-2010.

Similarly, for a senior citizen i e. every individual resident in India who is of the age of 65 years or more at any time during the previous year, a higher basic exemption limit of Rs. 2,25,000=00 will be applicable for assessment year 2009-2010.

1.2 For Companies and Partnership Firms:

No change has been proposed in the tax rates applicable to Companies, Partnership Firms and Cooperative societies.

1.3 Tax on Dividend / Income Distribution by Companies / Mutual Funds:

The finance minister has continued the levy of 15% Tax on Dividend / Income Distribution by companies / mutual funds.

However, he has proposed to give set-off of dividend received by a domestic holding company from its subsidiary company (in other words, the old section 80M is re-introduced indirectly).

1.4 Surcharge and Cess;

The scheme of levy of surcharge of levy on all categories of tax payers is continued without any change therein for assessment year 2009-2010.

Like wise, the finance minister has also continued the levy of Education Cess @ 2% and Secondary and Higher Education Cess @ 1% for assessment year 2009-2010.

1.5 Revised Tax liability and Benefit:

As a result of the revision in the Tax Slabs for individual / HUF assessee the tax liability and tax benefit at various levels of income for the assessment year 2009 – 2010 will be as follows:

Taxable Income	Tax for the year ended 31-03-2008	Tax for the year ended 31-03-2009	Relief in tax
1,10,000	Nil	Nil	Nil
1,50,000	4,120	Nil	4,120
2,00,000	14,420	5,150	9,270
2,50,000	24,720	10,300	14,420
3,00,000	40,170	15,450	24,720
5,00,000	1,01,920	56,650	45,320
8,50,000	2,10,120	1,64,800	45,320
9,00,000	2,25,570	1,80,250	45,320
10,00,000	2,56,470	2,11,150	45,320
11,00,000	3,16,107	2,66,255	49,852
12,00,000	3,50,097	3,00,245	49,852
15,00,000	4,52,067	4,02,215	49,852

[Note: The tax payable for the year ending 31-03-2009 has been calculated for an assessee other than a Senior Citizen / woman assessee.]

Further, as result of higher exemption limits, a Senior Citizen and a woman assessee will pay tax at various slabs as under:

Taxable Income	Tax payable by a senior citizen	Tax payable by a woman assessee
1,50,000	Nil	Nil
1,80,000	Nil	Nil
2,25,000	Nil	2060
2,50,000	2575	7210
3,00,000	7725	12360
5,00,000	48925	53560
8,50,000	157025	161710
9,00,000	172525	177160
10,00,000	203425	208060
11,00,000	257758	262856
12,00,000	291748	296846
15,00,000	393718	398816

2. Major Tax Changes:

2.1 For all Individual / HUF Assessee:

2.1.1 The finance minister has proposed to exempt from tax any amount received by an individual as a loan either in lump sum or in installments under a "Reverse Mortgage Scheme" notified by the government.

2.1.2 The finance minister has continued the deduction of an amount not exceeding Rs. 100000/= under section 80 C for the assessment year 2009 – 2010. However, he has added two more instruments of saving to the list of investments eligible for deduction under this limit. They are:

1. Investment in Senior Citizens Savings Scheme Rules 2004 and
2. Investment in Five year Time Deposit account under Post Office Time Deposit Rules 1981.

2.1.3 The finance bill also proposes to allow additional deduction for medical insurance premium paid by an assessee for his parent / parents. The amount eligible for this additional deduction shall not exceed:

a) in case where the parent is a senior citizen - Rs. 20000/=
b) in any other case - Rs. 15000/=.

2.2 For Salaried Employees:

The finance bill 2008 has not proposed any changes in the scheme of taxation of income from salaries.

2.3 For House Property Owners:

No change is proposed in the finance bill 2008 for the house property owners. The limit of Rs.150000/= for deduction of interest paid on funds borrowed for purchase / construction of a self-occupied house property is continued for assessment year 2009 – 2010.

2.4 Assessee having Income from Business and Profession:

2.4.1 Disallowance for payment in cash:

The provisions for disallowance of any cash payment in excess of Rs. 20000/= have been made more stringent. Under the proposed amendment to section 40 A (3) the disallowance will now be made if

a) such amount aggregating to or more than Rs. 20000/= is paid in cash in a day; or

b) such amount is allowed as an expenditure in earlier assessment year(s) and in any subsequent assessment year is paid in cash aggregating to or more than 20000/= in a day.

2.4.2 Tax on "Fringe Benefits":

The finance bill has continued the levy of "Fringe Benefits Tax" (FBT) for assessment year 2009 – 2010 with some changes for the benefits of the tax payers. The changes are as under:

a) The finance minister has proposed to exempt the following expenses from the levy of FBT which were hitherto taxed as Staff Welfare Expenses:

- ✓ Expenses on providing crèche facility for the children of the employee
- ✓ Expenses on sponsoring an employee for a sport
- ✓ Expenses on organising sports events for employees

b) The finance minister has also proposed to exempt expenditure on maintenance of any accommodation in the nature of guest house from the levy of FBT.

c) The finance minister has also proposed to levy FBT only on 20% of the expenditure on festival celebrations which was hitherto liable at 50% of the expenses.

2.4.2 Amendments to tax benefits to certain industrial undertakings:

a) Under the existing provisions of section 80-IB, deduction in respect of profits and gains is available to an undertaking engaged in production or refining of mineral oil.

   The finance bill proposes to withdraw the tax benefits to an undertaking engaged in refining of mineral oil if it begins refining on or after 1st April 2009.

b) The finance bill proposes to give a five year tax holiday to hospitals located anywhere in India except in seven urban agglomerations of Mumbai, Delhi, Kolkata, Chennai, Hyderabad, Banagalore and Ahmedabad and also the districts of Faridabad, Gurgaon, Ghaziabad, Gautam Budh Nagar, Gandhinagar and the city of Secunderabad provided they start functioning during the period 1st April 2008 to 31st March 2013.

c) The finance minister has proposed to give the tax benefits under the section 80-ID of five years tax holiday to new hotels of two, three and four star categories and convention centre if they are located in specified districts having World Heritage Site and start functioning during the period 1st April 2008 to 31st March 2013.

2.5 Capital Gains:

2.5.1 The finance bill 2008 has, with effect from assessment year 2009 – 2010, proposed to increase the rate of tax from 10 % to 15 % on short term capital gains arising from sale of equity shares and other securities on a listed stock exchange.

Otherwise**, t**he scheme of taxation of short term capital gains and long term capital gains arising from sale of equity shares and other securities on a listed stock exchange is continued.

2.5.2 The finance minister has proposed to exempt capital gains arising on transfer of a property under a notified "Reverse Mortgage Scheme" of financing for senior citizens as announced in the finance bill 2007.

2.5.3 .The finance minister has also proposed to exempt any capital gains arising from conversion of a "bonds" into shares or debentures of any company, if such bonds are issued by an Indian Company in accordance with a notified scheme.

3. Other Changes in Tax Provisions:

3.1 Widening the scope of MAT provisions:

3.1.1 Under the existing provisions, a company is liable to pay Minimum Alternate Tax (MAT) at the rate of 10% of its book profit if the normal income tax payable by it on its taxable income is less than 10% of the book profit.

3.1.2 Hitherto, some assessees have been claiming deductions for / excluding "Deferred Tax Provision", "Dividend Distribution Tax" and "interest payable to income tax department" while determining the "book profit" chargeable to MAT.

The finance bill 2008 now proposes to plug this loophole by amending the definition of income tax under the provisions of MAT. Accordingly these three items, viz. "Deferred Tax Provision", "Dividend Distribution Tax" and "interest payable to income tax department" will not be excluded from the "Book Profit" to be determined for computing MAT.

3.2.Changes in TDS provisions :

The finance bill has proposed following changes in the scheme of deduction of tax at source:

3.2.1 Amendment to Sec. 194 C – Payment to contractors:

The finance bill has proposed to amend provisions of section 194 C relating to deduction of tax at source from payments to contractors / sub-contractors.

Currently, the section does not provide for deduction of tax at source by an Association of Persons (AOP.) and a Body of Individuals (BOI) from payments to contractors / sub contractors.

It is now proposed that an AOP and a BOI shall also be liable to deduct tax at source from payments to contractors / sub contractors.

This amendment will take effect from 1st June 2008.

3.2.2 Amendment to Sec. 195 – Payments to non residents:

The finance bill proposes to amend section 195 relating to deduction of tax at source from payments to a non-resident or a foreign company i.e. from foreign remittances.

Currently, such remittances are made on submission of an undertaking of the remitter and a certificate from a Chartered Accountant to the Reserve Bank of India or its authorized dealers who in turn forward a copy to the Assessing Officer.

The finance bill proposes that the person making foreign remittances shall also furnish to the assessing officer information relating to such payment in a form and manner to be prescribed.

The amendment will take effect from the 1^{st} April 2008.

3.2.3 TDS certificates in paper format to be continued

As the national level information technology infrastructure of the income tax department is not yet operational, the scheme for dematerialization of TDS is proposed to be extended to 1^{st} April 2010. Hence, person deducting TDS are required to issue TDS certificates in paper form to payee till such date.

3.3.Advancement of Due Date for filing of Return:

The Income Tax Act provides for filing of return of income by corporate and other assessees whose accounts are required to be audited under section 44 AB, on or before 31^{st} October every year.

The finance bill now proposes to advance the due date of filing of return of income in such cases to 30^{th} September every year. This amendment will take effect from 1^{st} April 2008. In other words, for year ending 31^{st} March 2008 the corporate and other entities will have to file their return of income on or before 30^{th} September 2008.

3.4 Adjustments to returned income:

The finance bill 2008 proposes to re-introduce the concept of "adjustments" to the retuned income on account of following items:

a) Arithmetical errors in the return

b) Any incorrect claim in the return, if such incorrect claim is apparent from the return

Under the proposed amendment to section 143 (1) adjustments to the returned income now can be made only in the course of computerized processing of returns without any human interface.

3.5 Banking Cash Transaction Tax :

The finance minister has proposed to withdraw the Banking Cash Transaction Tax of 0.1% with effect from 1st April 2009.

3.6 Introduction of new Commodity Transaction Tax

The finance minister has proposed to introduce a new tax called "Commodity Transaction Tax" to be levied on taxable commodities transactions entered in a recognized association. It is proposed to define taxable commodities transaction to mean transaction of purchase or sale in a recognized association of –

1. Option in goods; or
2. Option in commodity derivatives; or
3. Any other commodity Derivative

The tax is proposed to be levied at the rate given in the table below on taxable commodities transactions undertaken by the seller or the purchaser as the case may be, as indicated below

Sr. No.	Taxable commodity transaction	Rate	Payable by
1	Sale of an option in goods or Option in commodity derivatives	0.017% on option premium	Seller
2	Sale of an option in goods or Option in commodity derivatives where option is exercised	0.125 % on the settlement price of the option	Purchaser
3	Sale of Any other commodity Derivative	0.017 % of the price at which the commodity derivative is sold	Seller

The commodity transaction tax will be introduced from a date which will be notified by the government at a later date.

It is also proposed that the commodity transaction tax (CTT) will be allowed as a deduction as business expenditure under section 36 of the Act provided the income from the taxable commodity transaction is offered for tax as business income. This deduction of CTT will be allowed with effect from assessment year 2009 – 2010.

3.7 Changes in Securities Transaction Tax:

The finance bill 2008 has proposed to change the scheme for allowance of Securities Transaction Tax (STT) in case of a dealer in shares.

Presently as provided under section 88E, the Securities Transaction Tax paid by a dealer in shares is allowed to be setoff against his tax liability to the extent of tax payable on profit arising from dealing in shares on which such STT is paid..

Instead, it is now proposed to allow the STT paid by a dealer in shares as business expenditure under section 36 of the Act provided the income from the taxable securities transaction is offered for tax as business income.

This amendment will take effect from 1st April 2009 i.e. assessment year 2009-10.

4. Amendments relating to Charitable Trusts / Associations:

The finance bill 2008 proposes to further clarify the term / expression "Charitable Purposes" as applicable to charitable trusts / associations. It is proposed that any activity in the nature of trade, commerce or business or rendering of any service in relation to any trade. Commerce or business for a fee or cess or any other consideration shall not be considered as an activity for charitable purpose and hence will not be eligible for exemption under section 10(23C) or section 11 of the Income Tax Act.

This amendment will take effect from 1st April 2009 i.e. assessment tear 2009-10.

5. Changes in Wealth tax and Gift Tax Act:

The Finance Bill has not proposed any major changes in the existing provisions of the Wealth Tax Act. 1957. The Gift Tax Act, 1958 continues to be non-operative with effect from 1st October 1998.

Part II

Proposals relating to Service Tax

1. Service Tax rate:

The finance bill has not proposed any increase in the rate of service tax, which remains at 12% plus Education Cess of 2% and Secondary and Higher Education Cess of 1% of service tax. Thus, the effective service tax rate continues to be 12.36%.

2. Increase in exemption limit:

The finance bill proposes to raise the threshold exemption limit for service tax purposes from Rs.8 lakhs to Rs.10 lakhs.

Thus, small service providers will not be liable for service tax if the value of taxable service provided by them in a financial year does not exceed Rs.10 lakhs.

This amendment will come into effect from 1st April 2008

3. New services covered under the tax net:

The finance bill proposes to add seven new services in the service tax net from a date to be notified after the enactment of the finance bill. The new services, which are proposed to be brought under service tax, are as follows:

1) Services provided by a recognised stock exchange in relation to securities.
2) Services provided by a recognised or registered association (commodity exchange) in relation to sale or purchase of any goods or forward contracts.
3) Services provided by a clearing and processing house in relation to processing, clearing or settlement of transactions in securities, goods or forward contracts.
4) Services provided in relation to software for use in or furtherance of business or commerce

5) Services provided in relation to supply of tangible goods without transferring right of possession and effective control of tangible goods
6) Services provided in relation to internet telecommunication. (Consequently, reference to services provided in relation to internet telephony shall be omitted).
7) Services provided in relation to management of investment of an ULIP scheme.

4. <u>Scope of existing services to be amended:</u>

The finance bill 2008 also proposes to expand scope of various existing services or omit them. These proposals will be effective from a date to be notified after the enactment of the finance bill. Some of the services affected by the proposed amendment are discussed below:

1) Services in relation to purchase or sale of foreign currency, including money changing, by an authorized dealer or an authorized money changer to be included under foreign exchange broker services (if such services are provided by an individual) and under banking and other financial service (if such services are provided by any other person).

2) Services in relation to packing together with transportation of cargo or goods, whether with or without other services like loading, unloading, unpacking to be covered under cargo handling services.

3) Services of testing or analysis of information technology software to be included under technical testing and analysis service.

4) Services of inspection, examination and certification of information technology software to be covered under technical inspection and certification service.

5) Services provided in relation to a journey from one place to another in a contract carriage vehicle to be included under tour operator service.

6) As information technology software service is being proposed as a separate taxable service, reference to information technology service is to be omitted from business auxiliary service.

7) As information technology software service is being proposed as a separate taxable service, reference of exclusion of computer software engineering consultancy information technology service is to be omitted from consulting engineering service.

5. New exemptions:

The finance bill proposes to give following exemptions from the levy of service tax with effect from 1st March 2008:

1) The finance bill proposes to exempt from levy of service tax the services provided by a non-resident to another non-resident by way of booking of an accommodation in a hotel in India.
2) The finance bill proposes to exempt 75% of the gross amount charged as freight for transport of goods by road from the levy of service tax in lieu of 75% abatement provided for such services.

6. Cenvat credit on inputs used for providing taxable and exempted services:

In case of a service provider using common inputs or input services for providing taxable as well as exempted services and who is not maintaining separate accounts, the finance bill proposes to give following options:

i. To reverse the credit attributable (as computed in the prescribed manner) to the inputs and input services used for proving exempted service: OR
ii. To pay 8% amount of the value of exempted services.

This proposal shall come into effect from 1st April 2008.

7. Composition Scheme for Works Contract:

The Works Contract (Composition Scheme for Payment of Service Tax) Rules were introduced in the last year and the contractors were given option to pay service tax at the composition rate of 2% of the total contract value subject to certain conditions.

The finance bill proposes to double the composition rate of service tax from 2% to 4% of the total value of the contract with effect from 1st March 2008.