

Union Budget IMPACT 2008-09

Overall impact

The actual tax collections in the last fiscal year were more than the budgeted tax collections which has rarely happens in the history of our economy. The corporate asseesses expected some relief on the tax incidence on them. Rather, a relief of Rs.60000 crore has been given to the farmers through waiving their debt. The efficient corporate sector, which has contributed to the exchequer in excess of estimates, has been given no carrot, instead, their contribution has gone to subsidize the inefficiency of the agricultural sector, by giving them further relief.

The USA economy contributes 22% (approx) of the GDP of the world. The other developed economies of the world contribute another 26%, whereas the balance is contributed by the developing economies of the world. The world economy is highly dependent on USA. Since USA's economy is going into recession, thus it is bound to affect the economic condition of India in an adverse manner. However, in the proposed budget the Finance Minister has not done anything to counter this situation in order to keep the growth momentum intact and has not brought any reduction in the surcharge, cess etc. as expected by the industry.

Direct Taxes

A. Retrospective Amendments

Retrospective Amendments are bad in law, as they cause undue hardship to the assesses and cause the re-opening of cases and issues which have been settled by the authorities or have become time-barred.

There are four pillars of a democracy i.e. Executive, Legislature, and Judiciary and press. The Judiciary is the most important pillar of any country to maintain law and order. Judicial precedent hold the force of law. In the recent past most retrospective amendments have been made to the laws, to over-ride the Judicial pronouncements, undermining the value and the power of the judiciary.

Legislative function is principally concerned with the establishment of future rules of conduct. The presumption is that all laws operate prospectively. The legislature can always render a judicial decision ineffective by enacting a valid law within its legislative field fundamentally altering or changing its character retrospectively. What is important is that the retrospectivity must be reasonable and not excessive otherwise, it runs the risk of being struck down as unconstitutional.

The legislature has powers to introduce enactments and amend enacted laws with retrospective effect; however, the same is not only subject to the question of competence but is subject to judicially recognised limitations. The legislative power cannot be used to subvert the decision without removing statutory basis of the decision

In the absence of any indication in the statute that the legislature intended for it to operate retrospectively, it must not be given retrospective effect. If there is doubt, it should be resolved in favour of the tax payer. The settled principles should be followed in their true spirit and that it does not result in unproductive deployment of expensive management time and resources to deal with such situations. In the present finance bill,2008 many retrospective amendments have been made by the finance minister which are as follows:-

Amendment in Section 115JB – Minimum Alternate Tax

Explanation to section 115JB requires that for calculating the book profits of the companies, amongst others Income tax paid / payable and the provision therefore has to be added to the book profit.

A new clause has been inserted to provide that the book profits shall also be increased by the amount of deferred tax and the provision therefore, if debited to Profit & Loss A/c. Further, it is clarified that "income tax" shall include Dividend Distribution Tax.

Retrospective - This is with retrospective effect from 1st April, 2001

SRD View: No such corresponding clarification has been given for the reduction of the deferred tax asset, if the same has been credited to the profit and loss account. Thus, this shall not be reduced while computing the Book Profits for MAT purposes. However, in public forms the Finance Minister has assured Industry that the corresponding amendment shall be incorporated at the time of passing of the Finance Bill, 2008 by the Parliament.

Other amendments are as per list attached –Annexure 'A'

B. 80C Basket of Exemptions Enhanced

Senior Citizen Saving Scheme 2004 and the Post Office Time Deposit Account subject to conditions and lock-in as prescribed have been added to the basket of saving instruments under Section 80C of the Income Tax Act under the overall limit of Rs. 1,00,000/-.

The principal amounts received by the nominee or the legal heirs of the assessee on his death is not liable to tax. This is w.e.f. 1st April, 2008, A.Y. 2008-09.

Impact: Under this amendment the basket of saving instruments is enlarged by adding Senior Citizen Saving Scheme 2004 and the Post Office Time Deposit Account. Even though the basket has been enlarged, The overall limit of exemption is still unchanged ie. Rs.1,00,000.

C. Threshold limit of exemption increased

Threshold limit for Personal income tax slabs in the case of all assesses increased to Rs.150,000.

The revised slabs and rates of tax are:

Up to Rs.150,000	NIL
Rs.150,001 to Rs.300,000	10 per cent + Education cess etc. of 3%
Rs.300,001 to Rs.500,000	20 per cent + Education cess etc. of 3%
Rs.500,001 and above	30 per cent + Education cess etc. of 3%

In case of a woman assessee, the threshold limit increased from Rs.145,000 to Rs.180,000; In case of a senior citizens, the threshold limit increased from Rs.195,000 to Rs.225,000.

Impact: The Finance Minister has made substantial Increase in the tax exemption limits. The threshold limit of exemption will make a tax saving of Rs 4,000 for individuals, Rs 6,500 for women assesses and Rs 6,000 for senior citizens. By this amendment, the senior citizen who should have been benefited the most have been benefited the least.

D. Amendment to Section 36 – Other Deductions

Section 36(1)(xv) inserted - Securities Transaction Tax (STT) shall be allowed as a deduction from Profits and Gains of Business or Profession as any other allowable deduction.

This is w.e.f. 1st April, 2009, A.Y. 2009-10.

Thus correspondingly section 40(a)(ib) stands omitted w.e.f. 1st April, 2009, which disallowed the tax so paid as a deduction from Business Income. Also, the corresponding Rebate of STT under section 88E also correspondingly stands omitted w.e.f. 1st April, 2009

There is no change in the present STT rates.

Impact: *Securities Transaction Tax will be allowed as a deductible expenditure against business income rather than only as a rebate against tax liability (which benefit was restrictive in nature). Further, securities transaction tax (STT) on options has been streamlined to deal with two situations, i.e. where the option is exercised, and where it is not. In the earlier scenario, assessee can get tax savings of 100% of STT paid but in the proposed scenario, assessee can get tax savings only of 33.39% of STT paid.*

E. Section 36(1)(xvi) - Commodities Transaction Tax (CTT)

CTT has been introduced by the Finance Bill, 2008 (details given in the later portion of the Analysis) and shall be allowed as a deduction from Profits and Gains of Business or Profession as any other allowable deduction.

This is w.e.f. 1st April, 2009, A.Y. 2009-10.

Impact: *The commodity market is at an infant stage and there are very few players in the market. With the introduction of the CTT on the commodities, the already few players existing in this market would be discouraged to participate actively. Commodities Transaction Tax will be introduced on transactions in commodity futures on the same lines as STT on options and futures.*

Service tax on services provided by stock/commodity exchanges

The services provided by stock/commodity exchanges and clearing houses is also brought under service tax net

Impact: *Under the proposed scheme, the services provided by stock/commodity exchanges also come under the purview of service tax net. As CTT as well as service tax both have been levied upon it, this badly hits the commodity market.*

F. Amendment to section 115O – Tax on distributed profits of domestic companies

It is proposed to allow a Parent company to set off the dividend received from its subsidiary company against dividend distributed by the parent company, provided that the dividend received has suffered Dividend Distribution Tax (DDT) and the parent company is not a subsidiary of another company.

This is effective from 1st April, 2008, A.Y. 2008-09.

Impact: *Partial relief has been introduced on dividends distributed by a subsidiary to a parent under a single-tier structure, wherein a parent would be permitted to claim deduction of the dividend distribution tax (“DDT”) paid by the subsidiary. While this benefit has been introduced to avoid cascading effect of double payment of DDT, the availability of benefit has been restricted to single-tier structures, thus excluding companies which have multi-tier subsidiaries for strategic business purposes.*

G. Amendment to section 143 – Assessment

Sub-section (2) to section 143 has been amended to provide that the time limit for serving notice for scrutiny assessment has been reduced from 12 months from the end of the month in which such return was filed to 6 months from the end of the financial year in which the return is furnished.

This is w.e.f. 1st April, 2008, 2008-09.

Impact: Under the proposed scheme, the department gets two more months for serving notice of scrutiny assessment for individual assesses and thus puts much burden on individual assesses, who now has to fear the scrutiny notice for another two months.

H. Insertion of new section 115WKB – Deemed Payment of FBT by employees.

A new section 115WKB is inserted relating to deemed payment of tax by employees.

It states that where an employer pays Fringe Benefit Tax on allotment or transfer of specified security or sweat equity and subsequently recovers such tax from the employees, it shall be deemed that the Fringe Benefit Tax so recovered is the tax paid only to the extent to which the amount thereof relates to the value fringe benefit provided to the employee.

It further provides that the employee shall not be entitled to claim any refund or credit out of such payment against any other tax liability, nor can he claim the FBT paid as the cost of acquisition at the time of computing capital gains at the time of sale of such Esops.

However, the employee can claim credit of such FBT paid by him in foreign country.

This is w.e.f. 1st April, 2008, A.Y. 2008-09.

Impact: Under this the foreign employee who is working in India can get the tax credit in their home country. But the Indian employees cannot get the tax credit. Thus, this will be a capital loss to Indian employees, acting as a deterrent for employees availing ESOP's. Also, the non-resident employees are treated partially vis-a-vis the resident employees which is unfair.

I. Amendment to Section 35

No deduction shall be allowed in respect of expenditure which is incurred by a company engaged in the business of Bio-technology or in the business of manufacture or production of any drugs, pharmaceuticals, electronic equipments, computers, telecommunication equipments, chemicals or any other article or thing notified by the Board if such expenditure is incurred after 31st March, 2008.

This is with effect from April 1, 2009, A.Y. 2009-10.

Impact: In the growing sector of research & development and bio-technology, as now no deduction is available the companies will be discouraged to enter into this sector. The industries mentioned herein above, are all those which provide India, with a competitive edge and compete neck to neck with companies in other parts of the developed world. India is still struggling to achieve state of the art, technology and develop its research & development facilities. On the one hand, the Finance minister wants to promote healthcare and education, and on the other hand he has removed the exemptions available to companies still building their capabilities in the same fields. It seems unfair to take from one hand and give to other.

J. Amendment in Section 111A– Tax on short term capital gains in certain cases & Amendment in Section 115AD – Tax on income of FII from securities or capital gains from their transfer

Rate of tax on short term capital gains under Section 111A and the Rate of tax on short term capital gains under Section 115AD proposed to be increased from 10 percent to 15 per cent.

This is with effect from 1st April, 2009, A.Y. 2009-10.

Impact: Under the proposed budget, as the tax on short term capital gain is increased, now the FII's don't want to invest owing to lower rates of taxes in most other countries, which encourage investment. Persons who don't want to block their funds for a longer period of time, arising to international market volatilities etc. Thus, the FII's would be discouraged to invest in our country and they would search for better avenues of investment in other world markets causing India to suffer in the global investment forum.

K. Amendment to section 195 – Other sums & Corresponding amendment in section 295 Power to make Rules.

In section 195 of the Income Tax Act, now all persons required to deduct and deposit withholding tax shall furnish the information relating to payment of any sum in such form and manner as may be prescribed by the Board.

The Board is empowered to prescribe the manner in which such information has to be filed under section 295(2)(fa).

With effect from 1st day of April 2008, A.Y. 2008-09.

Impact: The proposed budget defines a specified format to furnish the TDS details U/S 195 This will act as a deterrent for the companies to come in India, as the intention of the government could be to issue 143(2) notices to such companies for filing of returns in India etc., increasing the burden of tax compliance in India.

Annexure 'A'**1) Insertion of a new clause (26AAA) in Section 10**

It has been proposed to exempt income which accrues or arises to a "Sikkimese" individual from any source in the State of Sikkim or by way of dividend or interest on securities.

Retrospective - Effective with retrospective effect from 1st April, 1990.

2) Amendment to Section 43

It is proposed to insert explanation 6 to section 43(6), to define W.D.V of assets in case of assessee who are not required to compute total income for the purposes of the Income Tax Act (E.g. Charitable Trusts etc) wherein the actual cost of the assets is to be adjusted by the amount attributable to the revaluation of such assets (if any) as per the books and depreciation on such assets provided in the books shall be deemed to be depreciation actually allowed, which shall be adjusted by the amount of depreciation attributable to such revaluation.

Retrospective - This is with retrospective effect from 1st April, 2003

3) Amendment in Section 115JB – Minimum Alternate Tax

Explanation to section 115JB requires that for calculating the book profits of the companies, amongst others Income tax paid / payable and the provision therefore has to be added to the book profit.

A new clause has been inserted to provide that the book profits shall also be increased by the amount of deferred tax and the provision therefore, if debited to Profit & Loss A/c. Further, it is clarified that "income tax" shall include Dividend Distribution Tax.

Retrospective - This is with retrospective effect from 1st April, 2001

SRD View: No such corresponding clarification has been given for the reduction of the deferred tax asset, if the same has been credited to the profit and loss account. Thus, this shall not be reduced while computing the Book Profits for MAT purposes. However, in public forms the Finance Minister has assured Industry that the corresponding amendment shall be incorporated at the time of passing of the Finance Bill, 2008 by the Parliament.

4) Amendment to section 151 – Sanction for issue of notice

It is proposed to amend section 151 of the Income-tax Act to provide that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, are required only to be satisfied on the reasons recorded by the assessing officer about fitness of a case for the issue of notice under section 148. There is no further requirement for him to issue the notice himself.

Retrospective - This is w.r.e.f. 1st October, 1998.

5) Amendment to section 153 – Time limit for completion of assessment and reassessments

It is also proposed to amend section 153 of the Income tax Act so as to allow a minimum time period of one year to the Income tax authority for completion of assessment and / or re-assessment before whom the case was pending when the application was filed with the Settlement Commission.

Retrospective - This time limit is applicable retrospectively with effect from 1st of June 2007.

It shall be deemed that this revised time limit will apply to all cases where settlement proceedings have abated from 1st of June 2007 and thereafter.

6) **Amendment to section 153A – Assessment in case of search or requisition**

If assessment / reassessment proceedings pursuant to search are annulled in appeal / legal proceedings, the abated assessment / reassessment in respect of that year will stand revived. In case the order of annulment is set aside, such revival will cease to have effect.

Retrospective - This amendment will take effect retrospectively from 1st June 2003.

7) **Amendment to section 153B – Time-limit for completion of assessment under section 153A (amended)**

For computing the period of limitation under section 153B for assessment in the Explanation a new sub-clause (vii) has been inserted to read as “the period commencing from the date of annulment of a proceeding or order of assessment or re-assessment referred to in sub section (2) of section 153A till the date of the receipt of the order setting aside the order of such annulment, by the Commissioner”

Retrospective - This amendment will take effect retrospectively from 1st June 2003.

8) **Amendment to section 153C – Assessment of Income of any other person**

In section 153C of the Income Tax Act, in sub-section (1), in the proviso, for the word, figures and letters “section 153A”, the words, brackets, figure and letters “sub-section (1) of section 153A” shall be substituted.

Retrospective - This amendment will take effect retrospectively from 1st June 2003.

9) **Amendment to section 153D – Prior approval necessary for assessment in cases of search or requisition.**

In section 153D of the Income Tax Act, for the word, figures and letters “sub-section (1) of section 153A” shall be substituted.

Retrospective - This amendment will take effect retrospectively from 1st June 2003.

10) **Amendment to section 191 – Direct Payment**

The Explanation to section 191 has now included the employer (same as under section 192 (1A)) as also responsible for the deduction and payment of withholding tax in addition to the principal officer of the Company and the assessee directly himself and if such employer does deduct or after deducting fails to pay the tax, he shall be deemed to be an assessee in default as per section 201(1) amended.

Retrospective - This is w.r.e.f. 1st June 2003.

11) **Amendment to section 201 – Consequences of failure to deduct or pay**

Assessee in default to include person required to withhold tax – A clarification has been introduced to provide that an 'assessee in default' includes any person required to withhold tax u/s 192 irrespective of whether such taxes have been withheld

Retrospective - This is w.e.f. 1st June 2002.

12) **Amendment to section 268A – Filing of Appeal or application for reference by income tax authority**

A new provision is introduced to protect the right to appeal by the income tax authorities, as per the provision, the CBDT is to regulate filing of an appeal / application for reference by the income tax authorities.

Retrospective - This provision will be applicable retrospectively with effect from 1st April 1999.

13) **Amendment to section 271 – Failure to furnish returns, comply with notices, concealment of income, etc. - Deemed satisfaction for initiation of penalty proceedings**

It is now clarified that where any amount is added or disallowed in computing the total income or loss of an assessee and the order contains a direction for initiation of penalty proceeding, the same shall be deemed to constitute satisfaction for the assessing officer to initiate penalty proceeding.

Retrospective - This provision will be applicable retrospectively with effect from 1st April 1989.

14) **Amendment to section 292C – Presumption as to assets, books of accounts etc.**

Presently, the presumption that the books of account, other documents and specified assets found in the possession and or control of the person belong to such person and such books of account and documents are correct applies in cases of search.

Now, such presumption has been extended to survey operations also w.r.e.f. 1st June 2002.

The above presumption will also extend to books of account, other documents and assets delivered to the requisitioning officer w.r.e.f. 1st October 1975

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The above presumption will also extend to books of account, other documents and assets delivered to the requisitioning officer.

Retrospective - This provision will be applicable retrospectively with effect from 1st October 1975.